

Certified Mail # 9589 0710 5270 0699 7438 72

July 7, 2026

Forest Service

Uinta-Wasatch-Cache National Forest

Evanston-Mountain View Ranger District

Attn: Justin Robinson, Acting District Ranger

1565 -WY-150

Evanston, WY 82930

**RE: Comments on the Proposed Gilbert Creek Aspen  
Restoration Proposal: Reliance on Analysis and Draft Decision  
Notice**

Hello,

Native Ecosystems Council, the Alliance for the Wild Rockies, and the Council on Wildlife and Fish would like to submit the following comments on the proposed Gilbert Creek Aspen Restoration Project. Please note these comments include one attachment with hard copies of relevant portions of cited reports and/or publications in these comments.

Although the agency calls the analysis of impacts of the Gilbert Creek Aspen Restoration project as "Reliance on Analysis and Draft Decision Notice," the



document that it refers to as providing a general analysis of impacts to wildlife for this new proposal is the **Anadarko Vegetation Management Environmental Assessment (EA) lacks any analyses of vegetation treatment impacts on wildlife.**

As a result, this EA cannot serve as even a general analysis of vegetation treatments on wildlife, as it lacks any such analyses. As such, suggesting that the impacts to wildlife from the Gilbert Creek Aspen Restoration Project have already generally been evaluated is patently false. Even if the Anadarko project contained an extensive analysis of impacts to wildlife, which it did not, that analysis would still not apply to the Gilbert Creek project. For example, the baseline conditions regarding wildlife cannot be substituted for from another area of the landscape. For example, the Gilbert Creek project area is identified as key winter range for moose, but not in the Anadarko project area. The Gilbert Creek project is stated to be an aspen improvement project, while this is not the objective for the Anadarko project. In addition, the Gilbert Creek project is claimed to be a habitat improvement project for wildlife, while this claim is not made for the Anadarko project. Each project area also requires an inventory of snag habitat to determine if the Forest Plan standard is being met. This inventory would not likely be the same in both landscapes. Also, there is an inventory required for old growth forests. Again, this inventory would not likely be the same for both project areas. Depending on the availability of snags and old growth, the wildlife analyses for these 2 different project areas would be different.

Of particular note is that there are no monitoring results for snags and old growth on the UCW. Without any Forest Plan monitoring results that can indicate the impacts of vegetation treatments on wildlife associated with snags and old growth, the agency cannot claim that impacts to wildlife are known and thus indicate potential impacts of the Gilbert Creek project.

A complete and valid analysis of potential impacts of the Gilbert Creek project are required as per the NEPA. This analysis needs to include the status of wildlife associated with old growth and snags, as per the diversity requirements of the NFMA.



The agency cannot demonstrate the Forest Plan requirements for old growth and snags are being met on the Uinta-Wasatch portions of this forest. This means the agency cannot demonstrate that the diversity requirement of the NFMA are being met. Since monitoring is a required process during vegetation management projects, the Uinta-Wasatch-Cache National Forest needs to correct this failure before vegetation management projects continue to be implemented, as their impacts on wildlife habitat are not being monitored as is required by the NFMA.

Additional violations that are apparent for both the Anadarko and Gilbert Creek projects are chronicled below.

1. The agency is violating the NEPA by failing to include action alternatives that would meet the proposed objective of restoring aspen .

It is well known that livestock grazing is creating an ecological crisis for aspen by preventing any recruitment due to heavy browsing (Bechta et al. 2014; Earnst et al. 2012). We could not find a single reference to this severe ecological impact in the Gilbert Creek project summaries. This is both a NEPA and an NFMA violation, as the agency is providing a false rationale for project activities by not addressing what the actual problem is with aspen. There is no information provided in the agency's project documents as to what the current status of aspen is regarding browsing levels, and stand structure including recruitment. To propose a restoration project without any actual habitat data for aspen is a violation of the NEPA. The current condition of aspen stands in this landscape need to be inventoried and results provided to the public, along with an analysis as to what factors are affecting aspen conditions and structure. The agency cannot propose a logging solution to fix aspen if the problem has never been identified. An action alternative that actually addressing issues regarding aspen needs to be developed, also as per the NEPA.



2. The Gilbert Creek Aspen Restoration Project is a violation of the NEPA and the NFMA due to a lack of documentation that proposed actions benefit wildlife.

The Forest Service has yet to provide any monitoring data to indicate what wildlife species benefit from removing conifers from aspen. For example, the MIS/focal species goshawk has not been demonstrated to benefit from removing conifers from aspen. There has been no monitoring of the effect of this practice on goshawk prey species, including red squirrels and the Three-toed Woodpecker. Claims that removing conifers from aspen need to be substantiated with monitoring before the agency proceeds any further with these projects, as the impacts to wildlife are unknown, in violation of the NFMA, the NEPA, and the MBTA.

3. The agency has not evaluated the impacts of vegetation treatments, including within the Gilbert Creek or Anadarko projects, on wildlife associated with old growth forests.

Old growth stands are not identified in the project area either by acreage or by location. There is no indication that any existing old growth, including Douglas-fir, aspen and pinyon-juniper old growth, will be maintained by protecting these stands from treatment. Treatment will eliminate old growth conditions as defined for the Intermountain Region (Hamilton 1993).

The proposed thinning and underburning will destroy old growth values for Douglas-fir (Code 210). Douglas-fir old growth (Code 210) is defined as from 10-15 trees per acre with a dbh from 18-24 inches; ages are 200 years or older; there are usually at least 2 canopy layers; horizontal and vertical diversity are high, with a diversity of tree ages and sizes; large snags are present.



The proposed logging and underburning will destroy lodgepole pine old growth (Code 218). This old growth has at least 25 trees per acre over 11 inches dbh, an average of 140 years in age; tree canopy layers are 2, with at least 2 6-inch dbh classes.

The proposed thinning and underburning will destroy pinyon-juniper old growth forests. These old growth stands are defined by Hamilton (1993) (Code 239) as having from 12-30 trees per acre from 12-18 inches dbh; ages range from 200-250 years; snags are present; juniper dominated stands have a well-developed shrub-herbaceous understory; total canopy coverage ranges from 15-35%; snags are 12-15 inches dbh or larger.

The proposed thinning and burning in aspen stands will destroy their old growth values. Aspen old growth (Hamilton 1993, Code 217) may be seral or stable; seral stands have abundant and vigorous conifer reproduction in the tree canopy that constitute more than 10 percent of the layer. The stable stands have little or no conifer reproduction, thus less than 10 percent tree canopy is conifer; seral stands may constitute old growth, but will eventually be overcome with conifers; old growth aspen has trees at least 12 inches dbh, with 10-20 such trees per acre, with at least 2 or more age classes; snags will be from 10-15 inches dbh, and on average will be 4/acre; large diameter trees dominate a canopy of smaller diameter trees that may overtop clumped or uniformly distributed seedling and sapling sizes.

Based on the definitions of Douglas-fir, subalpine-spruce fir, lodgepole pine, aspen and pinyon-juniper old growth as per Hamilton (1993), the Gilbert Creek Aspen Restoration project will destroy old growth if stands are treated with thinning and underburning. In addition to failing to retain the old growth conditions defined by Hamilton (1993), old growth habitat conditions will be destroyed as defined for Region 1 of the Forest Service. USDA (1990) defines the general characteristics of old growth as having large-canopied trees that modify microclimatic conditions, as well as winds; dead and defective trees provide nesting and roosting sites for cavity-users; snags host invertebrates which are an



important food source for woodpecker; downfall supports insects and other invertebrates, provides cover and den sites for wildlife; a relatively closed canopy often with two or more layers, creates a more moderate microclimate; vertical diversity provides a variety of substrates for feeding or nesting; the presence of heart rot, mistletoe, dead or broken trees tops, diseased trees, and saprophytic plants create a variety of microsites and food sources for wildlife.

The agency is violating the NEPA by failing to define how old growth is being managed in the Gilbert Creek Aspen Restoration Project Area for wildlife. There are at least 22 bird species, including the MIS Northern Goshawk and sensitive species the Three-toed Woodpecker, Great Gray Owl, Boreal Owl and Flammulated Owl, that are associated with old growth forests on the UWC, including (USDA 2018; USDA 1990):

Three-toed Woodpecker, Boreal Owl, Brown Creeper, Flammulated Owl, Great Gray Owl, Northern Goshawk, Golden-crowned Kinglet, Hairy Woodpecker, Hermit Thrush, Lewis' Woodpecker, Pine Grosbeak, Pygmy Nuthatch, Red-breasted Nuthatch, White-breasted Nuthatch, Townsend's Warbler, Varied Thrush, Winter Wren, Williamson's Sapsucker, Red-naped Sapsucker, Northern Pygmy Owl, and Northern Saw-whet Owl.

Five of these old growth-associated birds are sensitive species for the UWC National Forest: Northern Goshawk, Flammulated Owl, Boreal Owl, Three-toed Woodpecker, and Great Gray Owl.

Three of these old growth associated birds are Birds of Conservation Concern for Bird Conservation Region 16 of the USFWS: Flammulated Owl, Three-toed Woodpecker, and Lewis' Woodpecker.

Two of these old growth-associated birds have been identified as Utah Partners in Flight Priority Species (2002): Lewis' Woodpecker, and Three-toed Woodpecker.



Two of these species associated with old growth forests have been identified as Species of Management Concern in the Utah Wildlife Action Plan: Joint Team (2015), and Partners in Flight Land Bird Conservation Plan (2010): Lewis' Woodpecker, and Williamson's Sapsucker.

Four of these species associated with old growth forests have been identified in the Utah Wildlife Action Plan (2015) as birds with the greatest conservation need: Boreal Owl, Flammulated Owl, Lewis Woodpecker, and Northern Pygmy Owl.

The Williamson's Sapsucker has been identified as having recent population declines (North American Bird Conservation Initiative 2022).

The agency has completed no analysis as to how these old growth species will be impacted by the loss of old growth forests in the Gilbert Creek Aspen Restoration Project. The loss of, and fragmentation of Douglas-fir, aspen and pinyon-juniper forests in this project area may have potentially severe impacts on the populations of these 22 birds, 6 which have an identified conservation concern. This project cannot meet the requirements of the NEPA until a full and thorough analysis is completed on existing and proposed levels of old growth forests, and how these current and proposed levels are affecting, or will impact 22 bird species associated with old growth. This analysis needs to consider the current status of western forest birds based on published reports of their population trends. The current indications of severe and significant population declines of western forest birds have been identified in recent publications (Rosenberg et al. 2019; The Guardian 2025; North American Bird Conservation Initiative 2022).

4. The agency failed to demonstrate that the Gilbert Creek Aspen Restoration Project will adhere to the Forest Plan requirements for old growth forests.



The Unita-Cache Revised Forest Plan S-13 requires 20% old growth to be maintained in each ecological section of the forest, while (G-14) requires the agency to maintain 20% old growth forests in Douglas-fir and pinyon-juniper forest types, and 30% old growth in aspen forest types (Biological and Terrestrial Diversity Standard S13). Subgoals include maintaining 40% mature and old growth forests combined. The Gilbert Creek Aspen Restoration Project documents do not identify any compliance with this Forest Plan standard, in violation of the NFMA. This could also be a NEPA violation, because if the 20% old growth requirements are not currently being met, or will be violated post-project, significant adverse impacts to old growth-associated wildlife will be triggered as per S13.

The adherence to the 20% old growth standard and the 20-30% old growth guideline is especially relevant to the MIS goshawk. The current best science recommends 20% old growth in conifer forests for this MIS (Reynolds et al 1991). The Gilbert Creek project area needs to have an inventory of old growth to demonstrate how this habitat is affecting the MIS goshawk.

5. The agency failed to evaluate the impact of the Gilbert Aspen Restoration Project on birds associated with snags.

There are at least 26 bird species on this national forest(s) that require snags for nesting. These include the following (USDA 2018):

American Kestrel, Black-capped Chickadee, Boreal Owl, Brown Creeper, Downy Woodpecker, Flammulated Owl, Hairy Woodpecker, House Finch, House Sparrow, House Wren, Lewis' Woodpecker, Western Bluebird, Mountain Bluebird, Northern Flicker, Pygmy Nuthatch, Red-breasted Nuthatch, White-breasted Nuthatch, Red-naped Sapsucker, Northern Saw-whet Owl, Northern Pygmy Owl, Tree Swallow, Violet Green Swallow, Western Screech Owl, Three-toed Woodpecker, and Williamson's Sapsucker.



Of these 26 bird species that require snags for nesting, 6 species have an identified conservation concern, as demonstrated below.

The Three-toed Woodpecker, Flammulated Owl and Boreal Owl are sensitive species in the UW RFP.

The Flammulated Owl and Lewis' Woodpecker are Birds of Conservation Concern in the USFWS Bird Conservation Region 16.

The Lewis' Woodpecker and Three-toed Woodpecker are Utah Partners in Flight (2002) Priority species.

The Boreal Owl, Flammulated Owl, Lewis' Woodpecker, and Northern Pygmy Owl are Birds in greatest conservation need in the Utah Wildlife Action Plan (2015).

The Williamson's Sapsucker and Lewis' Woodpecker were identified as Species of Management Concern in the Utah Wildlife Action Plan, Joint Team 2015, and Partners in Flight Land Bird Conservation Plan (Rossenberg et al. 2016).

The Williamson's Sapsucker has been identified as experiencing recent declines (North American Bird Conservation Initiative (2022)).

A stated objective of the Gilbert Creek Aspen Restoration Project is to remove dead standing trees. This is a direct conflict with the NFMA, where 26 bird species require snags for nesting. Although the UW RFP calls for 3 snags per acre to be maintained in treatment areas, there was never any analysis ever completed to define why 3 snags per acre meets the habitat needs of these 26 associated species. The 3 snags per acre is an arbitrary number that is baseless for maintaining viable populations of the 26 associated bird species. Even if 3 snags



per acre are maintained in treatment units, this does not ensure viable populations of these 26 species will be maintained. In addition, retaining a few snags per acre does not mitigate the loss of the surrounding forest, especially hiding cover, thermal cover, and forage. As just one example, the sensitive Three-toed Woodpecker nests in forest stands with up to over 70 larger snags per acre, as this provides foraging habitat (Saab et al. 2012). The use of the snag retention strategy, such as 3/acre, was demonstrated to be an invalid conservation strategy for wildlife well before the 2003 UW RFP was completed (Bull et al. 1997; Goggans et al. 1987). Besides the loss of the surrounding forest and foraging habitat, the 3 snags/acre recommendation does not address snag recruitment. Once retained snags fall with a few years, there can be a 100-year or more lack of any snags. So in effect, this snag retention strategy will not maintain snags over time, and as such, will not maintain associated species over time.

In conclusion, the 3 snags per acre recommendation in the UW RFP is merely “window dressing” and was never based on any actual habitat requirements for any cavity-nesting bird, either in the short or long term. Use of this recommendation to avoid significant adverse impacts on 26 species associated with snags is a violation of both the NFMA and the NEPA. The Big Cottonwood Canyon project analyses need to define the severe long term impacts this project will have on 26 species associated with snags.

6. The agency did not demonstrate that the UW RFP snag guideline G-16 will be met with the Gilbert Creek Aspen Restoration Project.

UW RFP guideline 16 requires that if a forest stand is not currently meeting the guideline for 3 snags per acre of an 18 inch dbh in mixed conifer, spruce-fir, and Douglas-fir stands, and 20 per acre in aspen stands at least 8 inches dbh, then no felling of snags is allowed. There has been no snag inventory for the project area, for any stand proposed for treatment. Until this is done, the agency cannot demonstrate the RFP guideline will be met.



7. It is unclear if the Forest Service is monitoring the Forest Plan requirement for snag habitat.

We could not locate any monitoring information on how snag habitat is being maintained on this national forest. Given that snag numbers are supposed to be the proxy for populations of associated species, this means that the agency is not meeting the NFMA requirements to monitor the impacts of vegetation treatments on these multiple wildlife species.

8. The agency is violating the 2012 Planning Rule by failing to identify a focal species for snag habitat.

The 2012 Planning Rule requires the Forest Service to identify a focal species for habitats that will be impacted by management actions. Clearly snag habitat is impacted by management activities. Yet there is no focal species identified in the 2003 RFP for the UW. The “proxy” for 22 species associated with snags is the number of snags per acre. Even if this were a valid indicator of populations of snag-associated wildlife, there is no monitoring program in the RFP on snag retention in vegetation management projects. So there is no monitoring occurring for the agency to determine if they are maintaining viable populations of the 22 bird species associated with snags, in violation of the NFMA.

9. The agency is violating the UW RFP standard 15 for the Northern Goshawk.

The UW RFP standard 15 for the Northern Goshawk requires the agency to design all management activities to maintain, restore or protect desired goshawk habitat and prey habitat, including foraging, nesting and movement. There is no analysis for the Gilbert Creek Aspen Restoration Project as to how occupied goshawk habitat is being managed to meet this standard. The number of goshawk territories that occur in the project area are unknown. The only requirement as per design criteria was that nesting stands will not be treated when occupied.



This direction is a direct conflict with standard 15, as it allows nesting habitat to be destroyed.

The project design features do not include any valid conservation measures for this indicator/sensitive species. As per the current best science (Reynolds et al. 1992), a goshawk territory should have 180 acres of nesting stands, which are not modified in any manner. These nesting stands should be located within 420 acres of post-fledging habitat, for a total of 600 acre block of habitat managed for nesting-post-fledging habitat. The 5400 acres of surrounding foraging habitat should be comprised of 40% mature and old forest habitat, of habitat that is the primary foraging habitat for goshawks. Maintaining prey species requires maintenance of the red squirrel, a species that requires dense mature/old growth forests. The red squirrel will be eliminated in all forest stands treated in this project (Reynolds et al. 1992).

10. The agency is violating the NFMA by failing to evaluate the impacts of vegetation management on the goshawk and other sensitive species.

The most recent monitoring reports for 2022-23 indicate a progressive decline in goshawks on this forest. But in spite of this, the agency has never provided any monitoring data on the impacts of vegetation treatments on this MIS. As an example, logging/burning is allowed in goshawk nesting stands. There is no monitoring data on how this treatment impacts future use of this stand for nesting. There is no monitoring as to how available old growth habitat is impacting goshawk population trends. There is no monitoring as to how removal of conifers from aspen stands impacts goshawk prey species. In general, simply counting goshawk territories, occupied territories, and territories with nesting activity fails to meet the requirements of the NFMA by looking at how vegetation management is impacting this species. As one monitoring example, the level of old growth forests and undisturbed aspen/mixed conifer stands within goshawk territories could be compared to those with nesting and those without nesting, or those that are still occupied and those that have been abandoned. Without any



type of monitoring to understand how vegetation management is impacting this focal species/MIS, the agency is in violation of the NFMA. No further modifications of goshawk territories should occur until this requirement is addressed and corrected, so that impacts of vegetation management projects, including the Gilbert Creek Aspen Restoration project, can assure that goshawk habitat is being maintained.

There are 4 other sensitive species on this forest that require snags in both conifers and aspen. Conifers can provide larger snags for the Flammulated Owl, Boreal Owl, and Great Gray Owl. Aspen snags are important to the Flammulated and Boreal Owl, as well as the Three-toed Woodpecker. The impact of removing conifers in aspen/mixed conifer stands on these 4 sensitive species has not been evaluated by the agency. As such, claims that wildlife habitat is improved by these treatments are unsubstantiated, and thus a violation of both the NEPA and the NFMA.

11. The agency is violating the NEPA by claiming that vegetation treatments in the Anadarko and Gilbert Creek Aspen Restoration Project will improve goshawk habitat by increasing prey.

The claims that vegetation treatments increase goshawk prey, and thus benefit the goshawk, are not supported with any evidence, or the current best science. Reynolds et al. (1991) clearly note that many goshawk prey species, especially the red squirrel and Three-toed Woodpecker, require dense older forests as habitat, including high cone production for the red squirrel. It is not possible that thinning forests will increase pine cone production for the red squirrel, and thus increase their populations. In addition, thinning of forest will reduce insects and diseases, or prey for the Three-toed Woodpecker. The agency is making false conclusions about impacts to this forest MIS, in violation of the NEPA.



12.The agency is violating the 2012 planning rule by failing to identify focal species for birds associated with snags, and birds associated with general forest habitat.

The agency has no MIS/focal species for 22 bird species that depend upon snags as nesting habitat. These species depend upon woodpeckers to create nesting cavities (Bull et al. 1997; Saab et al. 2012). Without woodpeckers, there will be no nesting habitat for other birds. Thus monitoring of woodpecker populations is a key ecosystem requirement for all these birds. The agency also has no focal species for a host of birds that require forested habitat. This absence of a focal species is especially egregious as almost all vegetation treatments affect these birds. There are up to 67 species of western forest birds (Rosenberg et al. 2019) that will be impacted by forest vegetation and fuels projects, and yet the agency is not monitoring effects on a single such species. Until the agency corrects this NFMA/2012 Planning Rule, the agency cannot legally implement any further vegetation/fuels treatments projects, as impacts are unknown. Mitigation measures need to be required to address habitat impacts that occur to these 67 species of western forest birds in order to ensure landscape viability is maintained.

13.The agency is violating UW RFP guideline 21.

UW RFP guideline 21 requires the agency to develop conservation measures and strategies to maintain and/or minimize impacts to sensitive species and their habitats. The sensitive species on the UW include the Northern Goshawk, Three-toed Woodpecker, Boreal Owl, and Great Gray Owl. As previously discussed, there are no effective conservation measures identified for the Northern Goshawk. Protection of nesting activities is only a temporary measure, as post-nesting the nesting stand can be degraded with vegetation treatments.

The only conservation strategy for the Three-toed Woodpecker is a recommendation to maintain 3 snags per acre post-treatment. This is not an



actual requirement, as green trees can be substituted. And snag provision is only short-term, for a decade or so before retained snags fall over (Bull et al. 1997). Woodpeckers require insects as foraging habitat, a factor that is not addressed with leaving a few snags (Bull et al. 1997; Goggans et al. 1987). An ineffective strategy is not a valid conservation measure as per the NEPA and the NFMA.

It has been long recognized that leaving a few snags per acre does not mitigate the loss of forest habitat for 26 species that depend upon snags for nesting (Bull et al. 1997; Goggans et al. 1987). For the Three-toed Woodpecker it has been demonstrated that the presence of insects, dead and dying trees is essential as foraging/nesting habitat. Saab et al. (2012) found Three-toed Woodpeckers nesting in beetle-infested lodgepole pine stands with over 70 larger snags (over 9 inches dbh) per acre. As well, Goggans et al. (1987) reported that up to 500 acres of undisturbed, older forest stands are required for a pair of Three-toed Woodpeckers, so that foraging habitat is provided. The need for insect-infested stands for this sensitive species has also been identified by the Utah Partners in Flight program (2002). This report noted that areas of 528 acres need to be established for a pair of Three-toed Woodpeckers where salvage logging or commercial harvest would not be permitted; insect infestations should be interpreted on a landscape scale rather than in terms of loss of wood fiber; plan and implement a fire management plan that allows fires to burn in areas where acceptable to other resources; aspen should be maintained throughout the landscape to provide nesting habitat.

As identified by Goggans et al. (1987), Bull et al. (1997, and the Utah Partners in Flight program (2002), a conservation strategy for the sensitive Three-toed Woodpecker requires the provision of landscapes infested with insects so that this species has adequate foraging habitat. The Gilbert Creek Aspen Restoration Project is a direct conflict with UW Guideline 21, as there are no provisions to maintain foraging habitat for the sensitive Three-toed Woodpecker. Nor is the objective to prevent stand replacement fires across the landscape consistent with conserving the Three-toed Woodpecker. Until the UW RFP is amended to include a valid conservation strategy for the sensitive Three-toed Woodpecker, no further



fuels reduction projects, or projects that eliminate habitat for this sensitive species without any actual provisions to maintain habitat, can legally proceed.

The UW RFP also lacks a valid conservation strategy for the sensitive Flammulated Owl, sensitive Boreal Owl, and sensitive Great Gray Owl. As demonstrated for the Gilbert Creek Aspen Restoration Project, no surveys for any of these 3 sensitive raptors are required. Without surveys, a minimum conservation measure, to protect nesting and post-fledging sites from disturbance, can be implemented. The project design criteria “suggest” that if a Flammulated Owl nest is located, it will have a 0.25 mile disturbance buffer implemented. What is not noted is how will nests be located? There is no design feature that says there will be careful and valid surveys for Flammulated Owls across the project area. There are no design criteria identified for the

14. The agency is violating the NEPA by failing to estimate the number of sensitive wildlife species that may have nesting areas degraded and nesting activity disturbed during project activities; there have been no surveys as well for the Golden Eagle, which is protected by the Bald and Golden Eagle Protection Act.

The UW RFP requires the agency to implement conservation measures for sensitive species. These include the Three-toed Woodpecker, Great Gray Owl, Boreal Owl, Flammulated Owl, and the Northern Goshawk. There appear to have been some surveys for the goshawk, but no nesting/postfledging areas have been identified for the Gilbert Creek Aspen Restoration Project. So it is likely that nesting/post-fledging areas will be destroyed.

There have been no surveys for areas occupied by the Three-toed Woodpecker, so nesting sites will be disturbed and destroyed with vegetation treatments.



There have been no surveys for the sensitive Great Gray Owl. The current best science recommends that buffer zones for forest owls be at least 0.25 miles (Romin and Muck 2002). Without surveys, there will be no protective buffer zones established for this sensitive owl, and nesting activities may be disrupted. Nesting areas will be destroyed, as this species is associated with old growth forests (USDA 1990). This species also depends upon snags for nesting, and snags will be removed.

There have been no surveys for the sensitive Boreal Owl. The current best science recommends that buffer zones for this forest owl be at least 0.25 miles (Romin and Much 2002). Without surveys to identify nesting areas, nesting activity if present will be disturbed, and nesting areas, which depend upon snags, will be destroyed and/or degraded. This species also depends upon old growth forests (USDA 2018; USDA 1990). Old growth stands in the project area have not been identified for protection.

There have been no surveys for the Flammulated Owl. This species is associated with old growth forests, none of which have been identified for protection in the project area. This species also depends upon snags for nesting, with snags targeted for removal in the project. If any nesting sites occur, nesting activity will be disturbed, and nesting habitat will be degraded as the recommended 0.25 acre buffer protection zone will not be implemented (Muck and Romin 2002).

There have also been no surveys for the Golden Eagle. This species is protected by the Bald and Golden Eagle Protection Act. Protection requires implementing a 0.5 mile buffer zone around nests (Romin and Muck 2002). If any nests occur in the project area, nesting activity is likely to be disturbed, impacting viability of this eagle in violation of the Act.

Although the agency “suggests” that some surveys “may” be done for the Flammulated Owl, and continued for the Northern Goshawk, claiming that



surveys will be done is a violation of the NEPA because these surveys are not being done as a part of project planning. For example, the draft EA at 35 states that if Three-toed Woodpecker nests are found, they will be buffered by 300 feet. Since no surveys are required, it is unlikely any nests will be found. The draft EA at 50 also states that "other raptor nests located during project implementation would be buffered and no nest trees would be removed. What other raptor species may occur in the project area was never identified. Nor was any information provided as to how these raptor nests would be located so that they would be protected.

Because no wildlife surveys were identified in the draft EA, the public is never provided with any information as per surveys, including survey protocol, survey results, and buffer zones implemented. The public is thus not provided with baseline information on sensitive species distribution within the project area. This information is essential in order for the public to understand the current occupancy levels of sensitive species in the project area, and is not provided the information as to how these species are being addressed in the proposed management actions. Thus the public lacks any information on management of sensitive species. This is not only a NEPA violation, but it is also an NFMA violation, as the agency is not demonstrating that management actions are maintaining a diversity of wildlife in a project area, and thus on the forest.

15. The agency is violating the NEPA by failing to provide an action alternative that adheres to the Forest Plan.

There is no action alternative that meets the Forest Plan requirements to develop and implement conservation strategies for sensitive species. In fact, the Forest Plan direction for goshawks contradicts itself, as nest stands can be destroyed with vegetation management actions, which is inconsistent with the conservation needs of this species (Reynolds et al. 1992). There needs to be at least one action alternative that meets this Forest Plan requirement. This alternative needs to require surveys for all sensitive species, and identification of protection measures



for all identified nesting areas. The costs required for such a program also need to be identified, and compared between action alternatives.

There is no action alternative that adheres to the Forest Plan direction to maintain 20% old growth in conifer and 30% old growth in aspen forests. There is no action alternative that demonstrates that the Forest Plan recommendation to have 3 snags per acre in conifer forests, and 20 per acre in aspen stands, will be met.

16. The agency is violating the NEPA, the NFMA and the Migratory Bird Treaty Act (MBTA) by failing to evaluate impacts on migratory birds; no take permit has been received to address the lack of beneficial practices to reduce mortality to migratory birds.

The NEPA and the MBTA require the agency to evaluate project impacts on migratory birds. There was no analysis for any migratory bird that may occur in the Gilbert Creek Aspen Restoration Project area. This analysis failure includes Birds of Conservation Concern in the UFWs Conservation Region 16, or the Southern Rockies and Colorado Plateau area. These include the following BCC:

Broad-tailed Hummingbird, Flammulated Owl, Long-eared Owl, Short-eared Owl, Lewis' Woodpecker, Olive-sided Flycatcher, Pinyon Jay, Clark's Nutcracker, Evening Grosbeak, Cassin's Finch, Virginia's Warbler, and Gray Warbler.

In particular, of these species, the North American Bird Conservation Initiative (2022) has identified the Pinyon Jay and Evening Grosbeak as "tipping point" species, or species that have lost half of their populations in the past 50 years, and are on a trajectory to lose another 50% of their remnant populations in the next 50 years.



This North American Bird Conservation Initiative (2022) has also identified the Olive-sided Flycatcher as a species that has lost 50% of their populations in the last 50 years.

The lack of any analysis of the Gilbert Creek Aspen Restoration Project on these BCC and tipping point species is a clear violation of the NEPA, the NFMA and the MBTA. IN addition, there is not a single habitat objective identified for any of these 12 birds of conservation concern. Until the agency amends their forest plan to include habitat objectives for not only sensitive species, but these birds of conservation concern, the agency cannot meet the requirements of the NEPA, NFMA and MBTA.

IN general, the agency is violating these legal requirements because there were no measures of the level of nesting habitat that will be lost for these 12 birds due to forest thinning and the removal of snags and old growth forests. There was no analysis of how the loss of thermal cover through forest thinning will increase vulnerability of these 12 species of conservation concern to extreme weather events, including precipitation and winds. There was no analysis as to how the loss of hiding cover will affect predation on these 12 species, since predation will increase with reduced cover. There was no analysis of how the loss of forage, such as juniper berries and conifer seeds, will affect populations of these 12 species, including the tipping point species the Pinyon Jay. There was no analysis as to what the loss of productivity will be on these 12 species of conservation concern with the inevitable increased cowbird parasitism (Utah Partners in Flight 2002); forest thinning will increase cowbird populations, which impact up to 98 species of Utah's breeding birds (Id). There was no analysis of what the expected level of mortality will be for all birds due to smoke toxicity (Defiance Canyon Raptor Rescue 2022).

The agency also did not evaluate what the expected level of mortality will be for birds who are nesting, or have newly fledged young, in treatment areas due to a



lack of implementing any “beneficial practices” recommended by the USFWS (2020). There are no “beneficial practices” being implemented for this project. Maximum beneficial practices include avoidance of destructive management activities during the migratory bird nesting season from December to August (USFWS 2020). The minimum protection for the migratory bird nesting season is from April 1 to July 15 (Id.). The USFWS recommends that if activities occur during the minimum nesting season for migratory birds, that nesting surveys be done so that active nests can be protected with buffers.

None of the recommended beneficial practices by the USFWS (2002) are being implemented for the Big Cottonwood Canyon Project, which means that the incidental take of migratory birds needs a take permit in order to comply with the MIBTA (USFWS 2021).

It is clear that the Gilbert Creek Aspen Restoration project will have severe impacts on migratory birds, including 12 species of conservation concern. These impacts have not been disclosed by the agency.

17. The agency is violating Forest Plan direction for big game management without completing a Forest Plan amendment, in violation of the NEPA and the NFMA in order to violate guidelines for big game management.

The Gilbert Creek Aspen Restoration Project documents did not define how the Forest Plan Guideline 26 will be met. This guideline requires protection of key big game calving and fawning habitat and to provide security in summer concentration areas. There are no big game calving or fawning areas identified for the project area. There is also no information as to how these areas would be protected once identified.



There is no analysis as to where summer concentration areas are for big game, or how these would be managed for security. Security would be based on hiding cover, which has a minimum recommended level of 40% on big game summer range (Black et al. 1976). There was no analysis of how the project would impact hiding cover, which is essential for security.

There was no analysis as to how Forest Plan guideline 29 would be met for the project. This requires protection of calving/fawning areas, as does guideline 26, but it identifies the time period when protections are required (May 1 through June 30). Calving and fawning areas have not been identified. There was no information as to how these areas would be protected from disturbance from May 1 through June 30.

There was no information as to how Forest Plan guideline 30 would be met for this project. This requires protection from disturbances on big game winter ranges from November 15 through April 30. Big game winter ranges were not identified for the project area. There was no information as to how treatment activities would be prohibited from 11/15 through 4/30.

As is required by a recent court decision, compliance with the Forest Plan has to be demonstrated before a project is implemented, so that the public understands how direction is being implemented. Agency claims that forest plan direction will be met during project implementation makes a Forest Plan meaningless, as the agency avoids demonstrating actual compliance. This problem is triggered by projects such as the Gilbert Creek Aspen Restoration project, which is "condition-based management." This process means the agency does not have to define to the public how Forest Plan direction will be met for a project, in violation of the NFMA. This process is also a violation of the NEPA, as we have abundantly demonstrated above. This process "postpones" any analysis to an unknown timeline but after a decision has been implemented. With this process, the public will never know if these analyses were ever actually done, such as wildlife surveys, buffer areas, or meeting Forest Plan direction (e.g., snags, old growth).



So this process is being use to supposedly allow the agency to escape the requirements of the NEPA.

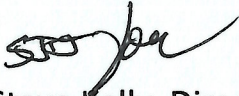
Regards,



Sara Johnson, Director, Native Ecosystems Council, PO Box 125, Willow Creek, MT 59760; phone 406-579-3286; [sjohnsonkoa@yahoo.com](mailto:sjohnsonkoa@yahoo.com).



Mike Garrity, Director, Alliance for the Wild Rockies, PO Box 505, Helena, MT 59624; phone 406-459-5936; [wildrockies@gmail.com](mailto:wildrockies@gmail.com).



Steve Kelly, Director, Council on Wildlife and Fish, PO Box 4641, Bozeman, MT 59772; phone 406-920;1381; [troutcheeks@yahoo.com](mailto:troutcheeks@yahoo.com).

