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Submitted via email to comments-intermtn-payette@fs.fed.us

Re: Middle Fork Weiser River Landscape Restoration Project DEIS Dear Mr. Lannom:

WildEarth Guardians respectfully submits these comments to the U.S. Forest Service concerning the Council Ranger District's Draft Environmental Impact Statement (DEIS) for the Middle Fork Weiser River Landscape Restoration Project. Across 24,000 acres the Forest Service seeks to move forest stands toward desired conditions as described in the Payette National Forest Land and Resource Management Plan (LMP) by returning fire to the ecosystem, and improve habitat for the white-headed woodpecker.

Guardians has a long history of promoting restoration and protection of wild places to reconnect habitats and support thriving ecosystems on our National Forests. We are very encouraged to see the Payette National Forest considering ecosystem restoration on a large scale to address many of the factors that continue to degrade ecosystems. In general, Guardians supports ecosystem restoration. This is especially true for the plan components that address water quality and aquatic habitats, improve watersheds and forest resiliency, and reduce overall road density by returning expensive and deteriorating forest roads to the wild.

We are also very supportive of the Forest Service's analysis that incorporates the Payette National Forest's Travel Analysis Plan (TAP). The Forest Service faces with its oversized and under- maintained road system. In turn, decommissioning forest service roads and unauthorized roads to close the gap between current funding and maintenance needs, and also to prevent further soil and water degradation is a necessary step forward. We strongly support these actions.

We do, however, have several concerns about the project and analysis in the DEIS. First, it is unclear why this

particular watershed is at the top of the Forest Service's priority. Second, we urge the Forest Service to identify the Minimum Road System in this NEPA analysis. Third, the Forest Service must provide assurances that the temporary roads proposed under this project will in fact be temporary. Fourth, the agency should provide clear standards for vegetation treatment. Fifth, the agency needs to ensure protection of lynx habitat. Fifth, the Forest Service should do more to

ensure elk security. And finally, the agency needs to consult under the Endangered Species Act as to the impacts of this project on listed species and their critical habitat.

I. The Forest Service should clearly explain why the Middle Fork Weiser River is a top priority project for the Payette.

The Forest Service should clearly articulate the statement of purpose, and provide support for the claimed need. The Council on Environmental Quality (CEQ) regulations implementing the NEPA explain that the statement of purpose and need "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." 40 C.F.R. [sect] 1502.13. An accurate statement of purpose and need is central to crafting an adequate EIS because it will provide the guideposts for the analysis of the proposed action, alternatives, and effects. 40 C.F.R. [sect] 1502.13.1 Because the statement of purpose and need sets the stage for the range of alternatives an agency must examine, it must not be so narrow as to artificially limit the alternatives considered. See, e.g., City of Carmel-by-the Sea v. U.S. Dep't of Transp., 123 F.3d 1142, 1155 (9th Cir. 1997).

The Forest Service explains the purpose of the project is to move vegetation and subwatersheds toward desired conditions, manage recreation use, contribute to the economic vitality of adjacent communities, and improve firefighter and public safety. DEIS at 19. The Forest Service explains that the need for this project is the different between current and desired conditions. DEIS at 20. But the same could be said for any number of watersheds across the Payette National Forest. And here, the high road densities on adjoining private lands means the Forest Service will not be able to achieve its goals for road density standards.

Given the various needs across the Payette National Forest, why did the Forest Service choose this location for its next priority focus?

The Forest Service states that restoration of subwatersheds is based on the amount of NFS land within each one. DEIS at 62. It goes on that because road density and disturbance in RCAs "are present in relatively equal proportions within each subwatershed," those with the higher percentage of NFS land will get higher priority. Id.

Does the Forest Service take the same approach when prioritizing projects among watersheds?

II. As part of its NEPA analysis, the Forest Service must identify the Minimum Road System.

The impacts from roads to water, fish, wildlife, and ecosystems are tremendous and well documented in scientific literature. As noted above, we are pleased to see the Forest Service incorporating the Payette National Forest's TAP in its analysis and development of the road

1 See also, e.g., CEQ, Letter to Secretary of Transportation Mineta (May, 2003) (stating that "[t]houghtful resolution of the purpose and need statement at the beginning of the process will contribute to a rational environmental review process and save considerable delay and frustration later in the decisionmaking process."), available at http://ceq.hss.doe.gov/nepa/regs/CEQPurpose2.pdf.

treatments proposed here. The 2013 TAP, however, provided only a recommended Minimum Road System (MRS).2 DEIS at 480. Given that is landscape restoration project is considering changes to a large number of miles of roads, and given its large geographic scale, this is precisely the type of project where the Forest Service must identify the MRS. We urge the Forest Service to carefully evaluate the proposed project and its alternatives through this lens. This type of large-scale project is the perfect opportunity to begin making on-the-ground progress towards an economically and environmentally sustainable road network.

Identify the Minimum Road System

To address its sustainable and deteriorating road system, the Forest Service promulgated the Roads Rule (referred to as "subpart A") in 2001. 66 Fed. Reg. 3206 (Jan. 12, 2001); 36 C.F.R. part 212, subpart A. The Roads Rule created two important obligations for the agency. One obligation is to identify unneeded roads to prioritize for decommissioning or to be considered for other uses. 36

C.F.R. [sect] 212.5(b)(2). Another obligation is to identify the MRS needed for safe and efficient travel and for the protection, management, and use of National Forest system lands. Id. [sect] 212.5(b)(1).3 The MRS is the road system, determined by the Forest Service, as needed to:

* Meet resource and other management objectives adopted in the relevant land and resource management plan,

* Meet applicable statutory and regulatory requirements,

* Reflect long-term funding expectations, and

* Ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

Id. (hereafter, MRS factors). See also Memorandum from Leslie Weldon to Regional Foresters et al. on Travel Management, Implementation of 36 CFR, Part 212, Subpart A (Mar. 29, 2012) (hereafter, 2012 Weldon Memo). The goal of subpart A is "to maintain an appropriately sized and environmentally sustainable road system that is responsive to ecological, economic, and social concerns."4

2 36 C.F.R. [sect] 212.5(b)(1) ("For each national forest . . . the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands.").

3 In promulgating its rules, the Forest Service indicated that "[t]he requirement to identify roads for

decommissioning is '[e]qually important' as the overall identification of the minimum road system." Center for Sierra Nevada v. U.S. Forest Service, 832 F. Supp. 2d 1138 (E.D. Cal. 2011) (quoting 66 Fed. Reg. at 3207).

4 See 2012 Weldon Memo at 1 ("The national forest road system of the future must continue to

provide needed access for recreation and resource management, as well as support watershed restoration and resource protection to sustain healthy ecosystems."). See also Memorandum from Joel Holtrop, U.S. Forest Service Washington Office, to Regional Foresters et al. (Nov. 10, 2010) (hereafter, 2010 Holtrop Memo) ("Though this process points to a smaller road system than our current one, the national forest road system of the future must provide needed access for recreation and resource management and support watershed restoration and resource protection to sustain healthy ecosystems and ecological connectivity.").

The Forest Service's Washington Office has issued a series of directive memoranda that outline how the agency expects forests to comply with subpart A.5 First, each forest was required to submit its TAR by September 30, 2015. See 2013 Weldon Memo. Next, pursuant to its own regulations and directive memoranda, the Forest Service must consider the valid portions of its TAR and begin to determine the MRS in its analysis of site-specific projects of the appropriate geographic size under NEPA. See 2012 Weldon Memo at 2 (directing forests to "analyze the proposed action and alternatives in terms of whether, per 36 CFR 212.5(b)(1), the resulting [road] system is needed"). By analyzing whether a proposed project is consistent with the relevant portions of the TAR, and considering the MRS factors under 36 CFR 212.5(b)(1), the Forest Service expects each forest to identify

the MRS for particular forest segments. Id. ("The resulting decision [in a site-specific project] identifies the MRS and unneeded roads for each subwatershed or larger scale").

Now that the Payette has completed its TAR, it is time for the Forest Service to take the next step under subpart A: identify the MRS through site-specific projects subject to NEPA.6 As the forest moves from concept (i.e., the MRS recommendation in the TAR) to realization (through this site- specific project), it should ensure the resulting road system meets the requirements in the subpart A rule. In its DEIS, the Forest Service references the MRS but makes no attempt to explain how the roads identified to remain on the landscape under this project meet the MRS factors. DEIS at 62.

The Forest Service must consider the MRS factors listed at 36 C.F.R. [sect] 212.5(b)(1) and make a determination as to which roads are needed. Specifically, for the roads it has decided to keep as part of the specific project:

* The agency must determine whether each road, individually and in the cumulative, is needed to meet resource and other management objectives adopted in the relevant LMP.

* The agency must determine whether each road, individually and in the cumulative, is needed to meet applicable statutory and regulatory requirements.

* The agency must determine whether the MRS reflects long term funding expectations.7 For roads that will remain on the landscape, the Forest Service must explain how maintenance of those roads will be supported based on long-term financial expectations. See DEIS at 62 (noting that "[r]oads that are recommended to remain on the landscape as part of the MRS would be maintained and improved").

5 2010 Holtrop Memo; 2012 Weldon Memo; Memorandum from Leslie Weldon, U.S. Forest Service Washington Office, to Regional Foresters et al. (Dec. 17, 2013) (hereafter, 2013 Weldon Memo) (supplementing and reaffirming the 2012 Weldon Memo).

6 See 2012 Weldon Memo ("The next step in identification of the MRS is to use the travel analysis

report to develop proposed actions to identify the MRS . . . at the scale of a 6th code subwatershed or larger. Proposed actions and alternatives are subject to environmental analysis under NEPA. Travel analysis should be

used to inform the environmental analysis.").

7 FSM 7712.1(1) ("Generally, use broad-scale travel analysis at the level of a ranger district or

administrative unit to inform decisions regarding implementing the [MRS]," an example of which "is the ability to sustain the unit's road system at objective maintenance levels with expected levels of funding.").

* The agency must determine the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

The National Forest road system is in a serious state of disrepair. The Payette National Forest is no exception. The best available science shows that roads cause significant adverse impacts to National Forest resources. Road-related impacts are a significant concern to the Payette. This results in a significant backlog of deferred maintenance needs. As the forest's TAR and more recent assessment recognize, the existing road system is not reflective of current or long-term funding expectations and is not sustainable.

To the extent that the Payette's TAR failed to address the MRS factors and recommended an MRS, without actually identifying the MRS, the Forest Service must do so now in determining whether each road within the proposed project is needed. Consistent with 36 C.F.R. [sect] 212.5(b)(1), the Forest Service must identify the MRS, based on the Forest Service's determination of what is needed to, inter alia, ensure minimization of adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance. The Forest Service must take this next step to consider the TAR, identify the MRS, identify unneeded roads for decommissioning, and implement those decisions as part of this project to achieve compliance with subpart A for this segment of the forest.

Proper Application of the 2013 TAP

The Forest Service should apply only the valid portions of its TAP, and reject the legally inadequate portions. The Washington Office memoranda outline that each TAR must: (1) analyze all roads (maintenance levels 1 though 5); (2) produce a TAP summarizing the travel analysis; (3) produce a list of roads likely not needed for future use; (4) synthesize the results in a map displaying roads likely needed and likely not needed; and (5) provide an explanation of the underlying analysis for that map. See 2012 Weldon Memo, 2013 Weldon Memo. In addition, the Washington Office instructed forests to consider the Watershed Condition Framework process so as to integrate the two approaches with new information or where conditions change. Id.

Here, the Payette National Forest completed its TAP in 2013. Portions of the TAP are inadequate. Based on this analysis, the Forest Service should apply the valid portions of that TAP to this project, and reject or consider revising those portions of the TAP that are inadequate. For example, the risk and benefit analysis in the TAP skews heavily against identifying any high risk, low benefit roads.

The Forest Service must rethink and rework its analysis when applying the TAP to this site-specific project. Any final list of needed and unneeded roads should reflect the results from the risks and benefits analysis in the TAR. It should be the rare circumstance in which a road identified with high risks and low access needs is identified as likely needed. We urge the Forest Service to identify high risk, low benefit roads within this project area for decommissioning.

In rethinking the TAP analysis, the Forest Service should provide a timeline for determining how far into the future a road is needed. Simply because a road accesses a stand that is currently designated as suitable for logging does not automatically qualify it to be identified as needed. There must be a reasonable timeframe associated with the need.

As a final example, the TAP did not include a comprehensive fiscal analysis of the road system. The budget forecast in the Forest Service's TAP must be realistic.8 It should account for the cost of maintaining roads to standard-including standards under the Clean Water Act, costs required to comply with Best Management Practices related to road maintenance, costs associated with bridge maintenance and annualized replacement, and increasing effects of high precipitation events as a result of climate change. Moving towards an economically sustainable road system on the forest is not a new concept.9

Consider Unneeded Roads for Closure or Decommissioning

Subpart A directs the agency to "identify the roads on lands under Forest Service jurisdiction that are no longer needed."10 It refers to all roads, not just National Forest System roads. The rules define a road as "[a] motor vehicle travelway over 50 inches wide, unless designated and managed as a trail." 36 C.F.R. [sect] 212.1.

The Forest Service must ensure that the actions proposed under this project are consistent with subpart A. The forest must assess the proposed actions as part of the project's implementation in relation to the TAP as well as the MRS factors, with the goal of minimizing adverse environmental impacts. Specifically, the decisions to close, decommission, or maintain certain roads should reflect the results from the risks and benefits analysis in the TAP. Routes identified for decommissioning through the TAP or other processes within the project area must be closed, decommissioned, and reclaimed to a stable and more natural condition during the life of the project. To the extent that the final decision in this project differs from what is recommended in the TAP, the Forest Service must provide an explanation for that inconsistency. See, e.g., Smiley v. Citibank, 517 U.S. 735 (1996) ("Sudden and unexplained change . . . or change that does not take account of legitimate reliance on prior interpretation . . . may be 'arbitrary, capricious [or] an abuse of discretion") (internal citations omitted).

The Forest Service proposes long-term closure of 17.8 miles of roads in the proposed action, Alternative 2. DEIS at 9. The Forest Service should consider these roads for decommissioning. The Forest Service should prioritize road decommissioning in this project to enhance landscape connectivity and ecological integrity based on:

* Effectiveness in reducing fragmentation, connecting un-roaded and lightly-roaded areas, and improving stream segments, with a focus on inventoried roadless areas, important watersheds, and other sensitive ecological and conservation areas and corridors;

* Benefit to species and habitats, including restoring aquatic and terrestrial habitats and habitat connections;

8 FSM 7712.4(5) ("The [travel analysis] report should identify access needs and opportunities based on current budget levels and realistic projections of future funding.").

9 See, e.g., 63 Fed. Reg. at 4350 (noting in 1998 that "current funding mechanisms and levels are not

adequate to maintain roads to the standards originally planned, to assure minimum ecological impacts, as well as to ensure efficient and safe use").

10 36 C.F.R. [sect] 212.5(b)(2). See also Center for Sierra Nevada, 832 F. Supp. 2d at 1155 ("The court agrees

that during the Subpart A analysis the Forest Service will need to evaluate all roads, including any roads previously designated as open under subpart B, for decommissioning.").

* Addressing impaired or at-risk watersheds;

* Achieving motorized route density standards; and

* Enhancement of quiet recreation experiences.

The Forest Service should use the National Best Management Practices for Water Quality Management on National Forest System Lands (Volume 1, April 2012) to guide road management in determining the MRS. The BMP program "was developed to improve agency performance and accountability in managing water quality consistent with the Federal Clean Water Act (CWA) and State water quality programs" and "[c]urrent Forest Service policy directs compliance with required CWA permits and State regulations and requires the use of BMPs to control nonpoint source pollution to meet applicable water quality standards and other CWA requirements." National Best Management Practices. It directs forests to:

* Design the transportation system to meet long-term land management plan desired conditions, goals, and objectives for access rather than to access individual sites.

* Limit roads to the minimum practicable number, width, and total length consistent with the purpose of specific operations, local topography, geology, and climate to achieve land management plan desired conditions, goals, and objectives for access and water quality management.

Id. at 104.

We urge the Payette National Forest to limit its road network to those roads that are necessary for access and management, and which can be adequately maintained within agency budgets and capabilities. We encourage road decommissioning and reductions in road density to improve watershed conditions and aquatic health in streams, as well as to protect and enhance wildlife habitat and connectivity. The Forest Service should continue working to reduce sediment delivery from roads, improve or remove road crossings, and close or decommission roads that cannot be adequately maintained.

The DEIS states that roads not needed for future management or access and unauthorized routes will be decommissioned. We strongly support the proposal to decommission Forest Service roads. Looking at the details, however, the specifics of the agency's proposed action are not clear. For example, the timeline the Forest Service used to gauge whether a road might be needed for "future management or access" is unclear from the TAP and the analysis in the DEIS. The Forest Service should explain its timeline.

Further, the Forest Service paints a false picture of the number of miles of system roads that will be decommissioned. The DEIS notes that the 80.7 miles of road for decommissioning includes unauthorized routes that will be used as temporary roads. DEIS at 9. For Alternative 2, that means

34.8 miles of unauthorized roads will remain on the landscape as temporary roads under this proposal, and at some later point in time the Forest Service plans to decommission those miles. This skews the analysis in several ways. First, as explained in the next section, temporary roads have very real impacts on the landscape and can remain for 10 years following a project, or longer without adequate assurances. Second, the Forest Service is inconsistent in its calculation and treatment of unauthorized roads. The TAP expressly did not include unauthorized roads-it analyzed only system roads. But at the point of applying the TAP to achieve real results, the Forest Service includes

unauthorized roads in its calculations for road decommissioning. In reality, Alternative 2 proposes to decommission only 45.9 system roads. The DEIS must more clearly present this information.

What is also unclear is when the road decommissioning will occur. The Forest Service states that the "34.8 miles of existing unauthorized routes would be used as temporary roads and obliterated after use." DEIS at 61. There is no timeline. As explained below, lack of any assurance as to when these currently unauthorized roads will be decommissioned is problematic.

III. The Forest Service must provide assurances that temporary roads will in fact be temporary in light of very real adverse impacts on the landscape.

We are particularly concerned about construction of temporary roads. Temporary roads must be closed within 10 years of completion of a project, per 16 U.S.C. 1608(a), unless the Forest Service re-evaluates the road and determines it to be necessary for the minimum road system.

Direct and Indirect Impacts

All of the action alternatives contemplate a combination of constructing new, and using existing unauthorized routes, for temporary roads. DEIS at 8. Under Alternative 2, the proposed action, the agency is proposing to construct up to 9.7 miles of new and use 34.8 miles of existing unauthorized routes as temporary roads. DEIS at 4. Some of these temporary roads will cross streams. Id.

During the project, and for an additional of at least 10 years after completion of the project, the temporary roads will continue to have very real impacts on the forest. For example, temporary roads will continue to allow for harassment of wildlife, segmenting of habitat, littering, fires, invasive plant distribution, and negative impacts to aquatic and riparian habitat, as well as the fish that depend on that habitat.

Some impacts are unclear, given the lack of information in the DEIS. It notes that "incidental temporary roads" cannot yet be identified due to the level of site-specificity necessary. DEIS at 61. It states that incidental temporary roads would be preferentially located on existing unauthorized routes and obliterated when logging is completed. Id. The Forest Service must conduct site-specific analysis as part of this DEIS. This includes explicitly delineating where incidental temporary roads will be located.

NEPA requires that this hard look assessment take place at the site-specific level if there are no additional NEPA processes yet to occur in the future to fully implement the project and the environmental impacts are reasonably foreseeable. See New Mexico ex rel Richardson, 565 F.3d 683,

718-19 (10th Cir. 2009) (requiring site-specific NEPA analysis when no future NEPA process would occur); Colo. Envtl. Coal. v. Ofc. of Legacy Mgmt., 819 F. Supp. 2d 1193, 1208 (D. Colo. 2011) (requiring site-specific NEPA analysis even when future NEPA would occur because "environmental impacts were reasonably foreseeable").

Cumulative Impacts

An agency's underlying substantive duty should inform the scope of the agency's NEPA analysis. Westlands Water Dist. v. U.S. Dept. of the Interior, 376 F.3d 853, 866 (9th Cir. 2004) (When an agency takes an action "pursuant to a specific statute, the statutory objectives of the project serve as a guide

by which to determine the reasonableness of objectives outlined in an EIS."). The Forest Service has a substantive duty under subpart A to identify the MRS it determines is needed to, inter alia, ensure the "identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance." 36 C.F.R. [sect] 212.5(b)(1). It also has a duty to identify roads no longer needed that should be decommissioned or considered for other uses. Id. [sect] 212.5(b)(2). Under NEPA, it also has a duty to consider the effects of its proposed action when added to the existing road and trail system. Wilderness Society v. U.S. Forest Service, 850 F. Supp. 2d 1144, 1157-58 (D. Idaho 2012) (holding the Forest Service was arbitrary and capricious to conclude that designating 94 miles of user-created routes as non-system routes would have no significant impact).

Here the Forest Service must consider the effects of its proposal to construct temporary roads when combined with the effects of its minimum road system. It must consider how construction of the proposed temporary roads will detract from the purpose of subpart A of the agency's own rules, to "identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of the National Forest System lands." 36 C.F.R. [sect] 212.5(b). It must also consider how construction of temporary roads will detract from the forest's efforts to achieve road density standards. Temporary roads are not included in road density calculations, but are certain to have real, lasting impacts on the resources that road density standards are designed to protect.

These considerations are especially important if the Forest Service fails to provide assurances that the proposed temporary roads will in fact be closed within 10 years of completion of the relevant project.

Monitoring and Enforcement Assurances

Currently, the Forest Service does not track temporary roads and has no system to enforce closure of temporary roads once they have outlived the forecasted 10-year time span. The Forest Service must ensure that the temporary roads will in fact be temporary by including monitoring and enforcement during the vegetation projects, and then tracking the temporary roads for 10 years following completion of the projects to ensure the road will be removed from the landscape. It must also require some type of monetary assurance from the users of the temporary roads to guarantee that the user will close them 10 years after a project. Otherwise, the burden falls on the Forest Service. And based on the agency's recent TAP that it is unlikely the Forest Service will have the resources necessary to fund those closures.

Construction of temporary roads without adequate monitoring and enforcement to ensure the roads will in fact be temporary undermines the goals of subpart A to establish an economically and environmentally sustainable road

network.

IV. The existing plans lack clear standards for vegetation treatment.

The Forest Service needs to set out clear sideboards for directing treatments on high elevation white bark pine and aspen. The DEIS states the Forest Service designed all of the alternatives to maintain large tree size class stands by managing densities. DEIS at 15. It is unclear, however, exactly how the Forest Service will ensure large trees will be protected when managing densities.

The Forest Service also plans to construct or reconstruct roads in RCAs. There is one area with series of RCA treatments within 5 feet of stream at road intersection. The Forest Service needs to

provide clear standards here for how to conduct the work in a way that will minimize impacts to water quality to ensure the project occurs on the ground as envisioned in these plans. The Forest Service should include monitoring for activities within RCAs to ensure the work is conducted as planned. The agency plans to allow mechanical RCA treatments in upland vegetation. Again, here the Forest Service must include clear standards to ensure the project is carried out as envisioned, so as to minimize impacts on water quality.

The agency is proposing treatments on legacy trees. It states that "[p]onderosa pine, western larch and Douglas-fir that fit the definition of legacy trees should be retained during harvest." DEIS at

119. It explains that this will be based on logic and experience. Id. It also proposes to retain forest stands that meet the definition of old forest, and this will also be based on logic and experience. Id. These existing descriptions are general-the public needs more specificity to understand precisely how the Forest Service intends to accomplish the stated goals of recruiting larger trees. The Forest Service must include quantitative standards, such as diameter limits, to guide these treatments.

Guidelines alone will be insufficient to ensure the treatments are targeting small and medium trees to actually improve recruitment of the larger trees. The existing descriptions in the proposed work and DEIS lack the necessary assurances. The Forest Service must identify design features to address these concerns about implementation. Descriptions of enforcement should provide more information than simply the instrument or entity (i.e., timber sale contract, wildlife biologist, contract administrator). See DEIS at 119. For example, the analysis should detail how these standards will be written into a timber sale contract, how often monitoring will be conducted to ensure consistency with the timber sale contract, who will conduct the monitoring, and how the Forest Service would modify or change the plans if the on the ground activities do not reflect the plans for retaining legacy trees.

Finally, the Forest Service should provide ecological justification supporting its chosen approach to retaining early seral legacy trees. The agency states that the objective of vegetation treatment is to retain early seral legacy trees for ecological function, diversity and wildlife habitat. But the agency fails to explain the basis for this. In contrast, the Forest Service included ecological justification for the RCA treatments. The Forest Service should similarly provide an ecological justification here, explaining how these treatments are serving ecological needs.

V. The Forest Service must consider impacts on lynx and lynx habitat.

The Forest Service must describe in complete detail - using numeric quantification and detailed maps - what lynx habitat exists in the Project area. This should not just identify mapped lynx habitat, or occupied lynx habitat, but should also include the different types of lynx habitat, including denning, foraging, and winter habitat, as well as linkage areas and connectivity corridors. This information is crucial to determining what specific impact the project will have on lynx, and what areas the Forest Service should avoid. Further, this information is imperative for the Forest Service to reasonably determine whether or not the project will be consistent with the 2013 Canada Lynx Conservation Assessment and Strategy.

Lynx avoid areas that have been clearcut, logged, and even thinned. Thinning will open up the habitat and reduce cover. The Interagency Lynx Conservation Assessment and Strategy (August 2013) (LCAS) includes vegetation management as one of the top four anthropogenic threats to lynx. See LCAS at 69. The LCAS also recognizes that managing forests to the extent that the canopy is

opened discourages use of those stands by lynx. LCAS at 73. Further, reduction in horizontal cover, one of the results of the project, degrades the quality of winter habitat for lynx. Id. The LCAS also notes that lynx avoid clearcut areas, especially during winter. Id. Squires also emphasizes the importance of maintaining and recruiting lynx winter habitat as opposed to winter hare habitat, as that is what is most important to conserve lynx, especially in winter when lynx are most taxed. See Squires et al., 2010.

The Forest Service needs to be cautious with treatments in lynx habitat. It must do more than analyze the effects on snowshoe hare. The DEIS must fully disclose and analyze effects to lynx winter habitat, both in terms of retention and recruitment.

The Forest Service should prioritize retention and recruitment of abundant and spatially well distributed patches of mature, multi-storied forest stands. The Project should be designed to conserve lynx winter habitat and manage stands in a manner that would allow younger stands to eventually become good lynx winter habitat. Young stands in the stand initiation stage may be decent habitat for snowshoe hares (once tree seedlings and saplings grow above the snow) but they are not good lynx winter habitat.

Because lynx denning habitat must occur near lynx foraging habitat (see LCAS at 29), the Forest Service must discuss and analyze the current state of lynx denning habitat within the project area, especially as it relates spatially to lynx foraging habitat. Without this baseline, there can be no legitimate determination of the effects of the project on lynx denning habitat. The environmental analysis should disclose (preferably on a map) and analyze what portions of the project area currently is considered to be lynx denning habitat, what portions of the project area are considered to be foraging habitat for lynx, what portions of that lynx denning habitat would be subject to treatments, what portions of lynx denning habitat would be degraded as a result of treatments, and how long it would take for degraded or destroyed denning habitat to once again become lynx denning habitat.

Importantly, the DEIS must disclose what percentage of each LAU is made up of lynx denning habitat, how much coarse woody debris currently exists within the denning habitat in each LAU, or what anticipated changes to coarse woody debris in each LAU's denning habitat would result from the Project's implementation. These issues should be addressed both qualitatively and quantitatively. If the Forest Service does not have this information, it should not proceed with a major vegetation management project without knowing what kinds of effects it will have on important lynx denning habitat in the project area.

The DEIS should discuss and analyze how lynx movement through the project area would be affected by the project, and what impacts to lynx travelling to other areas would see. Particular attention should be given to both official lynk linkage areas as well as other known travel corridors in the project area.

The DEIS should fully discuss the effects of the construction of temporary roads, the recommissioning of previously closed roads, and the construction of new roads on lynx and fragmentation of lynx habitat, as well as snow compaction and the potential for recreational use of those roads. The DEIS must also explain whether these roads would be closed to the public, how long they will be left on the landscape, how they will be decommissioned, what specific funding will be used to decommission and obliterate roads, what risk of unauthorized use of those roads by the

public would be, and what funding exists to prevent unauthorized use of those roads.

The Forest Service should not entertain a Forest Plan amendment to allow creating more than 30% suitable Canada lynx habitat within the Middle Fork Weiser River Lynx Analysis Unit. To the extent that Alternative 4 proposes this modification, we strongly oppose it.

VI. The Forest Service must consider and address elk security.

The Forest Service needs to better address elk security concerns. The goal is to provide 30% of the landscape for elk security areas. DEIS at 256. This is measured based on road densities. As noted above, it is unclear

whether the unauthorized roads that the Forest Service proposes to be used for temporary roads are included in the road density measurements. This is unlikely. Therefore the measurements largely underestimate existing and projected road densities. On top of that, Fish and Wildlife Service studies show that it is not possible to address elk security and maintain the current road densities. The Forest Service needs to seek out more opportunities to provide secure habitat for elk. Fish and Game told the Forest Service to keep looking for opportunities. We strongly suggest considering roads proposed for closure to be decommissioned, to permanently reduce road densities on a shorter time scale than the temporary road decommissioning proposed here.

VII. The Forest Service must consult with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act.

Bull trout exist in the East Fork Weiser River and Dewey Creek, and both are designated bull trout critical habitat. DEIS at 384. The Forest Service determination for all alternatives is May Affect, Not Likely to Adverse Affect bull trout and their critical habitat. DEIS at 420. The Forest Service reasoned that although it is adding a trail to the trail system, it is an existing trail and therefore there is no addition. Id. Also, all crossings already exist, crossing approaches would be hardened, and work would occur in the summer when stream flows are low. Id. This determination ignores the impacts of dry weather work on critical habitat, and how that might impact bull trout when water flows return to higher levels.

The U.S. Fish and Wildlife Service (USFWS)'s latest Recovery Plan for bull trout identifies historical habitat loss and fragmentation, interaction with nonnative species, and fish passage issues as the most significant primary threat factors affecting bull trout. USDI Fish and Wildlife Service, Recovery Plan for the Coterminous United States Population of Bull Trout (Salvelinus confluentus) (2015), page iv. It notes that the Weiser River is one of the two least robust, most threatened core areas. Id. at 8.

Section 7 of the Endangered Species Act (ESA) imposes a substantive obligation on federal agencies to "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of" habitat that has been designated as critical for the species.

16 U.S.C. [sect] 1536(a)(2); Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., 524 F.3d 917, 924 (9th Cir. 2008). The Forest Service must consult with the USFWS under section 7 of the Endangered Species Act as to the impacts of the project on species listed under the ESA and designated critical habitat, including bull trout. We encourage the Forest Service to be transparent about the consultation process and affirmatively post all consultation documents, including any Biological Assessment submitted to the USFWS, any letters seeking concurrence, and any responses or Biological Opinions

from the USFWS. Doing so will allow the public to view these critical documents, and other documents in the project record, without the need to submit a formal FOIA request.

Conclusion

The Forest Service's current road system is over-sized and unaffordable. Identifying a sustainable road network is one of the most important endeavors the Forest Service can undertake to restore aquatic systems and wildlife habitat, facilitate adaptation to climate change, enhance recreation, and lower operating expenses. Considering the MRS and making investments to implement the MRS as soon as possible will end up saving taxpayer dollars by avoiding expensive repairs and other restoration tasks that would otherwise be inevitable in the future. Increasing the pace of restoration activities to implement a right-sized road system is incredibly important and long overdue.

If you have questions, please me at or .

Sincerely,

Marla Nelson Rewilding Attorney