

Data Submitted (UTC 11): 5/5/2024 6:00:00 AM

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Comments: On behalf of WildEarth Guardians (Guardians), please accept the attached comments and supporting exhibits regarding the Environmental Assessment (EA) for the Flathead Forest Plan Suitability Changes: Winter Travel Management and Recommended Wilderness Project. (Project). We also are incorporating by reference comments on this project submitted by Keith Hammer on behalf of the Swan View Coalition.

May 6, 2024

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Submitted electronically: <https://cara.fs2c.usda.gov/Public/CommentInput?Project=61460>.

Re: Flathead Forest Plan Suitability Changes: Winter Travel Management and Recommended Wilderness Project

On behalf of WildEarth Guardians (Guardians), please accept these comments regarding the Environmental Assessment (EA) for the Flathead Forest Plan Suitability Changes: Winter Travel Management and Recommended Wilderness Project. (Project). We also are incorporating by reference comments on this project submitted by Keith Hammer on behalf of the Swan View Coalition.

Guardians provided comments regarding the scope of this project in our Feb. 2022 letter, much of which remains applicable as the agency has yet to fully address our concerns as we explain below. Generally, this project proposes to designate over-snow vehicle (OSV) use in certain areas deemed suitable for winter motorized use under the 2018 Flathead Revised Forest Plan (Revised Plan). Specifically, the Forest Service proposes to "designate over-snow vehicle use on about 12,588 acres of the 12,848 acres of additional areas identified as suitable in the forest plan." EA at 7. The agency explains the season of use for these areas would match adjacent OSV designations, which would be Dec. 1 - March 31 except for three areas that where the season would end May 14, "[i]n the upper Middle Fork portion of the Hungry Horse Ranger District, the Marias Pass, Skyland Challenge, and Elk Calf Mountain areas." Id. The project will also close areas identified as unsuitable for OSV use in the Revised Plan decision, which total 12,258 acres. Id. at 11. Further, the Forest Service proposes to protect recommended wilderness areas from public mechanized transport and motorized use. Id. at 14.

I. Programmatic Amendment to the Revised Plan

The Forest Service proposes a programmatic amendment to MA1b-SUIT-06 in the Revised Plan as follows:

Mechanized transport and motorized use are not suitable for use in recommended wilderness except for accomplishing administrative purposes such as restoration activities (for example, management of ignited fires or using chainsaws to reduce stand densities around whitebark pine trees) and trail maintenance.

Id. at 14. In describing the proposed action, the Forest Service explains it made three changes per comments it received during the project's scoping period, including increasing the enforceability of protecting recommended wilderness areas by proposing to close specific, short segments of trails that occur just outside of these areas. EA at 17. We support this proposed action given the difficulty in ensuring compliance with the OSVUMs. Motorized designations that terminate at the boundary of protected areas are nearly impossible to enforce and invite violations. In order to ensure the wilderness character of these areas, it is necessary to close OSV trails at the trailhead where the protections can be better monitored and enforced. Another change to the proposed action since the scoping period is the proposal "to adopt language similar to that of the Helena-Lewis and Clark's FW-RECWILD-SUIT 03, which says, "Motorized and mechanized equipment (such as chain saws to clear trails) are suitable for accomplishing restoration activities and/or administrative work." As explained in our scoping comments, we remain unconvinced that the Forest Service needs such permissive language in its Revised Plan given the scientific controversy and uncertainty regarding its so-called "restoration" activities. Wilderness areas are meant to be shaped by natural processes, even if they do not match historical ranges of variability, and the agency must allow those processes to proceed unhindered in recommended wilderness as well. Should the agency proceed to adopt the proposed amendment (which we do not support), at a minimum it must clarify that commercial vegetation removal is not suitable within recommended wilderness, and that restoration activities are not suitable if they establish new infrastructure such as firelines, fuel breaks or other ground disturbances. We recommend including a qualifying statement that restoration activities are not suitable that fail to protect and enhance the wilderness characteristics of the areas.

II. The Forest Service must conduct comprehensive OSV planning

Our scoping comments urged the Forest Service to recognize the need to conduct winter travel planning in all areas deemed suitable for winter motorized use across the Flathead National Forest noting that the Revised Plan identified approximately 31 percent of the forest as suitable, totaling 753,497 acres. Revised Plan Record of Decision at 8, FEIS at 324. We explained that when making winter motorized designations, the Forest Service must comply with the executive order minimization criteria, Travel Management Rule, and NEPA. The agency must not grandfather past decisions that did not properly consider the minimization criteria, and it cannot rely on the Revised Forest Plan analysis to support OSV designations. The Travel Management Rule permits the Forest Service to "incorporate previous administrative decisions regarding travel management made under other authorities," (Footnote 1) but the agency must still ensure those decisions comply with the minimization criteria, which requires detailed, site-specific analysis. If the previous decisions were not subject to the minimization criteria, as is the case for the Revised Plan, the Forest Service may not adopt them on its OSV use map (Footnote 2). The Forest Service fails to recognize the need to demonstrate such compliance stating, "this project does not propose changes to existing over-snow vehicle use in locations that remain suitable for over-snow

vehicle use in the revised forest plan and are presently designated for over-snow vehicle use on the Flathead National Forest's over-snow vehicle use maps. EA at 1.

Further, the agency states the following:

Consideration of the minimization criteria, with the objective of minimizing effects, began in the forest plan revision process and directly led to the suitability changes of about 25,000 acres that were adopted into the forest plan. These suitability changes that occurred during forest plan revision are a clear demonstration of complying with 36 CFR 212.81(d) even though the forest plan does not designate trails; this is because the forest plan changed suitability of some acres to address resource concerns.

Flathead Forest Plan Suitability Changes: Winter Travel Management and Recommended Wilderness Areas Minimization Criteria Screening (Screening Criteria) at 1. We appreciate the Forest Service's intent to minimize harmful effects of winter motorized use during its forest plan revision process. Yet, we vigorously disagree with the assertion that suitability changes during plan revision demonstrates compliance with the Travel Management Rule (TMR). The TMR requires the agency's adherence to the minimization criteria when actually designating winter motorized use (as the agency acknowledges), which can only occur through site-specific NEPA-compliant decisions. Certainly, site-specific analysis may find that some areas found to be suitable under the Revised Plan are not actually appropriate for OSV designation, which is what the agency determined for the 260 acres above the Kimmerly groomed trail in the Canyon and Big Creeks. EA at 17. This is precisely why travel management planning must occur within areas found to be suitable for winter motorized recreation. It also demonstrates how site-specific planning differs from suitability determinations under the Forest Plan revision process. To be clear, we agree there are areas that should be deemed unsuitable for winter motorized use in order to comply with the 2012 Planning Rule, but such management direction is most certainly NOT a demonstration of complying with the TMR. The 9th Circuit Court of Appeals address this point in its ruling regarding the 2009 Beaverhead-Deerlodge Revised Plan analysis:

The EIS's reference to plan-wide data and general decision-making principles is inadequate under the TMR. There is nothing in the TMR, or anywhere else, that allows the Forest Service to designate multiple areas for snowmobile use on the basis of a single forest-wide analysis and general decisionmaking principles. Instead, the TMR requires the Forest Service to apply the minimization criteria to each area it designated for snowmobile use.

WildEarth Guardians, 790 F.3d at 930. The importance of this ruling cannot be overstated since it demonstrates the Forest Service cannot rely on a programmatic Revised Plan analysis to support specific OSV designations. Yet, the Forest Service asserts that it need only consider compliance with the TMR when it makes changes to current OSV designations, even if those designations were never shown to be in compliance with the minimization criteria. Such an assertion is arbitrary and capricious, and in violation of Executive Order 11644 and 11989.

III. Failure to take a hard look at the direct, indirect, and cumulative impacts in demonstrating compliance with the Travel Management Rule.

The National Environmental Policy Act (NEPA), 42 U.S.C. [sect] 4321 et seq., is designed to facilitate informed decision-making and public transparency by requiring federal agencies to take a "hard look" at the direct, indirect, and cumulative impacts of their proposed actions and reasonable alternatives. Given the scale and scope of the winter travel planning process, the Forest Service should have recognized the significant impacts under the proposed action and developed an environmental impact statement, which is necessary to adequately analyze certain impacts, including disclosing site-specific baseline information, best available science, impacts to future potential wilderness recommendations, impacts to wildlife and habitat connectivity corridors, impacts of

authorizing OSV use on trails within protected areas, and the cumulative impacts, particularly in light of the climate crisis effects regarding snow levels and changing seasons and how that may affect the distribution and quality of habitat for at-risk species. Yet, the Forest Service fails to provide the necessary analysis to comply with NEPA's mandates. The examples below illustrate this failure, but are not exhaustive. A detailed, site-specific analysis is necessary to demonstrate compliance with the Travel Management Rule. As we explained in our comments, the executive orders require the Forest Service to minimize impacts - not just identify or consider them - when designating areas or trails for OSV use, and to demonstrate in the administrative record how it did so (Footnote 3). To satisfy its substantive duty to minimize impacts, the Forest Service must apply a transparent and common-sense methodology for meaningful application of each minimization criterion to each area and trail being considered for designation. Flaws with the agency's analysis preclude its ability to demonstrate compliance with the minimization criteria. For example, in its Screening Criteria, the Forest Service asks if the OSV use "of an area cause conflicts with non-motorized visitors' desire for solitude and quiet recreation." Screening Criteria at 4. To help explain the need to consider this issue, the agency explains "The noise produced by over-snow vehicle use in or adjacent to areas valued for quiet winter recreation could have the potential to reduce the quality of the recreation experience by a non-motorized user within these areas." Id. We agree. Yet, the Forest Service failed to measure, model or otherwise include noise disturbance in its analysis outside of providing generalized statements: "The proposed action would therefore increase the spatial extent of where engine noise occurs. However, over-snow vehicle concentrations under the proposed action are not expected to change substantially under the proposed action because more terrain will be available to a similar number of riders." EA at 57. Such conclusory statements are unsupported by the analysis, and fail to address the noise disturbances in non-motorized settings. Further, the lack of analysis precludes the agency's ability to demonstrate how its proposed action will minimize wildlife disturbance or significantly disrupt wildlife habitat.

A. Failure to analyze noise disturbances

In order to comply with the aforementioned requirements under the Revised Plan, TMR and ESA, the Forest Service must recognize the significant disturbance of noise caused by OSV use and incorporate that in its analysis. The TMR directs the agency to consider "compatibility of motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, and other factors" (Footnote 4). Properly managing noise emissions is also crucial to address conflicts with other recreational uses and impacts to wildlife. To best address this issue, we strongly urge the Forest Service to actually measure sound impacts for proposed designations using spatial models and software packages available for analyzing potential noise propagation from OSV use. Modeling results can then be overlaid across denning and secure winter habitats for a variety of species including grizzly bear, lynx wolverine, mountain goat and elk in order determine the potential for harassment and significant disruption of wildlife habitats.

In fact, we suggest that the Forest Service use a model titled "System for the Prediction of Acoustic Detectability (SPreAD)", a workbook issued by the Forest Service and Environmental Protection Agency for land managers to "evaluate potential [hellip] acoustic impacts when planning the multiple uses of an area" (Footnote 5).

The Forest Service currently uses this model when performing a detailed analysis of noise impacts. For example, the Tahoe National Forest utilized the SPreAD model in its winter travel planning process (Footnote 6):

This analysis uses SPreAD-GIS: an ArcGIS toolbox for modeling the propagation of engine noise in a wildland setting Version 2.0. SPreAD-GIS is based on the System for the Prediction of Acoustic Detection, a model developed by the Forest Service and Environmental Protection Agency to predict and plan for recreation opportunities in national forests. Input data include commonly available datasets including:

- * Digital elevation model (DEM)
- * Land cover
- * Local weather conditions (average air temp, relative humidity, wind speed and direction for given season)
- * Sound source characteristics (from a table of built in source types)
- * Ambient sound conditions (a tool is available to estimate this based on land cover and a table of background sound for various environmental conditions)

Given the example from the Tahoe NF, it is clear that while certainly complex, the ability to model sound disturbance is both feasible and necessary to take a hard look at the impacts OSV use may have on wildlife and quiet recreation opportunities. We have included the user's guide for the SPreAD-GIS model⁷, and we are confident the Forest Service can replicate this or a similar model to evaluate the potential acoustic impacts on the planning area from engine noise in this process. In fact, we provide an example of how the agency can utilize this model taken from comments we provided the Idaho Panhandle NF during its development of the Kaniksu OSV Designation Project.⁸ Here we utilized the SPreAD-GIS model to evaluate potential noise propagation within areas of grizzly bear denning habitat and primary wolverine habitat within a specific area called the Roman Nose. See Figures 1 - 4.

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Figure 1. OSV Noise Propagation, Roman Nose Area, Calm Wind Conditions (seeRoman Nose Soundscape.jpg)

Figure 2. OSV Noise Propagation, Roman Nose Area, Wind at 10 mph (seeRoman Nose Soundscape 2.jpg)

Comparing the two results demonstrates that on a calm day the noise disturbance echos within a portion of the area to the southwest, and on a windier day the ambient levels significantly reduce this disturbance. However, we strongly urge that the Forest Service manage for calm days as this would best support compliance with the TMR.

Figure 3. OSV Noise Propagation, Calm Wind Conditions within High & Medium Suitable Grizzly Bear Denning Habitat (seeRoman Nose Soundscape 3.jpg)

Figure 4. OSV Noise Propagation, Calm Wind Conditions, Primary Wolverine Habitat (Footnote 9) (seeRoman Nose Soundscape 4.jpg)

Our model results illustrate that keeping OSV use limited to designated trails reduces noise propagation within lake basins, and that ridgeline trails can cause disturbance across a large area, making them inappropriate for OSV designation where there is a need to minimize noise disturbance. While these examples come from the Idaho Panhandle National Forest, the methods are transferable and the Forest Service must apply them to the Project analysis, or provide an alternative analysis of noise impacts on par with the SPreAD model.

B. Failure to account for unauthorized motorized use.

The Forest Service must consider the effects of proposed actions on its ability to enforce the entire existing and proposed OSV designations. NEPA requires the agency to take a hard look at the impacts of illegal motorized

use on forest resources and the likelihood of illegal use continuing or expanding under each alternative (Footnote 10). The Forest Service must consider the impact of its proposal action in conjunction with the persistent and ongoing winter motorized use violations. Clearly, the issue is one that the agency must consider given its recognition that the proposed action would allow for better enforcement of the closure within the Puzzly Creek drainage of the Skyland Challenge Area:

The proposed closure location would help managers better communicate the boundary to motorized users at a more intuitive closure location at the end of the groomed trail. It would also be easier to maintain signs and monitor for illegal use at this location.

EA at 59. Certainly we support designating a more enforceable OSVUM, and the need to do so as explained by the Forest Service, also demonstrates the need to consider where existing and proposed OSV use is contributing to illegal motorized use.

C. Failure to analyze OSV impacts to soils, watersheds, vegetation or to ensure Travel Management Rule compliance.

The Forest Service provides the following arbitrary and capricious assertions absent any supporting evidence or analysis:

Because the proposed action is not expected to result in ground disturbance, potential effects on soils, watersheds, water quality, and fisheries would not result. Therefore, there are no relevant issues in the context of the National Environmental Policy Act that require further study in this environmental assessment (Forest Service Handbook 1909.15, Chapter 10).

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Over-snow vehicles operate on a protective blanket of snow and typically do not disturb ground cover. We assume the majority of over-snow vehicle use would occur during periods of sufficient snow depth because the vehicles do not operate properly without sufficient

snow depth and the expensive machines are prone to damage when they strike rocks, stumps, and other obstacles.

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If such exposed areas occur, users are expected to avoid or minimize use in such areas to prevent damage to the over-snow machines

EA at 70 - 71. The Forest Service provides no evidence or analysis demonstrating that users would avoid exposed ground, and it arbitrarily dismissed incorporating minimum snow depths as a tool to minimize damage. EA at 19. We urge the agency to reconsider this important minimization tool as it is necessary to protect soils, streambanks and vegetation. We remain unconvinced by the Forest Service's claim that "it would be difficult to enforce and would not be useful given that users of over-snow vehicles self-regulate." Id. The assertion that minimum snow depths are too challenging to enforce does not make sense when the agency already includes a number of directions in its Information and Education Strategy for Prevention of Over-Snow Vehicle Trespass (Strategy). EA, Appendix D. The Strategy includes work items such as "Conduct education-enforcement patrols

adjacent to closed area boundaries," and "Install orange over-snow prohibition signs at key field locations." However, it is important to note here that the directions in this Strategy are completely optional and discretionary, rendering otherwise laudable provisions completely useless. Surely the agency can require these actions and also include direction to close areas when snowpack levels drop below specified thresholds. Further, the Forest Service can utilize snowpack data in real time provided by the National Water and Climate Center's Snow and Water monitoring sites (SNOTEL). Further, other national forests have implemented minimum snow depth requirements. For example, recognizing the significant impacts of its OSV proposed action, the Plumas National Forest developed an environmental impact statement with five alternatives with some including minimum snow depths (Footnote 11):

Alternative 2 - modified proposes a minimum snow depth requirement of 12 inches within the designated cross-country OSV-use areas; 6 inches along designated OSV trails; and 12 to 18 inches along designated groomed trails

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Alternative 5 proposes a minimum snow depth requirement of 24 inches within the designated cross-country OSV-use areas; 12 inches along designated OSV trails; and 12 to 18 inches along designated groomed trails.

We strongly recommend that the Forest Service recognize the feasibility of establishing minimum snow depth thresholds and the fact they provide a necessary tool to comply with the minimization criteria, especially since variations in snow depths can expose soils and vegetation. For example, the agency states that "... areas associated with steep south- and west-facing slopes where wind and sun exposure reduce winter snow depths." Id. at 42. "Over-snow vehicles could facilitate the spread of invasive plant species by transporting seeds and disturbing ground when the snow depth is low." Id. at 47. Even though the Forest Service dismisses these impacts, it is well established that OSV use damages exposed soils and vegetation, and can harm water quality, especially early or late in the season where there is a likelihood of inadequate snow levels (Footnote 12). As snow is compacted, the soil temperature can be reduced and soil microbial activity and germination of seeds can be slowed. Compacted snow can lead to wet and soft trails due to slower snow melt, ultimately leading to damage by other users in the spring. OSVs that run over or near vegetation damage trees and shrubs by tearing at the bark, ripping off branches, or topping trees. Off-road vehicles[mdash]including OSVs[mdash]are designed to, and do, travel off-trail, disturbing soil, creating weed seedbeds, and dispersing seeds widely. Plus, fuel leaks and exhaust from OSV use also negatively impacts soil quality and vegetative health. Many of these impacts were on display in a report provided to the Forest Service by the Swan View Coalition in its 2002 report (Footnote 13). Though the report is from 2002, the results are from a time when the climate crisis effects were not so pronounced, and it is reasonable to expect snowpack declines have created more opportunities for damage to exposed soils, streambanks and vegetation. It is also reasonable to expect that OSV damage has persisted since that time.

The Forest Service attempts to dismiss the issue of declining snowpack in its discussion of climate change impacts on wolverine asserting that "According to the models used in an assessment by McKelvey et al. (2011), northern Montana (including the Flathead), would retain significant spring snow in the next 50 years." EA at 28. Certainly climate models have evolved since the 2011 study. For example, climate data can now be statistically downscaled using Climate BC/WNA/NA (Footnote 14) and we urge the Forest Service to refine its data utilizing the provided methods or utilize an alternative approach. The agency also asserts that "The area of median snow depth of greater than 1 meter on May 1 is not projected to change through the year 2055, decrease 12 percent through the year 2095 and decrease 16 percent through the year 2095 (U.S. FWS 2023b)." This comes from the U.S. Fish and Wildlife Service North American Wolverine Species Status Assessment Addendum September 2023, (Wolverine SSA, 2023), which we discuss further below. Of particular note here in regards to snowpack

and the exposure of soils and vegetation, the report notes

The modeling methods (ensemble) used here differ from the methods of Barsugli et al., (2020, pp. 4-6) in that they do not capture the interannual (year-to-year) variability in snowpack. Snowpack in wet and dry years and/or hot and cool years may be impacted differently by climate change

Wolverine SSA, 2023 at 52. Luckily, the Forest Service need not rely on complex and highly variable climate models to analyze variability in snow depths. Rather, we suggest the agency simply look at the trends from actual data reported at SNOTEL monitoring stations that provide useful information, including snow depths. For example, using the interactive map, we compared snow depths at the Noisy Basin site (elevation 6,040 ft) for May 1, 2011 and 2023 (Footnote 15). The results show that at 12:00 pm on May 1, 2011 the snow depth was 190 inches, and in 2023 it was 96 inches. For the Emery Creek site (elevation 4,350 feet), the May 1, 2011 depth at 12:00 pm was 56 inches, and in 2023 it was 3 inches (Footnote 16). Clearly declining snowpack exposing soils and vegetation is a significant issue the agency cannot choose to arbitrarily dismiss. This is especially true in regards to threatened whitebark pine.

Whitebark Pine

The Forest Service explains that "The U.S. Fish and Wildlife Service listed whitebark pine as a threatened species under the Endangered Species Act on December 15, 2022," that "Over-snow vehicle use was not identified as a major threat." EA at 48. The agency also states the species "is not expected to do well under future climates. This is primarily because of the current threats and severely declined population, its confinement to upper subalpine environments, and its lack of ability to regenerate because of nutcracker consumption of seed in areas of low whitebark pine populations." Id. While OSV use may not be a major threat, clearly any damage from winter motorized use is a serious concern for such an imperiled species, and the agency must take a hard look at the potential impacts, while also demonstrating it can effectively minimize whitebark pine damage.

The Forest Service explains its methods for analyzing OSV effects is limited to "changes to over-snow vehicle use designations" in the proposed action, and that the extent is appropriate because whitebark pine is widespread across the forest and expanding the analysis area to be forestwide would dilute the effects to whitebark pine." EA at 47. We agree that the agency should not dilute the effects, and support looking at the direct and indirect effects within newly designated areas, but the agency must also analyze the cumulative effects of OSV use on whitebark pine across the forest, and discuss how changes to OSV designations will affect those cumulative impacts. Here, the agency fails to provide such analysis. Identifying areas of known whitebark pine occurrences and displaying suitable habitat across the forest and also within areas proposed for OSV designation is a necessary step that must be part of the agency's analysis.

Additionally, the agency needs to provide a more detailed analysis of direct and indirects effects, rather than provide broad, conclusory statements. In regards to its analysis of direct effects the Forest Service explains that for the No Action alternative OSV use can cause "damage to boles, branches and foliage on mature trees from physical contact with machines. Effects to smaller, sapling-sized trees include crushing foliage and breaking leaders that are above the snowline from being run over by machines. Continual breakage in areas repeatedly used over the course of several years would stunt the development of these trees into larger, cone-bearing trees." Id. at 49. The agency then discloses that under the proposed action the effects would be similar, but downplays their significance by asserting the effects "are expected to be linked to high-use routes and would not be expected to impact the long-term viability of whitebark pine in the analysis area." Id. at 50. Yet, the agency provides no evidence or discussion that supports its assertion the effects are limited to high-use routes. Rather, the Forest Service simply lists 2,122 as the total acres of whitebark pine "range" potentially affected by additional OSV designations, but fails to disclose the miles of "high-use routes," or where they may occur within the newly

designated areas. Id. at 51. Given the agency is proposing area designations, it is likely that OSV use will damage exposed whitebark pine, especially where snowpack is inadequate to protect the species. Had the agency limited use to specific routes, and mapped where whitebark pine or its habitat occurs, it could have minimized damage by only designating OSV trails instead of the entire area. Instead, the agency claims "Signing and public education would be expected to minimize these impacts," in addition to monitoring popular routes. Id. Yet, the agency provides no discussion or evidence this is an effective method to minimize damage. The Forest Service states, "Whitebark pine in the project area may be damaged by over-snow vehicle use if the trees are above the snow surface. The greatest damage is expected to be terminal leader breakage on smaller trees just above snow level." Screening Criteria at 3, Table 1. Here it is important to note that tree damage may occur even when they may be below the snow since OSVs traverse through the snow and do not stay on the surface. The agency fails to acknowledge that snow depth must be greater than the depth the OSV may sink. Further, the agency discloses the specific acres in each designated area in its Screening Criteria and states "Designating these areas for over-snow vehicle use may cause effects to whitebark pine, including damage (breakage of limbs, running over, abrasion of branches and leader growth), snow compaction and pollutants." Id. at 7. It then asserts "public education" and "monitoring considerations" will effectively minimize the damage, again without evidence. The Forest Service then states, "The season of use provides a time limit when whitebark pine may be exposed to over-snow vehicle use." Id. But as we explained above, the agency fails to consider declining trends in snowpack, or provide any analysis that discloses when the season of use provides adequate snow cover. It fails to provide any evidence that education will be sufficient to comply with the TMR, and how monitoring efforts would result in the protection of whitebark pine trees. These deficiencies must be addressed before any final decision is made.

D. Failure to analyze OSV impacts to wolverine and ensure Travel Management Rule compliance.

As we explained above, the Forest Service states it is not conducting winter travel management planning for areas where there will be no changes to existing OSV designations, even though there is certainly a need. Yet, it appears some of the effects analysis for wolverine utilizes a forest-wide scale: "The spatial extent of analysis of effects for wolverines is the Flathead National Forest." EA at 22. Certainly, the forest-wide scale is appropriate for considering cumulative impacts, but not for considering direct and indirect impacts, as those would be "diluted" as the agency acknowledges in its whitebark pine analysis. We're concerned the Forest Service is averaging the impacts OSV designations will have on wolverine within each OSV area across the entire forest. For example, the agency discloses there are 19,828 acres of maternal wolverine habitat within the Skyland Challenge OSV area and that designating an additional 266 acres to the existing 7,601 acres available to OSV use would result in just a 1 percent increase in OSV use within maternal wolverine habitat. Id. at 25, Table 10. This obfuscates the fact that there would be approximately a 39.7 percent increase of OSV use within the Skyland Challenge Area when considering the total maternal habitat just within the area and not across the entire forest.

Further, we are particularly concerned about how the OSV designations will affect wolverine connectivity, especially since the Forest Service explained that it was not analyzing male wolverine dispersal habitat since it occurs forest-wide, and the agency's statement that "Dispersal habitat is not suitable for the establishment of home ranges and reproduction (U.S. FWS 2013)." Id. at 23. The Forest Service needs to identify and analyze an indicator for connectivity in order to disclose the cumulative impacts to wolverine connectivity if it asserts that dispersal habitat is not suitable for establishing home ranges, which we question, especially given the following:

Establishing connectivity for wolverines would also benefit many other species including mountain lions (*Puma concolor*), black bears (*Ursus americanus*), and grizzly bears (*Ursus arctos*) because of the large scale at which wolverines require connectivity and that fact that doing so would link much of the forested public land of Idaho, Montana, and Wyoming.

Further work on dispersal is needed to improve our understanding of factors limiting these critical movements for wolverines and other species.

Inman et al., 2013 (emphasis added). Clearly there is a link between dispersal and connectivity, and the Forest Service must take a hard look at how current OSV use affects connectivity in conjunction with the proposed action in order to fully address the cumulative effects of OSV on wolverine dispersal. Absent such analysis the agency cannot support its conclusory statement that "Over-snow vehicle use may alter wolverine travel patterns for dispersal of some individuals which would avoid over-snow vehicles; however, the proposed changes would not inhibit wolverine dispersal between habitats on the Flathead National Forest." EA at 26.

Moreso, while the Forest Service has limited ability to address declines in snowpack due to the climate crisis, the agency must account for such declines in its analysis, which it failed to do, as we noted above. We urge the agency to measure trends in snowpack decline from SNOTEL data, rather than climate models that begin 20 years from now. Doing so may enable the Forest Service to identify specific linkage areas to protect, the importance of which is shown in the following explanation:

New studies in southwestern Canada and the western U.S. have found that wolverine distribution and density are negatively related to road density. In southwestern Canada, consistency of spring snow and road density are the two most important variables correlated with wolverine density (Clevenger 2019, p. 52; Mowat et al. 2020, p. 220). Wolverine population estimates derived from models based on snow and road density predicted that wolverine abundance would be 44% higher without the depressing effect of the road covariate (Clevenger 2019, p. 52; Mowat et al. 2020, p. 220).

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[hellip] in southeastern British Columbia, the density of forestry roads that extended into high-elevation wolverine habitat was a strong negative predictor of wolverine distribution in winter, especially for females (Kortello et al. 2019, p. 10). The most likely explanation for this negative relationship is the use of these high-elevation forestry roads by snowmobilers, rather than predator avoidance or trapping pressure (Kortello et al. 2019, p. 10). Other possible explanations are increased trapping access or less abundant food resources near roads (Mowat et al. 2020, p. 224).

Wolverine SSA Addendum, 2023 (2023 SSA) at 31. The need to identify and protect areas of connectivity is especially important given that the agency states "Forestwide, the proposed action would increase over-snow vehicle use in female dispersal habitat[hellip]The change in over-snow vehicle use would increase in female dispersal habitats by approximately 2 percent. EA at 26. These two statements are confusing at best and appear contradictory, especially given a previous statement that "The proposed action would increase over-snow vehicle use in female dispersal habitats by approximately 1 percent." Id. at 24. We request the agency clarify these statements, and identify connectivity areas within OSV use areas and forest-wide.

We are also concerned with the Forest Service's attempt to downplay OSV effects on wolverine maternal habitat by diluting the impacts across the forest: "The additions of acres designated for over-snow vehicle use in maternal denning habitat would be in the Skyland Challenge and Canyon and Big Creeks areas. The result would be a net decrease of effects to maternal denning habitat of approximately 4,914 acres (1 percent) consistent with forest plan guideline FW-GDL-REC-04." Id. at 25. The Forest Service must demonstrate how it minimizes wolverine harassment and significant disruption of wildlife habitat, which it cannot do by diluting the impacts. In addition, the Revised Forest Plan was written before wolverine were listed as a threatened species in 2023, and the plan components were not developed to contribute to the recovery of the species, as such the Forest Service must demonstrate that FW-GDL-REC-04, and other plan components meet the requirements of the 2012 Planning Rule, specifically 36 CFR 219.9(b). Absent such analysis, the Revised Plan is likely not contributing to the recovery of wolverine in violation of the regulations.

The Forest Service must also better account for noise disturbance on wolverine habitat and recovery. The agency attempts to downplay the impacts OSV has on primary habitat:

Noise from motorized use and ease of over-snow access may increase potential disturbance to wolverine. While studies show wolverine to avoid winter recreation activities in primary habitats, there is evidence that individuals can avoid disturbance and maintain habitat use and reproduction within home ranges. Heinemeyer et al. (2019) found that some wolverine maintained multiyear home ranges in areas that had over 40 percent overlap a winter recreation footprint. At the forest-wide scale, the proposed action would reduce potential disturbance from over-snow vehicle use in potential maternal habitats when wolverines are most sensitive to disturbance.

EA at 25. In addition to the improper dilution of impacts we noted already, the agency must also acknowledge that Heinemeyer et al. (2019) determined motorized recreation occurred at higher intensity across a larger footprint than non-motorized recreation in most wolverine home ranges (Footnote 17). Female wolverines exhibited stronger avoidance of off-road motorized recreation and experienced higher indirect habitat loss than male wolverines (Footnote 18). High-cirque snowmobile use, especially cross-country use and "high marking," may present a substantial threat to wolverines and their habitat.

The Forest Service has not sufficiently analyzed how the loss of climate-induced winter wolverine habitat is exacerbated from current or projected OSV use, or the potential impacts to wolverine food availability or cover. This omission becomes particularly problematic in the transition zones where a model utilized in Aubry et al. 2023 found that "wolverines are restricted primarily to the transitional zone between treeline, below which environmental conditions become too warm, and upper elevations of permanent ice and snow where there is insufficient food and cover to support wolverines (Aubry et al. 2023, pp. 13-14)." 2023 SSA at 18. Further, "[t]here is growing evidence that wolverines rely on subnivean space (the environment between snow and terrain) for thermoregulation, to escape predation risk, and/or to cache food (van der Veen et al. 2020, pp. 8-10; Fisher et al. 2022, p. 10)." 88 FR 83748. The Forest Service did not account for the loss or shifting of transition zones or subnivean spaces in its analysis, nor did it account for OSV use within these areas. In fact, essential sources of wolverine prey reside within the subnivean space. Small mammals that remain active during the winter depend on the insulated space between the snowpack and the ground - the subnivean zone - for winter survival. When snow compaction from snowmobiles occurs, subnivean temperatures decrease, which can lead to increased metabolic rates in these small mammal species, such as voles, shrews, and mice. For example, if the subnivean air space is cooled by as little as 3 degrees Celsius, the metabolic demands of small mammals living in the space would increase by about 25 calories per hour (Footnote 19). Through controlled experiments, researchers have demonstrated that compaction due to snowmobile use reduced rodent and shrew use of subnivean habitats to near zero - a decline attributed to direct mortality, not outmigration (Footnote 20). Elsewhere, scientists have documented a decline in small mammals following snowmobile activity that compressed the subnivean zone (Footnote 21). Because small mammals make up the majority of prey for many species, from raptors to mesocarnivores, habitat changes that affect subnivean populations could cascade through the food chain (Footnote 22). The Forest Service failed to address this important issue in its analysis.

Finally, the Forest Service cannot rely on its design features or its Strategy to comply with the minimization criteria, especially given the Screening Criteria cites a slight decrease on OSV use forest-wide to comply with the TMR, (Screening Criteria at 9), but this dilutes the fact that "The proposed action would concentrate the increased over-snow vehicle access in the Canyon McGinnis and Lower Big Creek subunits which would result in an increase of acres by 51 and 12 percent, respectively, of over-snow vehicle use in potential maternal habitats." EA at 26. The reliance on "no net increase" under FW-GDL-REC-04 of the Revised Plan is insufficient to comply with the TMR, and is likely insufficient to comply with the 2012 Planning Rule requirement that the Revised Plan contributes to the recovery of the species.

E. Failure to analyze OSV impacts to Canada lynx and ensure Travel Management Rule compliance.

Canada lynx—a species listed as threatened under the federal ESA—can be sensitive to motorized recreation, especially during denning and diurnal resting periods. For lynx, it is important to remember that the Flathead National Forest is included within one of six core areas for Canada lynx (Footnote 23). The U.S. Fish and Wildlife Service defines Canada lynx core areas as those "areas with the strongest long-term evidence of the persistence of lynx populations within the contiguous United States" and that "have both persistent verified records of lynx occurrence over time and recent evidence of reproduction" (Footnote 24).

In its five-year status review, the USFWS explains that the Canada Lynx Conservation Assessment and Strategy (LCAS) identified 17 risk factors "with the potential to result in habitat conversion, habitat fragmentation, or obstruction to lynx movement [including] roads or winter recreation trails that may facilitate access to historical lynx habitat by competitors" (Footnote 25). The LCAS characterizes these risks as second tier influences, which "are those that may affect individual lynx but are not expected to substantially impact populations or habitats." Id. The USFWS confirmed that lynx are moderately vulnerable to winter motorized use. 2023 Lynx SSA at 55, Table 6.

Importantly, through the lens of the TMR and compliance with the minimization criteria, winter motorized use can have significant effects leading to harassment of individuals and significant habitat disruption, especially in the context of climate change that may be affecting snow-depths and the distribution of lynx foraging habitat. In addition, the Winter Wildlands report we provided with our scoping comments notes the following:

As snow levels diminish with climate change, winter recreation use will become more concentrated in those snowy areas still remaining - where lynx are trying to persist as well. Winter recreation will thus continually become a more serious threat to the persistence of lynx over time.

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An additional concern related to over-snow vehicle use is that open roads and motorized winter access increases lynx vulnerability.¹²²¹²³¹²⁴¹²⁵ Human access can increase the potential for mortality or injury of lynx captured incidentally in traps aimed at other species or through illegal shooting. Such vulnerability is reduced if there is less motorized winter recreation access (Footnote 26).

We raised concerns regarding the potential conflicts between OSV use and Canada lynx in our scoping comments, which are still relevant as the agency fails to properly address them or provide sufficient analysis to satisfy NEPA. For example, the analysis fails to provide maps illustrating where OSV designations would occur within core habitat, designated critical habitat, denning habitat and areas of connectivity, and maps displaying how that would change under the proposed action. We also asked the agency to take a hard look at how the new designations would affect lynx habituation and the resulting impacts that may cause to individuals, especially since "in lynx habitat proposed for over-snow vehicle use, 83 percent of the new areas would be concentrated north of Columbia Falls in the Canyon Lynx Analysis Unit, or in the Bear Creek Lynx Analysis Unit." EA at 29. The Forest Service states that "For all lynx analysis units affected on the Flathead, there would be no net increase in acres of over-snow vehicle use in potential lynx habitat." EA at 31. This obfuscates the fact that the agency is concentrating use in these areas will likely lead to increased lynx harassment and significant disruption of its habitat. The agency dilutes these impacts across the entire Flathead National Forest, and just as we explained above regarding wolverine, a forest-wide scale is appropriate for considering cumulative effects, but it is insufficient to disclose impacts to species in newly designated areas. Id. at 29.

The agency asserts that new OSV designations "are in areas that are difficult to access due to terrain and forest vegetation," Id., yet it fails to support this conclusory remark with evidence or analysis, which is especially glaring

given that OSVs, such as snow bikes and tracked all-terrain vehicles, can drive through dense vegetation and even up avalanche chutes. Just how dense does vegetation need to be to discourage use? What are the characteristics of the terrain that make it too difficult to traverse? The Forest Service does not provide this information.

The Forest Service also failed to account for how current OSV use in conjunction with the proposed OSV designations will affect lynx connectivity. Squires et al., 2013 notes that lynx conservation in the contiguous United States hinges in part on maintaining population connectivity between Canada and the United States. Maintaining such connectivity, however, is becoming increasingly difficult due to climate and anthropogenic change, as evidenced by reduced connectivity of other boreal species. Squires 2013 at 187 (Footnote 27). Results from Squires (2013)'s population level model indicate that "changes to vegetation structure can increase landscape resistance to lynx movement, however, there is no evidence that this is currently causing genetic isolation." Id. at 194. "Although lynx are capable of crossing hundreds of kilometers of unsuitable habitat, as evidenced by verified locations in prairie ecosystems, lynx in the Northern Rockies are sensitive to changes in forest structure and tend to avoid forest openings." Id. The Forest Service fails to discuss lynx connectivity and the potential impacts from changing the distribution of OSV use under the proposed action.

Further, the Forest Service relies on its Revised Plan to comply with the minimization criteria:

Forest plan guideline FW-GDL-REC-03 states that to provide ecological conditions to support Canada lynx on National Forest Service lands at a forestwide scale, there should be no net increase in miles of designated routes for over-snow vehicle use, groomed routes, or areas where over-snow vehicle use is identified as suitable.

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Canada lynx and habitat described in the draft environment assessment describe how this project complies with the guideline and therefore supports how we designed this project with consideration of potential effects to lynx with the objective of minimizing those effects.

Screening Criteria at 8-9. We already explained how the agency cannot rely on its programmatic Revised Plan analysis and plan components to demonstrate compliance with the TMR, and the agency actually needs to provide site-specific analysis where it actually designates OSV use to show how it is minimizing lynx harassment and significant disruption of lynx habitat. As it stands, the Project EA fails in this requirement.

In addition, the Revised Plan itself is insufficient to contribute to lynx recovery. One main reason is that the Revised Plan fails to adopt direction from the 2007 Northern Rockies Lynx Management Direction. See Ex. 6. Specifically, the direction states:

Designated over-the-snow routes or designated play areas should not expand outside baseline areas of consistent snow compaction, unless designation serves to consolidate use and improve lynx habitat. This may be calculated on an LAU basis, or on a combination of immediately adjacent LAUs.

NRLMD at 7. Looking at the Revised Plan, the Forest Service failed to adopt this direction and replaced it with plan component FW-GDL-REC-03 that states:

To provide ecological conditions to support Canada lynx on NFS lands at a forestwide scale, there should be no net increase in miles of designated routes for motorized over-snow vehicle use, groomed routes, or areas where motorized over-snow vehicle use is identified as suitable.

Revised Plan at 61. The Forest Services again obfuscates this changes and suggests that the Revised Plan continues to carry forward the NRLMD:

The Northern Rockies Lynx Management Direction is retained in appendix A. This lynx direction contains goals, objectives, standards, and guidelines. This lynx direction is retained in this forest plan through standard FW-STD-WL-04, with proposed Forest-specific modifications to one guideline and the addition of one exception to a standard (see FW-GDL-REC-03 and FW-STD-TE&V-02).

Id. at 8. That modification reads as follows:

To provide ecological conditions to support Canada lynx on NFS lands at a forestwide scale, there should be no net increase in miles of designated routes for motorized over-snow vehicle use, groomed routes, or areas where motorized over-snow vehicle use is identified as suitable. The "no net increase" is in comparison to the suitability displayed in forest plan figure B-11.

Revised Plan, Appendix A at A-10. As we see with this Project, operationalizing the "modification" results in significant reduction of lynx habitat conditions and security. For example, the NRLMD focuses on managing OSV routes and play areas to ensure winter motorized use does not expand outside baseline areas of consistent snow compaction. Yet, the agency states that "Roads may facilitate easier and more frequent over-snow access, increasing snow compaction on these routes." EA at 32. The proposed action designates OSV use on "18 miles of National Forest System roads in lynx habitat. The Canyon Lynx Analysis unit includes 17 miles of system roads opened for over-snow access. The remaining mileage is distributed across 8 Lynx Analysis Units." Id. In other words, the Revised Plan's modification of the NRLMD clearly results in an expansion of snow compaction beyond baseline areas and the proposed OSV designations do not result in a consolidation of use that actually improves lynx habitat within the LAUs or adjacent LAUs.

Morseo, it is reasonable to describe portions of the proposed OSV designations as "play areas." For example, "The proposed action would designate about 8,001 acres in the Canyon and Big Creeks area for over-snow vehicle use in areas that are currently closed[hellip]Currently, the Canyon and Big Creeks area only contains select open motorized routes and small play areas[hellip]Opening desirable riding areas adjacent to these routes would substantially increase riding opportunities available to over-snow users." EA at 58-59 (emphasis added). In other words, opening closed areas would result in designating new play areas beyond the baseline.

These examples show the Revised Plan's failure to adopt the NRLMD without modifications constitute a failure of the plan to contribute to lynx recovery in violation of the 2012 Planning Rule. Further, the failure to adhere to the NRLMD precludes any assertion that the proposed action will comply with the TMR's minimization criteria.

F. Failure to analyze OSV impacts to grizzly bear and ensure Travel Management Rule compliance.

As with wolverine and lynx, the Forest Service dilutes grizzly bear impacts from OSV use across the Flathead NF, rather than take a hard look at the direct and indirect impacts where the proposed action would actually designate winter motorized use: "The spatial extent of analysis of effects for grizzly bears is the Flathead National Forest." EA at 35. We recognize the agency summarized changes in OSV designations within specific grizzly bear management units by acres and percent, stating: "The proposed action would decrease over-snow vehicle use in two grizzly bear subunits (Ball Branch and Kah Soldier) and increase over-snow vehicle use in denning habitat in 4 subunits (Canyon McGinnis, Lower Big Creek, Skyland Challenge, and Werner)." Id. at 38, Table 15. Certainly this is a necessary disclosure, but hardly constitutes a hard look at impacts, especially when the Forest Service asserts the following:

The proposed action includes additional over-snow motorized access open into the den emergence period in the Skyland Challenge Grizzly Bear Subunit. With this addition, late spring over-snow vehicle use would only total approximately 3 percent of modeled grizzly bear denning habitat in the recovery zone and primary conservation area of the Flathead National Forest, which is a minor amount.

EA at 39. Such an arbitrary and capricious conclusion fails to consider the impacts to emerging bears within this BMU. The Forest Service provides a cursory overview of potential effects to late season denning habitat, but then it dismisses these harmful and disruptive effects by stating bear can simply go somewhere else in the BMU: "Approximately 55 percent of denning habitat in the Skyland Challenge subunit is not designated for oversnow vehicle use, therefore the area provides potential habitat for denning that does not have potential motorized disturbance during the denning season." Id. at 39. In addition, the Forest Service states, "The longevity of the seasonal snowpack in the Skyland Challenge area does not make good spring habitat for grizzly bears." Id. Yet, the agency fails to provide evidence or analysis to support the persistence of snowpack in the area. And, the Forest Service further downplays the potential impacts to grizzly bears explaining the area already receives OSV use at levels that currently displace grizzly bears: "Grizzly bears are likely to avoid moving through the Skyland Challenge area given the existing spring over-snow vehicle use." The TMR directs the agency to minimize grizzly bear harassment and significant disruption of its habitat, not to compound those impacts by adding additional OSV designations. Further, the Forest Service erroneously relies on unproven and inadequate design features in an attempt to meet the minimization criteria, stating that for the late season OSV use proposed for Skyland Challenge area (through May 14), it will follow wildlife design features 1-3. Screening Criteria at 8. Design feature 3 explains the following:

Each year, staff from the Flathead National Forest would coordinate with Montana Fish, Wildlife and Parks for any known female grizzly bear locations in the Skyland Challenge area. If information indicates that disturbance could occur from over-snow vehicle use during female den emergence (April 1 to May 15), the district ranger, recreation specialist, and wildlife biologist will determine the most effective method and location to mitigate disturbance from over-snow vehicle use to emerging females with cubs from dens in the area (design feature Wildlife 3).

Id. Besides misidentifying the denning season (Wildlife Design Feature 2), this design feature fails to explain precisely what "effective" methods it would use to minimize disturbance and harassment. Mitigation is insufficient as it fails to adequately protect grizzly bears before OSV use harms grizzly bears. In other words, this feature is reactive and not preventative, which is not how the TMR works without clear, precise direction such as automatic closure triggers. For example, if the design feature required the area to be closed upon the verified presence of a grizzly bear, then it could be effective, but the TMR does not direct the agency to designate OSV use first, and then figure out how to comply with the regulations.

The Forest Service also states the following: "The agencies have not detected conflicts due to over-snow vehicle use on the Flathead National Forest. The agencies have not detected grizzly bear avoidance of denning habitat in areas open to over-snow vehicle use." Id. at 36. The agency provided no evidence or analysis to support this conclusion, or explained what efforts it made to detect such impacts. One potential effect could be direct mortality from collapsed dens, which may occur when OSVs trigger avalanches and entomb a female and her cubs. Such an occurrence was documented in Alaska a number of years ago, (Footnote 28) and given there are no specific monitoring protocols that effectively document such instances within the Project area, there may have been similar mortality events that have occurred with no documentation. Certainly with such activities as highmarking and cornice tapping, OSV caused avalanches could result in direct grizzly bear mortality. The Forest Service does not consider OSV triggered avalanches or their potential to harm wildlife, including direct grizzly bear mortality. In addition, we certainly refute any assertion that OSV use occurs away from grizzly bear denning habitat to such a degree that negative impacts are unlikely, especially given the agency provides no evidence to support such an arbitrary conclusion. The interplay between grizzly bears and OSV use was captured in Region 1 under a Biological Opinion supporting the Flathead Forest Plan Amendment 24:

Female grizzlies with cubs have high energetic needs, and cubs have limited mobility for several weeks after leaving the den. Females and their cubs remain in the den site area for several weeks after emergence (Haroldson et al. 2002, Mace and Waller 1997)... Disturbance levels that cause a female to prematurely leave the den in spring or move from the den area could impair the fitness of the female and safety of the cubs. If cubs attempt to follow their mother, they would likely experience decreased fitness and the family unit may be pushed to less suitable habitat. [hellip] However, the potential of snowmobile use impacting an individual female grizzly bear's breeding, feeding, or sheltering to the extent that harm or harassment occurs cannot be eliminated. The incidental take is expected to be in the form of harm or harassment to individual female grizzly bears and/or cubs caused by premature den emergence or premature displacement from the den site area, resulting in reduced fitness of females and cubs, ultimately resulting in injury and possibly death (Footnote 29).

Further, the Forest Service must reconsider its dates for the bear year, as sightings earlier than April 1 continue to mount. The agency states, "The grizzly bear denning season is defined on the Flathead National Forest as December 1 through March 31," but that "Den emergence dates may vary based on factors such as male or female, dependent young, or other environmental factors such as snowpack or temperature." Id. at 37. Yet, the agency still asserts the earliest emergence occurred April 4, documented in 2015. Id. Yet, it wasn't clear if the agency considered bear emergence occurring in recent years. On April 23, 2024, the 9th Circuit Court of Appeals upheld a recent district court order "granting a preliminary injunction. The order limited wolf trapping and snaring¹ in certain parts of Montana to January 1, 2024 through February 15, 2024[mdash]when, as the district court found, it is reasonably certain that almost all grizzly bears will be in dens" (Footnote 30). In other words, the Montana district court determined it would be reasonable for grizzly bears to be outside of their dens past Feb. 15, not March 30. In issuing its ruling, the court considered expert declarations from numerous wildlife biologists (Footnote 31). Not only do these declarations support the fact that grizzly bears are likely to be out of their dens past Feb. 15, but they also demonstrate the need for a more robust and detailed analysis than what the Forest Service provides in the Project EA, and absent such analysis, the agency cannot demonstrate compliance with the TMR.

IV. Lack of an appropriate range of alternatives

NEPA requires agencies to "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public" (Footnote 32). In taking the "hard look" at impacts that NEPA requires, an EA must "study, develop, and describe" reasonable alternatives to the proposed action (Footnote 33). The Tenth Circuit explains that this mandate extends to EAs as well as EISs. "A properly-drafted EA must include a discussion of appropriate alternatives to the proposed project" (Footnote 34). This alternatives analysis "is at the heart of the NEPA process, and is 'operative even if the agency finds no significant environmental impact'" (Footnote 35). Reasonable alternatives must be analyzed for an EA even where a Finding of No Significant Impact is issued because "nonsignificant impact does not equal no impact. Thus, if an even less harmful alternative is feasible, it ought to be considered" (Footnote 36). When an agency considers reasonable alternatives, it "ensures that it has considered all possible approaches to, and potential environmental impacts of, a particular project; as a result, NEPA ensures that the most intelligent, optimally beneficial decision will ultimately be made.

Yet, the Forest Service arbitrarily dismissed our comments urging it to consider adopting minimum snow depths as a tool to ensure compliance with the minimization criteria or expanding the proposed action to ensure all OSV designations across the forest comply with the TMR. EA at 19. Given the failure of the Revised Plan to contribute to recovery of wolverine, lynx and grizzly bears, the Forest Service must consider adding another Plan Amendment that address the deficiencies we described above. Finally, the agency failed to provide other

suggested alternatives in its analysis, instead it stated, "Other alternatives considered but not analyzed in detail are documented in the project record." Id. This precludes our ability to meaningfully engage in the NEPA process by evaluating the other alternatives it dismissed.

V. Endangered Species Act

Section 7 of the 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). To make this determination, a federal agency may engage in informal consultation with the Fish and Wildlife Service or the National Marine Fisheries Service (collectively, Services). 50 C.F.R. [sect] 402.13(a). Informal consultation "includes all discussions, correspondence, etc., between the [Services] and the Federal agency " Id. An agency may also prepare a biological assessment to determine whether the action will adversely affect the species or its habitat and whether formal consultation or a conference with the Service is necessary. Id. at [sect] 402.12(a). If, during informal consultation or as a result of the biological assessment, the agency and the Service agree in writing that the action "is not likely to adversely affect listed species or critical habitat, the consultation process is terminated, and no further action is necessary." Id. at [sect] 402.13(a).

An agency action is "not likely to adversely affect" a species "when effects on the listed species are expected to be discountable, or insignificant, or completely beneficial.... " S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv., 723 F.Supp.2d 1247, 1270 (E.D. Cal. 2010) (citing Fish and Wildlife Serv. And Nat'l Marine Fisheries Serv., Endangered Species Consultation Handbook, pages 3-12 to 3-13 (1998)). Where a species is proposed for listing, or critical habitat is proposed, the process is different. Section 7(a)(4) of the ESA requires a Federal action agency to conference with the Services if a proposed action is likely to jeopardize a proposed species, or destroy or adversely modify proposed critical habitat. 16 U.S.C. [sect] 1536(a)(4); 50 C.F.R. [sect] 402.10(a). See also 50 C.F.R. [sect] 402.02 (defining "[c]onference" as "a process which involves informal discussions between a Federal agency and the Service under section 7(a)(4) of the [ESA] regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects."). The agencies must record any results of a conference. Id. at [sect] 401.10(e) ("The conclusions reached during a conference and any recommendations shall be documented by the Service and provided to the Federal agency").

Here, the Forest Service must consult as required by the ESA to ensure its proposed actions are not likely to jeopardize the continued existence of the endangered or threatened species or result in the destruction or adverse modification of critical habitat. This includes whitebark pine, wolverine, lynx and grizzly bears.

Conclusion

The Forest Service has yet to demonstrate compliance with NEPA, the Travel Management Rule, the Endangered Species Act and the National Forest Management Act. We urge the agency to correct the deficiencies we explain herein, and develop a travel management plan that better protects at-risk and sensitive wildlife.

Cordially,

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Exhibits

1. Keyel, A.C., and S.E. Reed. Sound Mapping Tools: an ArcGIS toolbox for modeling the propagation of sounds in a wildland setting. Version 4.4. Colorado State University, Fort Collins, CO.
2. Methods, Kaniksu Winter Recreation EA Soundscape Analysis by Paul Sieracki, Geospatial Analyst.
3. Switalski, A. 2016. Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management - Wildlife. *Journal of Conservation Planning*. 12:13-20
4. Snowmobiling's Endless Winter: Facilitating Physical Access Also Extends The Snowmobile Season, Resulting In Harm To Wildlife Security, Vegetation, Soils, And Water
5. Nordstrom, Lori. 2005. Recovery Outline: Contiguous United States Distinct Population Segment of the Canada Lynx. U.S. Fish and Wildlife Service at 3-4.
6. 2007 Northern Rockies Lynx Management Direction Record of Decision
7. Biological Opinion on Amendment 24 to the Flathead National Forest Plan (December 19, 2008)
8. Select Declarations for Flathead-Lolo-Bitterroot Citizen Task Force v. State Of Montana, No. 23-3754 (9th Cir. 2024).

Footnotes:

1 See 36 C.F.R. [sect] 212.50(b).

2 The language of the grandfathering provision does not explicitly require that previous OSV decisions have been subject to the minimization criteria. See 36 C.F.R. [sect] 212.81(b). To the extent the agency interprets the provision to permit adoption of OSV designation decisions that do not satisfy the minimization criteria, the rule itself violates Executive Orders 11644 and 11989. See *Winter Wildlands Alliance v. U.S. Forest Serv.*, No. 1:11-CV-586-REB, 2013 U.S. Dist. LEXIS 47728, at *32 (D. Idaho Mar. 29, 2013) (requiring the agency to promulgate new OSV travel management rule that complies with the executive orders and making clear that the orders "require[] the Forest Service to ensure that all forest lands are designated for all off-road vehicles").

3 Importantly, efforts to mitigate impacts associated with a designated OSV system are insufficient to fully satisfy the duty to minimize impacts, as specified in the executive orders. See Exec. Order 11,644, [sect] 3(a) ("Areas and trails shall be located to minimize" impacts and conflicts.). Thus, application of the minimization criteria should be approached in two steps: first, the agency locates areas and routes to minimize impacts, and second, the agency establishes site-specific management actions to further reduce impacts. Similarly, the Forest Service may not rely on compliance with the relevant forest plan as a proxy for application of the minimization criteria because doing so conflates separate and distinct legal obligations. See *Friends of the Clearwater*, 2015 U.S.

Dist. LEXIS 30671, at *46 ("Merely concluding that the proposed action is consistent with the Forest Plan does not . . . satisfy the requirement that the Forest Service provide some explanation or analysis showing that it considered the minimizing criteria and took some action to minimize environmental damage when designating routes.").

4 36 C.F.R. 212.55(b)(5).

5 See https://www.fs.usda.gov/t-d/library-card.php?p_num=9823%201308 (last accessed 5/3/2024).

6 USDA Forest Service, Tahoe National Forest, March 2024. Tahoe National Forest Over-snow Vehicle Use Designation Final Environmental Impact Statement at 120. <https://usfs-public.app.box.com/v/PinyonPublic/file/1462940606182> (last accessed, 5/3/2024).

7 See Ex. 1 - Keyel, A.C., and S.E. Reed. Sound Mapping Tools: an ArcGIS toolbox for modeling the propagation of sounds in a wildland setting. Version 4.4. Colorado State University, Fort Collins, CO.

8 See Ex. 2 - Methods, Kaniksu Winter Recreation EA Soundscape Analysis by Paul Sieracki, Geospatial Analyst

9 The GIS data we received from the Forest Service did not show any maternal denning habitat within the Roman Nose Area, though we question the accuracy of this information.

10 See *Sierra Club v. U.S. Forest Serv.*, 857 F. Supp. 2d 1167, 1176-78 (D. Utah 2012).

11 See USDA Forest Service Plumas National Forest. August, 2019. Plumas National Forest Over-snow Vehicle Use Designation Final Environmental Impact Statement. p. xii,xv.

12 See Ex. 3 at 9-10. Switalski, A. 2016. Snowmobile Best Management Practices for Forest Service Travel Planning: A Comprehensive Literature Review and Recommendations for Management - Wildlife. *Journal of Conservation Planning*. 12:13-20.

13 See Ex. 4 - Snowmobiling's Endless Winter: Facilitating Physical Access Also Extends The Snowmobile Season, Resulting In Harm To Wildlife Security, Vegetation, Soils, And Water

14 <https://cfcg.forestry.ubc.ca/projects/climate-data/climatebcwna> (last accessed 5/3/2024).

15 <https://wcc.sc.egov.usda.gov/nwcc/site?sitenum=664> (last accessed 5/3/2024).

16 <https://wcc.sc.egov.usda.gov/nwcc/site?sitenum=469> (last accessed 5/3/2024).

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18 *Id.*

19 Neumann, P.W. and H.G. Merriam. 1972. Ecological effects of snowmobiles. *The Canadian Field Naturalist*. 86: 207-212; See also, Sanecki, Glenn & Green, Ken & Wood, Helen & Lindenmayer, David. (2006). The implications of snow-based recreation for small mammals in the subnivean space in south-east Australia. *Biological Conservation*. 129. 511-518. 10.1016/j.biocon.2005.11.018.

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M. (ed.) Proceedings of the Snowmobile and Off the Road Vehicle Research Symposium. College of Agriculture and Natural Resources, Department of Park and Recreation Resources, Recreation Resources and Planning Unit, Tech. Rep. 8, Michigan State University, East Lansing, MI.

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22 Brander, R.B. 1974. Outdoor recreation research: applying the results: ecological impacts of off-road recreation vehicles. North Central Forest Experiment Station, USDA Forest Service St. Paul, MN. General Technical Report NC-9. <https://www.fs.usda.gov/treearch/pubs/10074>

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24 Nordstrom, Lori. 2005. Recovery Outline: Contiguous United States Distinct Population Segment of the Canada Lynx. U.S. Fish and Wildlife Service at 3-4. See Ex. 5.

25 U.S. Fish and Wildlife Service. 2017. pg. 54. Available at: <https://ecos.fws.gov/ServCat/DownloadFile/213244> (last accessed on May 3, 2023).

26 See scoping comments Ex. 1 at 15, 16.

27 Squires, J.R. & DeCesare, Nicholas & Olson, Lucretia & Kolbe, Jay & Hebblewhite, Mark & Parks, Sean. (2013). Combining resource selection and movement behavior to predict corridors for Canada lynx at their southern range periphery. *Biological Conservation*. 157. 187-195. 10.1016/j.biocon.2012.07.018.

28 Hildebrand et al. 2000. A denning brown bear, *Ursus arctos*, sow and two cubs killed in an avalanche on the Kenai Peninsula, Alaska. *Canadian Field Naturalist* 114(3): 498.

29 Biological Opinion on Amendment 24 to the Flathead National Forest Plan (December 19, 2008), pages 35 & 53. See Ex. 7.

30 Flathead-Lolo-Bitterroot Citizen Task Force v. State Of Montana, No. 23-3754 (9th Cir. 2024)

31 See Select Declarations for Flathead-Lolo-Bitterroot Citizen Task Force v. State Of Montana, No. 23-3754 (9th Cir. 2024), See Ex. 8.

32 40 C.F.R. [sect] 1502.14 (emphasis added).

33 42 U.S.C. [sect] 4332(2)(C) & (E); 40 C.F.R. [sect] 1508.9(b) (an EA "[s]hall include brief discussions . . . of alternatives").

34 *Davis v. Mineta*, 302 F.3d 1104, 1120 (10th Cir. 2002) (granting injunction where EA failed to consider reasonable alternatives).

35 *Din[acute] Citizens Against Ruining Our Env't v. Klein*, 747 F. Supp. 2d 1234, 1254 (D. Colo. 2010) (quoting *Greater Yellowstone Coal. v. Flowers*, 359 F.3d 1257, 1277 (10th Cir. 2004)). See also *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013) (in preparing EA, "an agency must still give full and meaningful consideration to all reasonable alternatives" (emphasis added) (internal quotation and citation omitted)); 40 C.F.R. [sect] 1502.14 (describing alternatives analysis as the "heart of the environmental impact statement").

36 Ayers v. Espy, 873 F. Supp. 455, 473 (D. Colo. 1994) (internal citation omitted).

Attachments:

Ex. 1 - SoundMappingTools User's Guide v4_4_2.docx

Ex. 2 - Methods Kaniksu Winter Recreation EA Soundscape Analysis v2.pdf

Ex. 3 - Switalski 2016 OSV BMPs natural resources.pdf

Ex. 4 - SVC Endless-Winter.pdf

Ex. 5 - Nordstrom Lynx recovery outline.pdf

Ex. 6 - 2007 NRLMD ROD.pdf

Ex. 7 - 2008 12 19 BO Rein FNF A24 G.pdf

Ex. 8 - Combined Declarations.pdf

Roman Nose Soundscape 2.jpg

Roman Nose Soundscape 3.jpg

Roman Nose Soundscape 4.jpg

Roman Nose Soundscape.jpg