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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

ALLIANCE FOR THE WILD
ROCKIES, AND NATIVE
ECOSYSTEM COUNCIL
Plaintiffs,

vs.
LEANNE MARTEN, Regional Forester
of Region One of the U.S. Forest
Service, UNITED STATES FOREST
SERVICE, an agency of the
U.S. Department of Agriculture,

CV-

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Defendants.

I. INTRODUCTION

1. This is a civil action for judicial review under the citizen suit provision of the Administrative Procedure Act which stems from the U.S. Forest Service's (Forest Service) authorizations, analyses, and lack thereof on the Helena-Lewis and Clark National Forest (Forest) related to and regarding the Tenmile-South Helena logging project (Project).
2. Plaintiffs Alliance for the Wild Rockies and Native Ecosystem Council attest that the decisions approving the challenged authorizations, analyses, and lack thereof are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with law.
3. Defendants' actions or omissions violate the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4331 *et seq.*, the National Forest Management Act (NFMA), 16 U.S.C. § 1600 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*
4. Plaintiffs request that the Court set aside the Project pursuant to 5 U.S.C. § 706(2)(A) and enjoin implementation of the Project.

5. Plaintiffs seek a declaratory judgment, injunctive relief, the award of costs and expenses of suit, including attorney and expert witness fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and such other relief this Court deems just and proper.

II. JURISDICTION

6. This action arises under the laws of the United States and involves the United States as a Defendant. Therefore, this Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 28 U.S.C. §§ 1331, 1346.

7. An actual controversy exists between Plaintiffs and Defendants. Plaintiffs' members use and enjoy Helena-Lewis and Clark National Forest National Forest for hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, spiritual, and recreational activities. Plaintiffs' members intend to continue to use and enjoy the area frequently and on an ongoing basis in the future.

8. The aesthetic, recreational, scientific, spiritual, and educational interests of Plaintiffs' members have been and will be adversely affected and irreparably injured if Defendants implement the Project. These are actual, concrete injuries caused by Defendants' failure to

comply with mandatory duties under NEPA, NFMA, and the APA. The requested relief would redress these injuries and this Court has the authority to grant Plaintiffs' requested relief under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.

9. Plaintiffs submitted timely written comments and objections concerning the Project in the available NEPA and/or administrative review process, thus they have exhausted administrative remedies. Therefore, the Court has jurisdiction to review Plaintiffs' APA claims.

III. VENUE

10. Venue in this case is proper under 28 U.S.C. § 1391(e) and LR 3.3(a)(1). Defendant Marten resides within the Missoula Division of the United States District Court for the District of Montana.

IV. PARTIES

11. Plaintiff NATIVE ECOSYSTEMS COUNCIL is a non-profit Montana corporation with its principal place of business in Three Forks, Montana. Native Ecosystems Council is dedicated to the conservation of natural resources on public lands in the Northern Rockies. Its members use and will continue to use the Helena-Lewis and Clark National Forest National Forest for work and for outdoor

recreation of all kinds, including fishing, hunting, hiking, horseback riding, and cross-country skiing. The Forest Service's unlawful actions adversely affect Native Ecosystems Council's organizational interests, as well as its members' use and enjoyment of the Helena-Lewis and Clark National Forest National Forest, including the Project area. Native Ecosystems Council brings this action on its own behalf and on behalf of its adversely affected members.

12. Plaintiff ALLIANCE FOR THE WILD ROCKIES is a tax-exempt, non-profit public interest organization dedicated to the protection and preservation of the native biodiversity of the Northern Rockies Bioregion, its native plant, fish, and animal life, and its naturally functioning ecosystems. Its registered office is located in Missoula, Montana. The Alliance has over 2,000 individual members, many of whom are located in Montana. Members of the Alliance observe, enjoy, and appreciate Montana's native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future, including in the Project area in the Helena-Lewis and Clark National Forest National Forest. Alliance's members' professional and recreational activities are directly affected by Defendants' failure to perform their lawful duty to protect and conserve these

ecosystems as set forth below. Alliance for the Wild Rockies brings this action on its own behalf and on behalf of its adversely affected members

13. Defendant LEANNE MARTEN is the Regional Forester for the Northern Region/Region One of the U.S. Forest Service, and in that capacity is charged with ultimate responsibility for ensuring that decisions made at each National Forest in the Northern Region, including the Helena-Lewis and Clark National Forest National Forest, are consistent with applicable laws, regulations, and official policies and procedures.
14. Defendant UNITED STATES FOREST SERVICE (Forest Service) is an administrative agency within the U.S. Department of Agriculture, and is responsible for the lawful management of our National Forests, including the Helena-Lewis and Clark National Forest National Forest.

V. FACTUAL ALLEGATIONS

15. In February 2016, the Forest Service drafted a Draft Environmental Impact Statement (DEIS) and a Draft Record of Decision (DROD).
16. The DEIS analyzed 3 alternatives.
17. The Forest Service published an Final Environmental Impact

Statement (FEIS) in August 2017.

18. The Forest Service signed the Final Record of Decision (ROD) authorizing the Project on December 19, 2018.
19. The ROD authorizes implementation of “Alternative 4 with adjustment.”
20. The activities authorized by “Alternative 4 with adjustments” was not disclosed or analyzed in the DEIS or the DROD.

PROJECT AREA & ACTIVITIES

21. The Project Area is southwest of Helena, Montana and is located in Lewis and Clark and Jefferson Counties.
22. Specifically, the Project lies within the following township and range sections: T10N, R6W Section 36; T10N, R5W Section 31; T10N, R4W Sections 31-32, 34-36; T9N, R6W Sections 1-2, 11-13, 23-26, 35-36; T9N, R5W Sections 1, 6-36; T9N, R4W Sections 1-24, 26-35; T8N, R6W Sections 1-2, 11-14, 23-26; T8N, R5W Sections 1-12, 14-22, 29, 30; T8N, R4W Sections 5-8.
23. The Project Area is approximately 60,355 acres in size and activities are proposed on approximately 17,595 acres within the Project Area.
24. The Project is expected to occur over the next 15 years.

25. The Project includes 2,239 acres of clear cutting, 4,803 acres of “private land buffers,” 1,061 acres of “improvement harvest”, 1,950 acres of “rearrangement of fuels,” 7,189 acres of prescribed burn and 353 acres of precommercial thinning.
26. The Project authorizes the construction of 11 miles of temporary roads, 21 miles of road reconstruction and 26 miles of road maintenance.
27. Many of these new roads will be “stabilized and barriered” and left in place following Project implementation.
28. The Project authorizes construction of over 20 miles of new non-motorized trails in the Project Area. These trails were not disclosed or analyzed in the DEIS.
29. A number of new roads, including but not limited to 4000-NS04, 4000-001, and 4000-NS01 do not exist on the Forest Service’s Roads Analysis or on the Helena National Forest maps, are not system roads and do not meet the definition of a “road.”
30. A number of new roads, including but not limited to 4000-NS04, 4000-001, and 4000-NS01 were not discussed during scoping for the Project nor were they disclosed in the DEIS or FEIS.
31. The DROD discloses Roads 4000-001 as an “emergency access

route” but the final ROD authorizes 4000-001 for “reconstruction, barrier and stabilization.”

INVENTORIED ROADLESS AREAS

32. There are two Inventoried Roadless Areas (IRA) in the Project Area: the Jericho Mountain IRA and the Lazyman Gulch IRA.
33. The Jericho Mountain IRA is approximately 8,440 acres of public land.
34. The Lazyman Gulch IRA is approximately 11,569 acres.
35. Jericho Mountain and Lazyman Gulch IRAs provide important habitat for big game and other wildlife species.
36. The Jericho Mountain and Lazyman Gulch IRAs provide large amounts of hiding and thermal cover and low open-road density.
37. The United States Fish and Wildlife Service considers the Jericho Mountain and Lazyman Gulch IRAs as “key” linkage zones for wildlife.
38. The Montana Department of Fish, Wildlife and Parks (“Montana”) has determined that the Jericho Mountain and Lazyman Gulch IRAs are “crucial wildlife habitat[s]” and “fundamental corridors for the movement of wildlife.”
39. The Jericho Mountain and Lazyman Gulch IRAs are important for

grizzly bear movement between the Greater Yellowstone Ecosystem and the Northern Continental Divide Ecosystem.

40. The low open road density and the large amounts of cover within Jericho Mountain and Lazyman Gulch IRAs wildlife with important habitat and security.
41. Approximately 5,359 acres of logging would occur within the Jericho Mountain IRA and the Lazyman Gulch IRA.
42. Currently there are 1.7 miles of “roads” in the Lazyman Gulch IRA.
43. The Project authorizes the construction or reconstruction of over 14 miles of additional roads in the Lazyman Gulch IRA.

ELK

44. The Project will occur in three elk herd units (EHU): Jericho Mountain, Quartz Creek, and Black Mountain-Brooklyn Bridge.
45. The Helena National Forest Plan (“Forest Plan”) provides standards to ensure habitat and security for big game species including elk and deer.
46. Big game standard 1 states that “[o]n important summer . . . and winter range, adequate thermal and hiding cover will be maintained to support habitat potential.”
47. The Forest Plan defines “important summer range” as a range,

“usually at higher elevation, used by deer and elk during the summer” and “[m]oist sites often found at the heads of drainages, bordering streams, marshy meadows, swales or benches that are preferred by elk during the summer months (June through September).” The Forest Plan defines “winter range” as a “range, usually at lower elevation, used by migratory deer and elk during the winter months.”

48. The Forest Plan defines “thermal cover” as cover “used by animals to ameliorate effects of weather” and includes a “stand of coniferous trees 40 feet or more tall with an average crown closure of 70 percent or more . . .”
49. The Forest Plan defines “hiding cover” as “[v]egetation capable of hiding 90 percent of a standing adult deer or elk from the view of a human at a distance equal to or less than 200 feet, and having a minimum size of 40 acres.”
50. The amount of available thermal cover is not a surrogate or proxy for the amount of available hiding cover.
51. Big game standard 2 states, “An environmental analysis for project work will include a cover analysis. The cover analysis should be done on a drainage or elk herd unit basis.”

52. Big game standard 3 states that, subject to hydrologic and other resource constraints, “elk summer range will be maintained at 35 percent or greater hiding cover and areas of winter range will be maintained at 25 percent or greater thermal cover in drainages or elk herd units.”
53. Big game standard 4a was designed to “maintain or improve big game security.”
54. The best available science defines “security” as the protection inherent in any situation that allows big game to remain in a defined area despite an increase in stress or disturbance.
55. Big game standard 4a restricts the amount of open road density depending on the amount of hiding cover within an elk herd unit: the more hiding cover in the elk herd unit, the more road density is allowed.
56. The Forest Plan states standard 4a should take all motorized routes open during the big game rifle season into account when determining open road density. There are no exemptions for temporary or administrative management activities under standard 4a.
57. Standard 4a is the only standard in the Forest Plan that allows the

Forest Service to use one of two definitions for “hiding cover”: the Forest Plan definition (90 percent of a standing elk at 200 feet – a definition based on the amount of horizontal cover) or the Montana Department of Fish and Wildlife’s (“Montana’s”) definition (“a stand of coniferous trees having a crown closure of greater than 40 percent.”

58. The max road densities allowed based on hiding cover for Standard 4a are below:

<u>Existing Percent Hiding cover (according to FS definition of hiding cover)¹</u>	<u>Existing Percent Hiding Cover (according to MDFWP definition of hiding cover)²</u>	<u>Max Open Road Density</u>
56	80	2.4 mi/mi ²
49	70	1.9 mi/mi ²
42	60	1.2 mi/mi ²
35	50	0.1 mi/mi ²

¹ A timber stand which conceals 90 percent or more of a standing elk at 200 feet.

² A stand of coniferous trees having a crown closure of greater than 40 percent.

59. Montana’s definition is based on an unpublished paper and is not based on the best available science.

60. The use of Montana’s definition of “hiding cover” is only allowed for purposes of standard 4a. The Forest Plan does not allow the use of Montana’s definition of “hiding cover” for other big game standards.

61. The Project will result in a loss of thermal cover, hiding cover and security for big game and will violate the Forest Plan big game standards 1, 2, 3 and 4a.
62. The Forest Service issued a site-specific Forest Plan Amendment exempting the Project from compliance with certain big game standards.

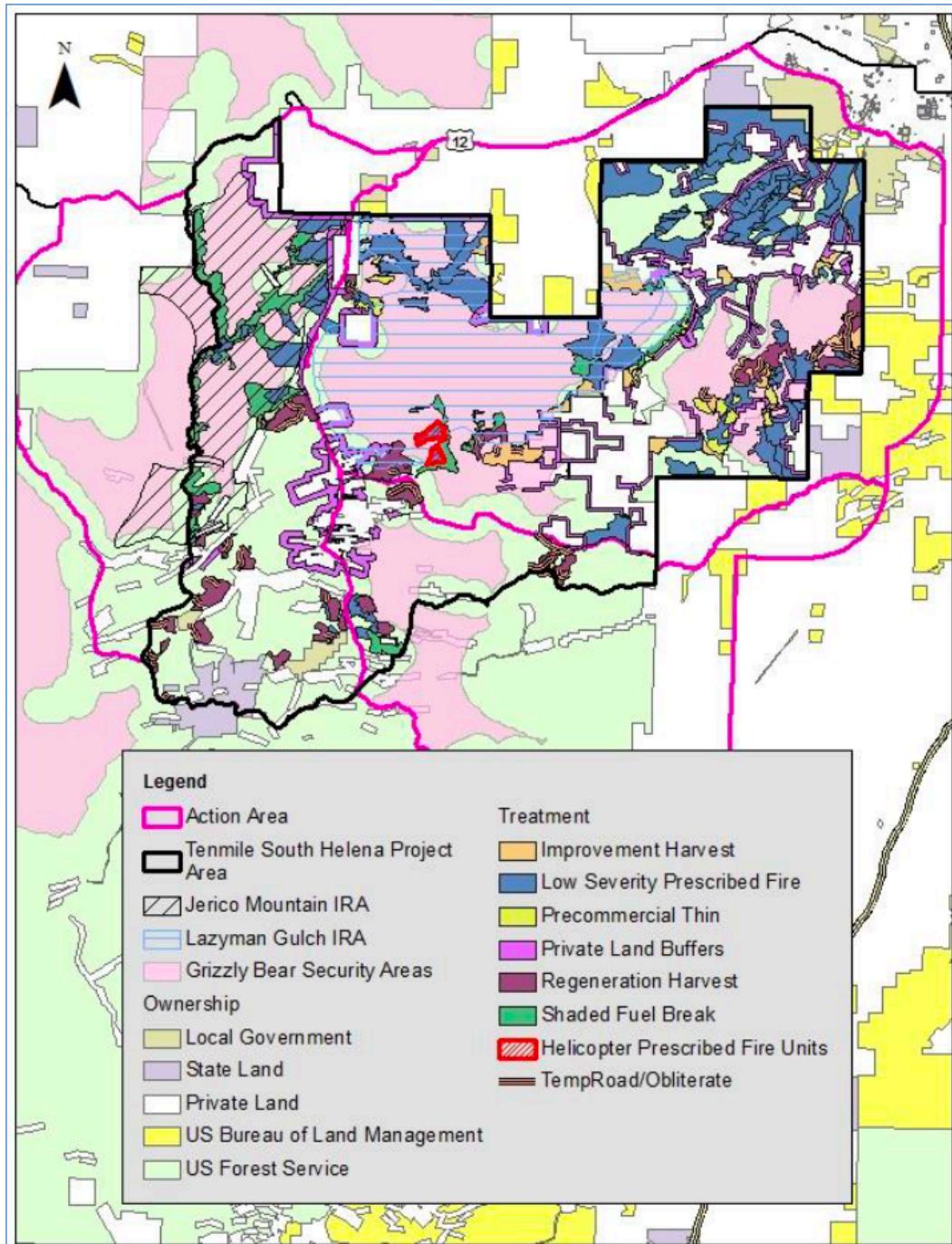
GRIZZLY BEAR

63. The grizzly bear is listed as a threatened species under the Endangered Species Act.
64. The Project Area occurs within the Helena National Forest's "Expanded Distribution Zone" for grizzly bears within the Divide Landscape, which is an area that the FWS has determined to be occupied by grizzly bears based upon consistent reports over the last two decades.
65. The Divide Landscape is part of a linkage zone connecting grizzly bear habitat in the Northern Continental Divide Ecosystem and the Greater Yellowstone Ecosystem.
66. Grizzly bears occupy and move through the Expanded Distribution Zone in the southern half of the Divide Landscape where the Tenmile South Helena project is located.

67. Grizzly bears have been observed to be consistently present in the Divide Landscape and the Project Area in recent years; credible reports have been increasing in the southern half of the area (south of Highway 12) over the last 10-15 years.
68. The Forest Service stated that “the fact that grizzlies seem to have persisted here for at least two decades (albeit in very low numbers) suggests that it has a role to play in the recovery process, potentially providing local habituation opportunities and linkage between bonafide Recovery Zones.”
69. The Project Area is situated near the center of a potential linkage zone that covers much of the National Forest on both sides of the Continental Divide.
70. The Forest Service identified “core area equivalents” in the Project Area as a means of analyzing Project effects to grizzly bears.
71. In the Forest Service Biological Assessment, the Forest Service uses the term “‘grizzly bear security area’ instead of ‘core area equivalents’ to avoid confusion with management tenets for the NCDE.”
72. Core area equivalents are areas larger than 2,500 acres that are at

least 0.3 miles from motorized routes open to the public during the non-denning period for grizzly bears.

73. Core area equivalents include restricted roads, which are roads on which motorized vehicle use is restricted seasonally or yearlong by means of a physical obstruction such as a gate. However, “not all ‘restricted’ roads in core area equivalents are physically obstructed at this time since the Divide Travel Plan Decision has recently been signed (March 2016) and the Forest is in the process of implementing that decision.”
74. There are four grizzly bear core areas in the Tenmile Project Area.
75. Project activities will take place in core areas as set forth in the map below:



76. Within the grizzly bear core areas, the Project allows: (1) clear cutting on 626 acres; (2) intermediate harvest on 2,574 acres; (3) precommercial thinning on 278 acres; (4) prescribed fires on 2,819

acres; (5) 2.8 miles of temporary road construction; (6) the reopening of an additional 7.1 miles of closed roads

77. The Forest Plan contains Threatened and Endangered Species standard 3 that prohibits open road density over .55 mi/^mi² in occupied grizzly bear habitat.

78. The Biological Assessment for the Project analyzes open road density by using the Black Mountain-Brooklyn Bridge, Jericho and Quartz Creek Elk Herd Units. “Open and total road densities are calculated for each herd unit where open roads are defined as motorized routes open to the public with no restrictions during the non-denning period - generally April through October.” BA 34

79. The current open road density within Black Mountain-Brooklyn Bridge EHU is 1.7 mi/mi² and will increase to 1.9 mi/mi² during project implementation.

80. The current open road density within Jericho EHU is 1.9 mi/mi² and will increase to 2.0 mi/mi² during project implementation.

81. The current open road density within Quartz Creek EHU is 2.1 mi/mi² and will increase to 2.2 mi/mi² during project implementation.

82. The Biological Assessment states that the total current open road density in the Project Area 1.1 mi/mi² and will increase to 1.4 mi/mi² during project implementation.
83. The disturbance to grizzly bears associated with this road use is expected to last the life time of the timber sale contract (three to five years) and, in the case of road use for prescribed fire activities, up to an additional 10 years depending on conditions conducive to prescribed fire.
84. Helicopter-ignited prescribed fire will occur in units 178ba and 178bb and will occur in grizzly bear core.
85. Prescribed burning on southerly aspects would be conducted during the spring burning season (March through June) and prescribed burning on north aspects would be conducted during the fall burning season (September through November). Helicopter ignition may be conducted below 500 feet above ground level (AGL) usually sometime between 10 AM and 7 PM. Each unit would be treated over the course of 2 to 4 hours for one day per unit.
86. The Forest Service determined that “Use of helicopter ignition at low elevations (less than 500 feet AGL) could cause grizzly bears to flee to cover or move away from the area.”

87. The Forest Service determined, “Treatments during the spring could impact grizzly bear use of grassy, south facing openings while treatments in the fall could interfere with grizzly bear accessibility to fall foods such as berries.”
88. The Montana/Idaho Level 1 Terrestrial Biologist Team developed assessment guidelines in 2009 to assist in analyses of helicopter effects on grizzly bears. Factors to be considered include proximity of helicopter use to grizzly bear occurrence, distribution and timing, nature of the effect, duration, frequency, intensity, and disturbance severity (Montana/Northern Idaho Level 1 Terrestrial Biologist Team 2009).
89. Grizzly bears make “extensive use of forested cover,” including using forested habitat for resting, general concealment, thermal relief in summer, and foraging and hunting.
90. Grizzly bears generally avoid new openings caused by logging.
91. The Forest Service’s Biological Assessment states, “Vegetation management can negatively affect grizzly bears by (1) removing cover; (2) disturbing or displacing bears from habitat during the logging period; (3) increasing human/grizzly bear conflicts or mortalities as a result of unsecured attractants; and (4) increasing

mortality risk or displacement due to new roads into previously roadless areas and/or increased vehicular use on existing restricted roads.

92. The Forest Service Biological Assessment states, “Project activities in security areas (harvest and road construction/use) would temporarily reduce the security that these areas provide grizzly bears and would result in disturbance and displacement.
93. The Forest Service determined that open road densities during project implementation will exceed thresholds of greater than 1 mi/mi² reported by Mace and Manley (1993).
94. However, the Forest Service’s Biological Assessment concludes that “Open and total road densities during project implementation would not increase.”
95. The Forest Service also concludes that “The proposed action would improve landscape level foraging habitat at least until understory forbs and shrubs are shaded out, result in short term reductions in cover, and potentially increase the risk of bear/human interaction during project implementation . . . Aerial ignition for some of the prescribed fire treatments could also displace grizzly bears.

96. The Forest services states. “All roads considered closed to the public have been physically closed with gates or other obstructions (e.g. boulders).
97. It is unclear whether closure by “other obstructions” is an effective restriction.

TELEGRAPH PROJECT CUMULATIVE EFFECTS.

98. The Helena Ranger District is planning another logging/burning project directly adjacent to the Tenmile Project, which is called the Telegraph Vegetation Project (Telegraph Project).
99. The map below shows the Tenmile Project in relation to the Telegraph Project. The Tenmile Project units are in blue and the Telegraph Project units are in red.

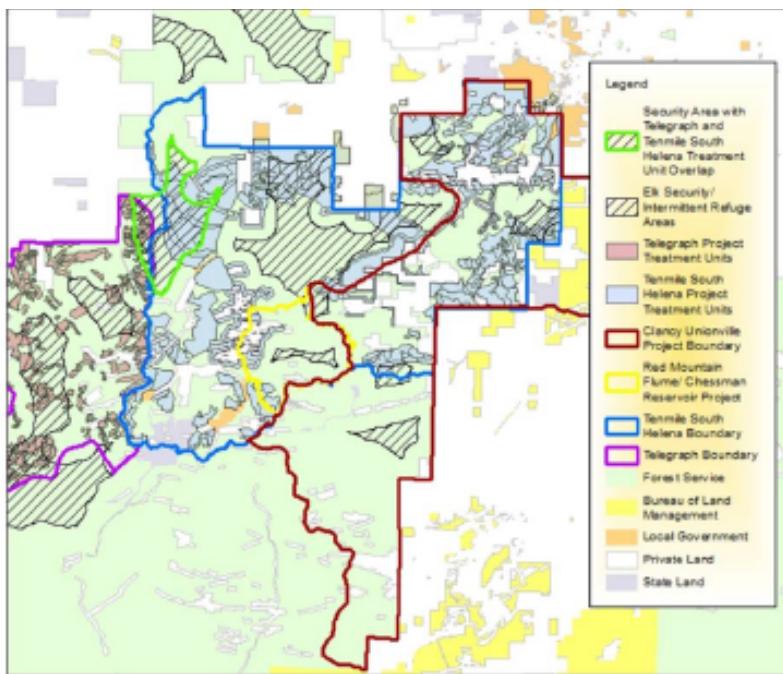


Figure 35: Treatments in security in the Tenmile South Helena and Telegraph projects.

100. The Telegraph Vegetation Project is directly adjacent to the Tenmile project.
101. The Telegraph and Tenmile Projects will be implemented at the same time.
102. The Telegraph and Tenmile Projects share elk security areas, the Jericho IRA and a grizzly bear core area.
103. The Tenmile Project EIS states, “The Telegraph project includes treatment in 1,989 acres of hiding cover in the Jericho herd unit which overlaps with the Tenmile South Helena project.”
104. The Tenmile Project EIS states that the Telegraph Project will build 9.6 miles of temporary roads, 4.2 miles of which are in the Jericho

EHU.

105. The Tenmile Project EIS states that the Telegraph Project will reopen 36.5 miles of closed roads, 12 of which are in the Jericho EHU.
106. The Tenmile Project EIS states that the Telegraph Project includes treatment within a grizzly bear core area that also will include treatments by the Tenmile Project.
107. The Tenmile Project EIS states that the Telegraph Project will treat 1,167 acres within this core area of which 516 acres comprise regeneration harvest, 115 acres intermediate harvest (i.e. rearrangement of fuels), 380 acres of pre-commercial thinning, and 156 acres of prescribed fire. The Telegraph Project will also treat 341 acres in the Jerico Mountain IRA.
108. The Tenmile Project EIS states that the Telegraph Project will remove 280 acres of elk hiding cover with the security area shared by both projects.
109. There are only two security areas in the Jericho elk herd unit: (1) 3,435 acres in the inventoried roadless area, and (2) an “intermittent security area” that is 923 acres. This amounts to only 12% security

in this elk herd unit.

110. The Forest Service determined that “ Cumulatively, the Tenmile South Helena project contributes to the effects of the past and ongoing projects. In addition to reductions in cover, elk may be displaced during project activities; particularly associated with the Telegraph project since it’s likely that that project could be ongoing simultaneous to Tenmile South Helena.”
111. Together, the Telegraph and Tenmile Projects will reduce the amount of hiding cover in the Jericho EHU to below the Forest Plan standard 3 for elk hiding cover and reduce big game security below the allowable Forest Plan standard 4a.
112. Together the Telegraph and Tenmile Projects will result in violations of the Forest Plan.
113. The proposed treatments associated with the Telegraph Project overlap with lynx analysis unit di-04. The Telegraph Project could result in the removal of up to 3,354 acres of multistory hare habitat, stand initiation, early stand initiation, stem exclusion and ‘other’ habitat [mid-seral, etc.] in lynx analysis unit di-04 (which overlaps with the Tenmile South Helena project). The effects associated with the Telegraph project would be cumulative to those anticipated

from the Tenmile/South Helena project..

114. The Forest Service concluded, “Implementation of one of the action alternatives would also affect connectivity for both lynx and snowshoe hare (especially when considering the cumulative effects of the project and Telegraph).”

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of NFMA- improper use of a new elk “security area” standard that conflicts with the Forest Plan and was previously withdrawn by the Service.

115. All previous paragraphs are incorporated by reference.
116. NFMA requires all projects be consistent with Forest Plan standards unless subject to a site-specific amendment. 16 U.S.C. § 1604(i).
117. Under the Forest Plan, big game “security” includes both a hiding cover and open road density component.
118. The Forest Plan defines “security” and includes specific values for hiding cover as it relates to open road-density.
119. However, the Project utilizes a new elk “security area standard” that is not provided for in the Forest Plan, conflicts with the Forest Plan’s definition of “security” and standards and methods for

analyzing and measuring impacts to elk security, and is contrary to best available science.

120. The Forest Service's new elk security area standard removes the hiding cover component and redefines open road density to exclude certain type of roads used for logging and administrative purposes.
121. The Forest Service's decision to use and rely on a new elk security area standard is a violation of NFMA, is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law and/or constitutes "agency action unlawfully withheld or unreasonably delay." 5 U.S.C. §§706(2)(A) and 706(1).

SECOND CLAIM FOR RELIEF

Violation of NFMA- failure to properly define and analyze impacts to "hiding cover" to ensure compliance with the Forest Plan big game standards.

122. All previous paragraphs are incorporated by reference.
123. The Forest Plan defines "hiding cover" as "vegetation capable of hiding 90% of a standing adult deer or elk from the view of a human at a distance equal to or less than 200 Feet." This definition applies to all big game standards in the Forest Plan except standard 4a, which allows the Forest Service to utilize Montana's definition of hiding cover. Other than standard 4a, the Forest Service must use

the Forest Plan definition of “hiding cover.”

124. The Forest Plan standard 1 for big game requires the Forest Service to maintain adequate hiding cover on important summer and winter range. Forest Plan standard 1 is not subject to the Forest Service’s site-specific Forest Plan amendment for the Project. The Forest Service arbitrarily used Montana’s definition of hiding cover to analyze and determine compliance with standard 1. The Forest Service cannot demonstrate compliance with standard 1 unless it utilizes the definition of hiding cover as set forth in the Forest Plan.
125. The Forest Plan standard 2 for big game requires the Forest Service to conduct a hiding cover and thermal cover analysis for the Project. Forest Plan standard 2 is not subject to the Forest Service’s site-specific Forest Plan amendment for the Project. The Forest Service arbitrarily used Montana’s definition of hiding cover to analyze and determine compliance with standard 2. The Forest Service cannot demonstrate compliance with standard 2 unless it utilizes the definition of hiding cover as set forth in the Forest Plan.
126. The Forest Plan standard 3 for big game requires the Forest Service maintain at least 35% hiding cover in elk summer range. The Forest Service arbitrarily used Montana’s definition of hiding cover to

analyze and determine compliance with standard 3. The Forest Service cannot demonstrate compliance with standard 3 unless it utilizes the definition of hiding cover as set forth in the Forest Plan.

127. Standard 3 is subject to the Service's site-specific Forest Plan amendment for the Project but only in the Black Mountain-Brooklyn Bridge herd unit. Standard 3 is not subject to the Service's site-specific amendment for the Project in the Jericho Mountain and Quartz Creek elk herd units.
128. The Forest Service's failure to utilize the Forest Plan's definition of "hiding cover" when authorizing the Project and its decision to rely on the Montana definition is a violation of NFMA and is "arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706(2)(A) and 706(1).

THIRD CLAIM FOR RELIEF

Violation of NFMA- failure to properly define "open road" density for Forest Plan big game standard 4a

129. All previous paragraphs are incorporated by reference.
130. Standard 4a requires all projects comply with specific hiding cover

and open road density standards. Standard 4a is subject to the Service's site-specific Forest Plan amendment for the Project but only in the Black Mountain-Brooklyn Bridge and Quartz Creek EHUs. The Forest Plan amendment does not apply to the Jericho Mountain EHU.

131. Standard 4a defines "open road density" as all motorized routes in used during the big game rifle season. Roads are calculated at 100% the length of all public roads and 25% the length of private roads.
132. The Forest Service determined that the hiding cover, as defined by the Montana definition of hiding cover, in Jericho Mountain EHU will decrease from 25,810 acres (73%) to 21,939 acres (62%) after the Project is implemented.
133. Standard 4a states that the maximum open road density allowed in the Jericho Mountain EHU is 1.2 mi/mi².
134. The Forest Service did not properly determine road density in the Jericho EHU. When evaluated "open road density" the Forest Service failed to include all motorized routes in use during the big game rifle season and only considered roads "open to the public." The Forest Service failed to include and consider motorized routes that are open for logging trucks, management and/or administrative

purposes.

135. If the Forest Service had calculated road density as defined by standard 4a, the Project would violate the maximum open road density allowed by standard 4a.
136. The open road density estimates and the amount of available hiding cover estimates for the Project differ from the Forest Service's previous estimates used to approve other projects in the Jericho EHU.
137. The Forest Service's failure to properly define and account for open road density when evaluating compliance with standard 4a is a violation of NFMA and is "arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706(2)(A) and 706(1).

FOURTH CLAIM FOR RELIEF

Violation of the Roadless Rule

138. All previous paragraphs are incorporated by reference.
139. The Roadless Rule states, "a road may not be constructed or reconstructed in inventoried roadless areas of the National Forest System, except as provided in paragraph (b) of this section." 36

C.F.R § 294.12(a). Paragraph (b) provides specific exceptions in which the Forest Service may construct or reconstruct a road in IRAs.

140. The Project authorizes over 14 miles of road construction and reconstruction in the Jericho Mountain and Lazyman Gulch IRAs. The construction/reconstruction of these roads do not fall within an exception as allowed by 36 C.F.R. §294.12(b).
141. The Forest Service is prohibited from authorizing timber cutting, sale or removal within the IRAs unless it can demonstrate that timber cutting, sale or removal falls within the exceptions allowed by 36 C.F.R. §294.12(b).
142. The Project authorizes timber cutting, sale or removal in the Jericho Mountain and Lazyman Gulch IRAs that does not fall within an exception allowed by 36 C.F.R. §294.12(b).
143. The Forest Service has failed to analyze and demonstrate that an exception to the Roadless Rule exists for the Project.
144. The Forest Service's decision to authorize road construction, road reconstruction and timber cutting, sale and removal in the Jericho Mountain and Lazyman Gulch IRAs violates the Roadless Rule and

is “arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law” and/or constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706(2)(A) and 706(1).

FIFTH CLAIM FOR RELIEF

Violation of NEPA- failure to analyze effects

145. All previous paragraphs are incorporated by reference.
146. NEPA requires the Forest Service to take a hard look at the direct, indirect, and cumulative effects of the Project. “Direct effects” are caused by the action and occur at the same time and place. “Indirect effects” are caused by the action but occur later in time or are farther removed in distance but are still reasonably foreseeable. “Cumulative effects” are the impact “on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

40 C.F.R. § 1508.7

147. The Forest Service failed to evaluate and analyze how the Project (i.e., the logging, road work (including new road reconstruction in

the roadless areas), prescribed burning, new mountain bike trails, as well as the eight sight-specific amendments to the forest plan) may directly and/or indirectly impact grizzly bears, lynx, wolverine, big game, and their habitat and security, roadless area values, the Project Area's ecological and biological resources, and potential for wilderness designation.

148. The Forest Service failed to evaluate and analyze how the Project (i.e., the logging, road work (including new road reconstruction in the roadless areas), prescribed burning, new mountain bike trails, as well as the eight sight-specific amendments to the Forest Plan) may cumulatively impact wildlife (including big game, grizzly bears, Canada lynx and wolverine), habitat, security, roadless area values, including the Project Area's ecological and biological resources and potential for wilderness designation.

149. The Forest Service's failure to evaluate and analyze the direct, indirect, and cumulative effects of the Project is a violation of NEPA and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A) and 706(1).

SIXTH CLAIM FOR RELIEF

Violation of NEPA- no “security area” analysis and misleading EIS.

150. All previous paragraphs are incorporated by reference.
151. NEPA requires the Forest Service to take a hard look at the direct, indirect, and cumulative effects of the Project. 40 C.F.R. §§ 1502.16, 1508.8. NEPA also requires the Forest Service analyze a reasonable range of alternatives to a proposed action. 40 C.F.R. §§ 1502.14.
152. NEPA’s procedures “must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1. The information presented in an EIS “must be of high quality.” *Id.* “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.* An EIS “shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.
153. The draft EIS and final EIS includes a new elk security area standard to evaluate and analyze impacts to big game, big game habitat and security, and ensure compliance with forest plan

standards.

154. The Forest Service never analyzed the direct, indirect, or cumulative impacts of its new elk security area standard in the draft EIS or final EIS for the Project as required by NEPA. The Forest Service failed to analyze reasonable alternatives to new elk security area standard in the draft EIS or final EIS for the Project as required by NEPA. The new elk security area standard conflicts with the best available science.
155. The final EIS inappropriately portrays to the public that the new elk security area standard is analogous to the existing security standard in the Forest Plan. The final EIS confuses the public by using and referencing the “security area” concept and existing forest plan standard for security. The new elk security area standard discussed and analyzed in the draft EIS and final EIS undermines the public’s ability to make an informed comparison of alternatives and assess the environmental impacts of the decision. The new elk security area standard in the draft EIS and final EIS is confusing to the public, makes it difficult to assess Forest Plan compliance and impacts to big game habitat and security, allows the Forest Service to “double-count” hiding cover, and undermines the public’s ability

to submit meaningful comment.

156. The Forest Service’s failure to analyze the impacts (direct, indirect, and cumulative) of and reasonable alternatives to its new elk security area standard and confusing, incorrect, and misleading EIS for the Project is a violation of NEPA and is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and/or constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A) and 706(1).

SEVENTH CLAIM FOR RELIEF

Violation of NEPA- failure to prepare supplemental EIS.

157. All previous paragraphs are incorporated by reference.

158. NEPA requires the Forest Service to prepare “supplements” to either a draft EIS or final EIS if the “agency makes substantial changes in the proposed action that are relevant to environmental concerns” or if there “are significant new circumstances or information relevant to the environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c). If required, a supplemental EIS shall be prepared, circulated, and filed in the “same fashion (exclusive of scoping) as a draft and final [EIS] . . .” *Id.*

159. The Forest Service's decision to: (a) authorize new road construction and/or reconstruction in the Project Area; (b) authorize new non-motorized trails in the Project Area and (c) withdraw its use of the new elk security area standard, are substantial changes to the proposed action and/or significant new information requiring preparation of a supplemental EIS.
160. The Forest Service's final decision – Alternative 4 – which authorizes additional road construction and/or reconstruction and non-motorized trails was never discussed, analyzed, or disclosed in the draft EIS. The decision to authorize additional road construction and/or reconstruction and new non-motorized trails in the Project Area is not a “minor variation” from the proposed action discussed in the draft EIS, and is not qualitatively within the spectrum of alternatives included and discussed in the draft EIS.
161. The Forest Service is required to prepare a supplemental EIS as required to NEPA.
162. The Forest Service's failure to prepare a supplemental EIS for the Project is a violation of NEPA and is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and/or constitutes “agency action unlawfully withheld or

unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A) and 706(1).

EIGHTH CLAIM FOR RELIEF

Violation of NFMA- failure to analyze Tenmile and Telegraph Projects in the same EIS.

163. All previous paragraphs are incorporated by reference.
164. The CEQ regulations implementing NEPA require that “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a).
165. The CEQ regulations also require that two or more agency actions must be discussed in the same impact statement if they are “cumulative” actions, “which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” 40 C.F.R. § 1508.25(a)(2). “Significance cannot be avoided by ... breaking [an action] down into small component parts.” 40 C.F.R. § 1508.27(b)(7).
166. If there are “substantial questions that [timber sale projects] will result in significant environmental impacts,” then “[a] single EIS, therefore [is] required to address the cumulative effects of these

proposed sales.” *Blue Mountains Biodiversity Project v.*

Blackwood, 161 F.3d 1208, 1215 (9th Cir. 1998).

167. As set forth in detail above, the units in the Telegraph and Tenmile Projects are directly adjacent to each other, will be implemented during the same time frame, are in the same elk herd units, lynx analysis units and linkage zone, inventoried roadless areas, and grizzly bear core areas, are located on the same ranger district within the same National Forest, and serve the same purpose and need to wildfire risk in the Tenmile watershed.

168. Thus, the Telegraph and Tenmile “[p]roposals . . . are related to each other closely enough to be, in effect, a single course of action [that] shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a).

169. The Telegraph and Tenmile Projects will also have cumulatively significant effects including but not limited to effects on elk, grizzly bears, lynx, and inventoried roadless areas, including but not limited to violation of Forest Plan standards, likely adverse effects on species listed under the Endangered Species Act, significant habitat degradation for wildlife and displacement of wildlife, logging and/or burning of the Jericho Mountain Inventoried

Roadless Area, and violation of the Roadless Area Conservation Rule.

170. These cumulatively significant impacts must be assessed in the same EIS, 40 C.F.R. § 1508.25(a)(2), and the Forest Service cannot avoid this significance simply “by … breaking [the action] down into small component parts.” 40 C.F.R. § 1508.27(b)(7).
171. The Forest Service’s failure to analyze the adjacent and simultaneous Telegraph and Tenmile Projects in a single EIS violates NEPA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and/or constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A) and 706(1).

NINTH CLAIM FOR RELIEF

Violation of NFMA- failure to comply with the Forest Plan grizzly bear open road density standard.

172. All previous paragraphs are incorporated by reference.
173. The Forest Plan contains standard 3 under the Threatened and Endangered Species section that prohibits open road density over 0.55 mi/mi² in occupied grizzly bear habitat. This Forest Plan standard is not subject to the Forest Service’s site-specific Forest

Plan amendment for the Project.

174. Occupied grizzly bear habitat exists in the Project Area.
175. The Forest Service calculated road density in grizzly bear habitat by elk herd unit: Jericho EHU, Black Mountain-Brooklyn Bridge EHU, and Quartz Creek EHU. BA Adden. At 6. The existing open road densities in each of the EHUs exceed .55 mi/mi². During Project implementation, the open road density will further exceed .55 mi/mi² in all elk herd units.
176. The Forest Service also calculated road density by “Divide Landscapes” North and South of Highway 12. The existing open road densities in the North Divide Landscape and the South Divide Landscape both exceed .55 mi/mi². During Project implementation, the open road density will further exceed .55 mi/mi² in both North and South Divide Landscapes.
177. The Forest Service also calculated road density by Project Area. The existing open road density in the Project Area currently exceeds .55 mi/mi². During Project implementation, the open road density will further exceed .55 mi/mi² in the Project Area.
178. The EIS, in a footnote, states that Forest Plan Standard 3 “is not

applicable to this project.”

179. The Forest service has determined that grizzly bears occupy the Project Area. Therefore, the Forest Service is required to comply with standard 3 for grizzly bears.
180. The Forest Service’s failure in the Project EIS to adequately demonstrate compliance with its Forest Plan standard that prohibits open road density over 0.55 mi/mi² in occupied grizzly bear habitat violates NFMA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and/or constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A) and 706(1).

VIII. RELIEF REQUESTED

For all of the above-stated reasons, Plaintiffs request that this Court award the following relief:

- A. Declare that the Project, as approved, violates the law;
- B. Vacate the Project decision and remand the matter to the agency until such time as the agency demonstrates to this Court that it has adequately complied with the law;
- C. Set aside the Project the Record of Decision;
- D. Enjoin implementation of the Project;

C. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees under EAJA; and

F. Grant Plaintiffs any such further relief as may be just, proper, and equitable.

Respectfully submitted this 20th Day of June, 2019.

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