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

SWAN VIEW COALITION, FRIENDS
OF THE WILD SWAN, NATIVE
ECOSYSTEMS COUNCIL, and
ALLIANCE FOR THE WILD
ROCKIES

Plaintiffs,

vs.

CHIP WEBER, Flathead National
Forest Supervisor, FAYE KRUEGER,
Regional Forester of Region One of the
U.S. Forest Service, UNITED STATES
FOREST SERVICE, an agency of the
U.S. Department of Agriculture, and
UNITED STATE FISH & WILDLIFE
SERVICE, an agency of the U.S.
Department of the Interior,

Defendants.

CV-

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

I. INTRODUCTION

1. This is a civil action for judicial review under the citizen suit provision of the Endangered Species Act and the Administrative Procedure Act of the U.S. Forest Service's (Forest Service) and U.S. Fish and Wildlife Service's (FWS) authorizations of the Glacier Loon Project (Project) on the Flathead National Forest (Forest), and the Flathead National Forest Land and Resource Management Plan (Forest Plan).
2. Plaintiffs Swan View Coalition, Friends of the Wild Swan, Alliance for the Wild Rockies, and Native Ecosystems Council attest that the decisions approving the Project and Forest Plan are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with law.
3. Defendants' approval of the Project and Forest Plan and corresponding documents as written is a violation of 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.*, the Endangered Species Act (ESA), 16 U.S.C. § 1531 *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 decision pursuant to 5 U.S.C. § 706(2)(A) and 16 U.S.C. § 1540(g) 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 the Endangered Species Act, 16 U.S.C. § 1540(g)(4), and such other relief as 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 the Flathead 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, including, but not limited to, use by members that live and own homes on Lindbergh Lake.
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 NFMA, NEPA, ESA, 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 sent a notice of intent to sue under the ESA on March 19, 2013. Thus, Plaintiffs have complied with the 60 day notice requirement for claims under the ESA and this Court has jurisdiction to review Plaintiffs' ESA claims.
10. Plaintiffs submitted timely written comments concerning the Project and fully participated in the available administrative review and appeal processes, thus they have exhausted administrative remedies. Defendants' denials of Plaintiffs' administrative appeals were the final administrative actions of the U.S. Department of Agriculture Forest Service. Thus, the Court has jurisdiction to review Plaintiffs' APA claims.

III. VENUE

11. Venue in this case is proper under 28 U.S.C. § 1391(e) and LR 3.3(a)(1). Defendant Krueger, the chief representative for U.S. Forest Service Region

One, and the chief representative of the U.S. Forest Service in the State of Montana, resides within the Missoula Division of the United States District Court for the District of Montana.

IV. PARTIES

12. Plaintiff SWAN VIEW COALITION (Coalition) is a non-profit conservation organization dedicated to conserving water quality and quiet, secure habitats for fish, wildlife and people on the Flathead National Forest and greater Flathead River Basin. Its members use these areas, including the Project area, for recreation, employment, wildlife viewing, photography, research, education, aesthetic enjoyment, spiritual rejuvenation, and other activities. The Coalition's office is located in Kalispell, Montana. Its members are directly affected by Defendants' failure to perform their lawful duty to protect and conserve these ecosystems by approving the challenged Project and Forest Plan. The Coalition brings this action on its own behalf and on behalf of its adversely affected members.
13. Plaintiff FRIENDS OF THE WILD SWAN (Friends) is a non-profit conservation organization dedicated to the conservation of water quality, fish and wildlife habitat on the Flathead National Forest. Its members use the Swan Valley for recreation, wildlife viewing, photography, research, aesthetic

enjoyment, foraging, fishing and other activities. Friends' office is in Big Fork, Montana. Friends are concerned that more industrial logging projects like this one will adversely affect wildlife habitat in this already fragmented area, adversely affect its members interests and violate a number of laws.

14. 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 Flathead 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 by approving the challenged Project and Forest Plan. Alliance for the Wild Rockies brings this action on its own behalf and on behalf of its adversely affected members.
15. 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 Flathead 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 Flathead National Forest, including the Project area. Native Ecosystems Council brings this action on its own behalf and on behalf of its adversely affected members.

16. Defendant CHIP WEBER is the Flathead National Forest Supervisor, and in that capacity is charged with ensuring that decisions made on the Flathead National Forest are consistent with applicable laws, regulations, and official policies and procedures.
17. Defendant FAYE KRUEGER 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 Flathead National Forest, are consistent with applicable laws, regulations, and official policies and

procedures.

18. 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 Flathead National Forest.
19. Defendant UNITED STATE FISH AND WILDLIFE SERVICE is an administrative agency within the U.S. Department of Interior and is responsible for lawful management of species listed under the Endangered Species Act.

V. PROCEDURAL BACKGROUND

20. The Forest Service published the Environmental Assessment (EA) for the Project in August of 2012.
21. Plaintiffs filed timely public comments on the EA.
22. The Forest Service signed the Decision Notice/Finding of No Significant Impact (Decision) authorizing the Project on February 13, 2013.
23. On March 19, 2013, Plaintiffs sent a 60 day notice of intent to sue under the ESA.
24. Plaintiffs filed timely administrative appeals of the Project.
25. On May 28, 2013, the Forest Service denied Plaintiffs' administrative appeals

of the Project.

26. As of the date of the filing of the Complaint, the Forest Service has not yet advertised or awarded any commercial timber sales for the Project.

VI. FACTUAL ALLEGATIONS

PROJECT AREA

27. The Project is located in Missoula County in Sections 2-6 T18N, R17W, Sections 1-3, 5-9, and 16-17 T18N, R18W; Sections 01-4, 7-23, 26-35 T19N, R17W; Sections 2-4, 9-15, 22-27, and 33- 36 T19N, R18W; Sections 18-19 and 29-32 T20N R16W; and Sections 1-2, 11-5, 22-37, and 33- 36 T20N R17W; Swan Lake Ranger District, Flathead National Forest.
28. The Project Area is 37,320 acres, and extends south and west of Condon, Montana on the west side of Montana Highway 83 to the south end of Lindbergh Lake.
29. The Project area includes 29,363 acres of public (i.e. National Forest) lands, and 7,956 acres of private lands.
30. Over 12,000 acres of the Project area (almost 1/3) are part of a designated wilderness area where no management activities are proposed.
31. The other part of the chosen Project area is heavily roaded and logged.
32. There are approximately 140 miles of total existing roads within the Project

- Area. The majority (100 miles) are National Forest System (NFS) roads.
33. 140 miles of total roads in the 58.31 sq. mi. Project area equate to a linear total road density of 2.4 mi/sq. mi. across the Project area. If the 12,000 acres of non-roaded wilderness are excluded, it translates to a 39.56 sq mi Project area with a total road density of 3.53 mi/sq. mi.
 34. There are 63.5 miles of roads open to the public in the Project area.
 35. 63.5 miles of open roads in the 58.31 sq. mi. Project area equate to a linear road density of 1.09 mi/sq. mi. of roads open to the public across the Project area. If the 12,000 acres of non-roaded wilderness are excluded, it translates to a 39.56 sq. mi. Project area with a linear open road density of 1.6 mi/sq. mi. of roads open to the public.
 36. The Project is located in the Northern Continental Divide Grizzly Bear Ecosystem (NCDE), within the designated recovery zone for NCDE grizzly bears.
 37. The NCDE Recovery Zone is divided into Bear Management Units (BMU), and further divided into BMU subunits (subunits).
 38. The Project is primarily located within the Glacier Loon subunit, and a small portion of the Project is located within the Buck Holland Subunit.
 39. Grizzly bears are known to be present in the area.

40. The existing percentage of the Glacier Loon subunit with open motorized access route density (ORD) over 1 mi/sq mi is 22%.
41. The existing percentage of the Glacier Loon subunit with total motorized access route density (TRD) over 2 mi/sq mi is 43%.
42. The existing percentage of the Glacier Loon subunit with secure core habitat is 41%.
43. The existing percentage of the Buck Holland subunit with open motorized route density over 1 mi/sq mi is 24%.
44. The existing percentage of the Buck Holland subunit with total motorized route density over 1 mi/sq mi is 41%.
45. The existing percentage of the Glacier Loon subunit with secure core habitat is 40%.
46. The Project area lies within six different Lynx Analysis Units: Buck; Elk; Glacier; Holland; Lower Beaver; and Upper Beaver.
47. The existing historic range of variability for old growth forest in the Swan subbasin is 32-40%, inclusive of all elevations.
48. There has been approximately 26,243 acres of logging in this Project area since 1950, including 10,303 acres of clearcutting.
49. Only 3% of the Project area now has verified old growth stands.

50. At a larger watershed level, which includes wilderness, there is still only an estimated 9% old growth.
51. Results from snow tracking and DNA analysis conducted from 2000-2012 did not detect the Northern Rockies fisher, an old growth management indicator species, within the Project Area or within the Swan Lake, Seeley, or Lincoln Ranger Districts.
52. Additionally, from 2007 to 2011 the Forest Service set baited lures to monitor for fisher presence across the Forest but it failed to detect a single fisher on the entire Forest.
53. The Forest Service's systematic regional goshawk nest surveys from 2000-2005 did not locate a single active goshawk nest in the Swan Valley. The goshawk is an old growth associated species, and was designated as an old growth management indicator species for the Project.
54. The Canada lynx, another old growth management indicator species, is already listed as a threatened species under the ESA, and is likely declining in the Seeley area south of the Project area.
55. The Project area contains FWS-designated lynx critical habitat.
56. The pine marten, another old growth associated species, is dramatically declining in the Swan Valley.

57. The wolverine, a species recently proposed for listing as a threatened species under the ESA, may be present in the Project area.
58. Water howellia, a plant species listed as threatened under the ESA, is present in the Project area.
59. The bull trout is listed as threatened under the ESA. Both bull trout and FWS-designated bull trout critical habitat are present in the Project area.

PROJECT & IMPACTS/ANALYSIS

60. The Forest Service chose to implement Alternative D from the Project EA with modifications as the selected alternative.
61. The Forest Service estimates that timber sales for the Project will be sold in 2013.
62. The Forest Service estimates that the timber harvest will be completed 2-3 years after the sale date.
63. The Forest Service estimates that the Project will be fully completed by 2019.
64. The Project includes logging 1,405 acres of National Forest lands within the Project area, including hundreds of acres of clearcutting.
65. The Project authorizes 5.9 miles of new temporary road construction, including new temporary roads across two stream channels.
66. The Project authorizes the use of 16.0 miles of currently gated/bermed (i.e.

restricted) roads for Project activities.

67. Collectively then, the Project authorizes the reopening or new construction of 21.9 miles of roads in the Project area.
68. The Project will also use 29.3 miles of existing open roads in the Project area.
69. Thus, the Project will use 51.2 miles of road in the Project area.
70. Use of gated or bermed roads will increase human activity levels in areas normally more secure for the grizzly bear.
71. There will be a temporary increase in the ORD and TRD in whichever subunit the activities are occurring.
72. The Project authorizes logging inside the Riparian Habitat Conservation Area (RHCA) in Units 19, 24, 57, 61, and 205.
73. The Project authorizes logging on 320 acres adjacent to wetland complexes.
74. The Project authorizes clearcutting directly adjacent to verified old growth stands.
75. The Project will degrade existing verified old growth stands with 1.3 miles of new high contrast edge effects, and an additional 0.9 miles of lesser contrast edge effects.
76. The Project does not designate any recruitment old growth stands.
77. The Project authorizes logging of stands that could become old growth

- stands, i.e would be suitable recruitment old growth stands.
78. The Project will render unsuitable 1,282 acres of lynx habitat.
 79. The Project will eliminate 380 acres of habitat for snowshoe hare, the primary prey for lynx.
 80. The Project has the potential to displace lynx from important habitat during Project implementation.
 81. The Project may cause short term displacement for fisher.
 82. The Project allows logging of 320 acres of fisher riparian habitat.
 83. Additionally, canopy removal over 1,040 acres will render that habitat unsuitable for fisher.
 84. The Project will remove 92 acres of goshawk post-fledgling habitat.
 85. The Project may displace grizzly bears.
 86. The Project will cause an increase in annual water yield in the Swan River Valley Bottom Area and the Upper Swan River Watershed.
 87. The Project's new temporary roads across stream channels will cause sedimentation.
 88. The Forest Service estimates the potential amount of soil erosion from temporary road construction and log skidding at 1.9 tons/acre/year over the 3-year sale contract period .

89. The temporary road construction and system road decommissioning has potential to generate a short-term, moderate amount of sediment to Lindbergh Lake.
90. The Project will remove 1,042 acres of hiding cover.
91. The remaining percentage of hiding cover in the Project area after implementation is unknown because the Forest Service excluded all private lands from its hiding cover analysis.
92. The Project will eliminate or degrade 320 acres of wolverine habitat.
93. The Project will create a high risk of invasive species introduction, establishment, spread, and persistence.
94. Another simultaneous logging project, the Fredswood Project, will occur on National Forest lands within the Glacier Loon Project area directly adjacent to and between Project units. The Fredswood Project allows approximately 150 acres of clearcutting in 4 units. This Project was not mapped in the EA, and the cumulative effects of these clearcuts were not discussed.
95. The Decision references another project -- the Beaver Creek Project -- that will occur directly adjacent to/south of the Project area, but the agency does not disclose or discuss the cumulative effects of this project. This project was not mapped in the EA.

96. Other logging projects are ongoing or have been recently implemented in the same lynx analysis units as the Project, including the Summit Salvage and Hemlock Elk projects. In the EA, these project were not mapped and the cumulative effects were not disclosed.
97. Additional logging projects are being implemented in the upper Swan Valley including Meadow Smith, Cooney McKay, and Mid Swan Blowdown projects. In the EA, these projects were not mapped and their cumulative effects were not discussed.
98. Other projects being planned in the Swan Valley include Cold Jim (six miles away) and Chilly James, which are to the north of the Project area, and Colt Summit, which is approximately 4.5 - 6 miles south of the Project area. In the EA, these projects were not mapped and their cumulative effects were not discussed.
99. Additionally, the economics section of the EA lists a number of other commercial logging projects that will have a cumulative economic effect. The EA does not map these projects or disclose their location and it does not disclose or address them in any wildlife analysis: Miss'n Dog, Lion's Paw, Sixmile, Porter Mount, Wild Cramer, Red Whale, Island South, East Shore, Belton, Soldier Addition, Firefighter, Spotted Bear River, Middle Fork,

Granite Lodgepole, Beaver Lake, Corduroy, Sharp-Tail, Gregg-Plume, Valley Face, Reid Creek, Cyclone Products, Round Bug, Lost Cliff, Lost Mountain, West Logan, Griffin Creek, and Johnson Peak Projects.

FIRE ECOLOGY

100. Lodgepole pine is the dominant species in most units in the Project area.
101. Lodgepole pine has thin bark that does not resist fire well; thus wildfires in lodgepole pine habitat tend to be naturally stand-replacing and only occur when the forest is sufficiently dried out due to climatic factors.
102. 83% of the forest in the Project area naturally experienced stand-replacing fires. Some fires may have occurred every 100 years, but some may have occurred only every 200-300 years.
103. The Forest Service states: “Oliver et al (1994) have observed that many forest ecosystems in the Northern Rocky Mountains developed naturally to high levels of insect infestation and then burned through catastrophic fires at about 100 year intervals. Many of these forests burned about 100 years ago; *their present extreme insect and fire susceptibilities are probably within the natural range*, although their catastrophic burning is not necessarily desired by people.”
104. The Forest’s 2008-2010 monitoring report states: “Due to the high variability

of historical conditions, we cannot conclude that the extent of fire in the last decade is outside the historical range. Large stand replacing wildfires have always been part of the natural processes which have shaped historical conditions on the forest.”

105. Schoennagel et al (2004) states: “we are concerned that the model of historical fire effects and 20th-century fire suppression in dry ponderosa pine forests is being applied uncritically across all Rocky Mountain forests, including where it is inappropriate [].”
106. Schoennagel et al (2004) states: “High-elevation subalpine forests in the Rocky Mountains typify ecosystems that experience infrequent, high-severity crown fires []. . . The most extensive subalpine forest types are composed of Engelmann spruce (*Picea engelmannii*), subalpine fir (*Abies lasiocarpa*), and lodgepole pine (*Pinus contorta*), all thin-barked trees easily killed by fire. Extensive stand-replacing fires occurred historically at long intervals (i.e., one to many centuries) in subalpine forests [], typically in association with infrequent high-pressure blocking systems that promote extremely dry regional climate patterns [].”
107. Schoennagel et al (2004) states: “it is unlikely that the short period of fire exclusion has significantly altered the long fire intervals in subalpine forests

- [], Furthermore, large, intense fires burning under dry conditions are very difficult, if not impossible, to suppress [], and such fires account for the majority of area burned in subalpine forests [].
108. Schoennagel et al (2004) states: “Moreover, there is no consistent relationship between time elapsed since the last fire and fuel abundance in subalpine forests [], further undermining the idea that years of fire suppression have caused unnatural fuel buildup in this forest zone.”
109. Schoennagel et al (2004) states: “No evidence suggests that spruce–fir or lodgepole pine forests have experienced substantial shifts in stand structure over recent decades as a result of fire suppression. Overall, variation in climate rather than in fuels appears to exert the largest influence on the size, timing, and severity of fires in subalpine forests []. .We conclude that large, infrequent stand replacing fires are “business as usual” in this forest type, not an artifact of fire suppression.”
110. Schoennagel et al (2004)(emphasis added) states: “Mechanical fuel reduction in subalpine forests would not represent a restoration treatment but rather *a departure from the natural range of variability* in stand structure.”
111. Schoennagel et al (2004) states: “Given the behavior of fire in Yellowstone in 1988, fuel reduction projects probably will not substantially reduce the

frequency, size, or severity of wildfires under extreme weather conditions.”

112. Schoennagel et al (2004)(emphases added) states: “The Yellowstone fires in 1988 revealed that variation in fuel conditions, as measured by stand age and density, had only minimal influence on fire behavior. Therefore, *we expect fuel-reduction treatments in high-elevation forests to be generally unsuccessful in reducing fire frequency, severity, and size*, given the overriding importance of extreme climate in controlling fire regimes in this zone. Thinning also will not restore subalpine forests, because they were dense historically and have not changed significantly in response to fire suppression. Thus, *fuel-reduction efforts in most Rocky Mountain subalpine forests probably would not effectively mitigate the fire hazard, and these efforts may create new ecological problems by moving the forest structure outside the historic range of variability”*

113. Likewise, Brown et al (2004) states (emphasis added):

At higher elevations, forests of subalpine fir, Engelmann spruce[], mountain hemlock [], and lodgepole or whitebark pine [] predominate. These forests also have long fire return intervals and contain a high proportion of fire sensitive trees []. At periods averaging a few hundred years, extreme drought conditions would prime these forests for large, severe fires that would tend to set the forest back to an early successional stage, with a large carry-over of dead trees as a legacy of snags and logs in the regenerating forest....natural ecological dynamics are largely

preserved because fire suppression has been effective for less than one natural fire cycle. Thinning for restoration does not appear to be appropriate in these forests []. *Efforts to manipulate stand structures to reduce fire hazard will not only be of limited effectiveness [] but may also move systems away from pre-1850 conditions to the detriment of wildlife and watersheds.*

114. Likewise, Graham et al (2004) states:

Most important, the fire behavior characteristics are strikingly different for cold (for example, lodgepole pine, Engelmann spruce, subalpine fir), moist (for example, western hemlock, western redcedar, western white pine), and dry forests []. Cold and moist forests tend to have long fire-return intervals, but fires that do occur tend to be high-intensity, stand-replacing fires. Dry forests historically had short intervals between fires, but most important, the fires had low to moderate severity.

115. The Forest Service's own research scientist, and expert on wildfire risk, Dr. Jack Cohen, states: "Thinning will often result in increased potential surface fire behavior, for several reasons. First, thinning reduces the moderating effects of the canopy on windspeed, so surface windspeed will increase (Graham et al., 2004). It also results in increased solar radiation on the forest floor, causing drier surface fuels. It may also cause an increase in flammable grassy and shrub fuels over time, due to the reduced tree competition."

116. According to Graham et al (2004), thinning may also increase the likelihood of wildfire ignition in the type of forests in this Project area:

The probability of ignition is strongly related to fine fuel moisture content, air temperature, the amount of shading of surface fuels, and the occurrence of an ignition source (human or lightning caused) []. Stand structure strongly influences all these factors. There is generally a warmer, dryer microclimate in more open stands (fig. 9) compared to denser stands []. Dense stands (canopy cover) tend to provide more shading of fuels, keeping relative humidity higher and air and fuel temperature lower than in more open stands. Thus, dense stands tend to maintain higher surface fuel moisture contents compared to more open stands []. More open stands also tend to allow higher wind speeds that tend to dry fuels compared to dense stands []. These factors may *increase probability of ignition in some open canopy stands compared to dense canopy stands.*

117. Dr. Cohen also states: “evidence indicates that home ignitions depend on the home materials and design and only those flammables within a few tens of meters of the home (home ignitability). The wildland fuel characteristics beyond the home site have little if any significance to WUI home fire losses.”
118. Cohen also finds: “The high survival rate for homes with nonflammable roofs and 10-20 meter vegetation clearances included firebrands as an ignition factor, thus indicating that firebrand ignitions also depend on the ignition characteristics of the home and the adjacent flammable materials.”
119. Cohen finds that “a low home ignition potential reduces the chances of fire destruction without extensive wildland fuel reduction. These findings indicate that the W-UI home fire loss problem is a home ignitability issue largely

independent of landscape fuel reduction issues.”

120. Cohen finds: “Vegetation management to prevent ignitions from radiation does not require extensive vegetation removal hundreds of meters from a structure. Our analysis indicated that 40 meters was sufficient for a 20 meter flame height.”
121. Cohen finds: “This finding indicates that the spatial scale determining home ignitions corresponds more to specific home and community sites than to the landscape scales of wildland fire management. Thus, the W-UI fire loss problem primarily depends on the home and its immediate site.”
122. The EA does not disclose whether home owners in the Project area have taken action to reduce fuels immediately proximate to their residences.

GRIZZLY BEAR

123. Researchers have documented grizzly bears’ avoidance of habitats adjacent to roads as well as negative impacts of high road densities and traffic volumes for grizzly bears.
124. The risk of grizzly bear mortality increases significantly near motorized routes and include mistaken identification shootings of black bears or other game animals, poaching, malicious killing, and self-defense of life.

Sometimes bears are struck by vehicles while crossing roads or foraging on

roadkill. Others are killed by wildlife managers after becoming habituated to human food, garbage, or livestock or pet feed that is often associated with motorized routes and developments.

125. Some grizzly bears are displaced from large portions of their available habitat when they attempt to avoid motorized use areas and their associated human presence.
126. Avoidance behavior is often strongest in adult grizzly bears, with males selecting for high quality habitats and absence of humans. Males that were found using high quality habitat near roads did so during the night where hiding cover was available.
127. However, adult females were more likely to avoid humans altogether: all age and sex classes used habitats closer to high-use roads and development during the human inactive period. All bears showed a considerably greater avoidance of high-use roads and development during periods of high human activity.
128. Disturbance from roads or from alteration of habitat (high road densities) will likely cause female bears to significantly under-use important habitat. Such under-use of habitat likely leads to some level of impairment of normal breeding and feeding behavior in females.

129. Significant levels of displacement from key habitats could result in a female bear's failure to obtain adequate food resources, which in turn could result in reduced fitness and either failure to breed or mortality of cubs prior to or after parturition.
130. The Forest Service approved Amendment 19 (A19) to the Forest Plan to set enforceable standards to minimize the negative impacts from roads and road activity on grizzly bears.
131. The Forest Plan states: "The grizzly bear objectives and standards of Amendment 19, which are required by the Terms and Conditions of the U.S. Fish and Wildlife Service's Biological Opinion on Amendment 19, are not discretionary. These objectives and standards supersede any conflicting or inconsistent management direction contained in the Forest Plan."
132. The Forest Plan also states: "Standards are not discretionary, they apply to all National Forest System lands and will be followed unless the standards are amended." It further states "Standards established for threatened and endangered species conservation and protection are mandatory, and thus take precedence when there are conflicting uses."
133. The Forest Service represents that the Project "achieves A19 numerical objectives before and following implementation of proposed activities."

134. The Forest Service also represents that “[t]he grizzly bear subunit currently meets Forest Plan Amendment 19 objectives for open and total road density, and for security core.”
135. Over 40,000 acres of Plum Creek Timber Company (PCTC) lands in the Swan Valley have been conveyed to federal and state ownership over the past 5-10 years. The Forest Service states that “[t]his will be beneficial for TES [threatened & endangered species] wildlife in the Swan Valley because standards and guidelines in place for TES on Federal and State lands will now apply to the lands which were once PCTC lands.”
136. The numerical objectives of Amendment 19 are no more than 19% ORD, no more than 19% TRD, and no less than 68% core, i.e. 19/19/68.
137. The 19/19/68 objectives from Amendment 19 apply to all subunits in the Forest that have over 75% U.S. Forest Service/National Forest System land ownership.
138. On June 30, 2008, The Nature Conservancy (TNC) and The Trust for Public Land (TPL) announced they reached agreement to purchase approximately 310,000 acres of PCTC lands in three phases over two years culminating in December 2010. The lands in the agreement include more than 65,630 acres in the Swan Valley.

139. By July of 2012, TNC has conveyed approximately 117,460 acres to the Forest Service (44,820 of those acres are in the Swan Valley) and approximately 105,000 acres to the State of Montana.
140. As a result of these transfers, the Glacier Loon subunit now has over 75% U.S. Forest Service/National Forest System land ownership.
141. As a result of these transfers, the Buck Holland subunit now has over 75% U.S. Forest Service/National Forest System land ownership.
142. Neither subunit in the Project area complies with the 19/19/68 objectives before Project implementation.
143. Neither subunit in the Project area will comply with 19/19/68 objectives after Project implementation
144. Amendment 19 requires “no net increase” in TRD in a subunit.
145. In 2005, the TRD in the Glacier Loon subunit was 39%.
146. The current TRD in the Glacier Loon subunit is 43%.
147. There has been a net increase in TRD in the Glacier Loon subunit.
148. Amendment 19 requires “no net decrease” in core.
149. In 2005, core in the Glacier Loon subunit was 47%.
150. The current core in the Glacier Loon subunit is 41%.
151. There has been a net decrease in core in the Glacier Loon subunit.

152. Amendment 19 addresses the issue of the use of reclaimed roads in calculations and states: “Roads that have been treated, but that do not yet fully satisfy the definition of a reclaimed road will be included in calculations for total motorized access route density.”
153. FWS states that barriers and revegetation of roadways are minimum treatments for a road to qualify as reclaimed.
154. Monitoring data indicates that barriers alone do not eliminate motorized use. For example, FWS has found (for years with data reports) from 3 to 14 percent of the barrier devices were found to be ineffective in preventing unauthorized use. Additionally, signs used in place of a barrier device were consistently ineffective in restricting or prohibiting entry.
155. In 1995, and again in 2005, FWS issued a biological opinion and incidental take statement for Amendment 19.
156. The biological opinion and incidental take statement for Amendment 19 require no increase in TRD and ORD, and no decrease in core.
157. The biological opinion and incidental take statement for Amendment 19 do not qualify the terms “increase” or “decrease” with the term “net.”
158. The Project authorizes an increase in both TRD and ORD during the Project. During Project implementation, ORD in the Glacier Loon subunit increases

from 22% to 38%, and TRD increases from 43% to 46%.

159. The 2005 A19 biological opinion and incidental take statement reiterates that take under the ESA in the form of “harm” to grizzly bears is likely to occur in the following circumstances: when ORD exceeds 1 mile per square mile in 19 percent of a subunit and TRD exceeds 2 miles per square mile in 19 percent of a subunit.”
160. Under this definition, take in the form of “harm” is currently occurring in the Project area, will be exacerbated during Project implementation, and will continue to occur after Project implementation.
161. The 2005 A19 biological opinion notes that the NCDE grizzly population failed to achieve all of its recovery parameters between 1992 and 2003 in all years but one (1995).
162. The 2005 A19 biological opinion notes that the most recent six year average found that the NCDE grizzly population was failing three out of six recovery parameters.
163. The 2005 A19 biological opinion finds that National Forest access management requires continued improvement in some subunits in the NCDE to attain and sustain grizzly bear recovery.
164. The expanding distribution of NCDE grizzly bears might be a function of a

growing grizzly bear population, or it could be due to displacement from human development or activity, including roads, within the Recovery Zone, temporarily limited resources, and/or attractiveness of resources outside the Recovery Zone. The causes for an expanding distribution could vary depending on specific characteristics and conditions of different areas of the Recovery Zone.

165. Kendall et al (2009) found a smaller population of NCDE grizzly bears at the southern end of the NCDE range.
166. Near roads and human activity, some grizzly bears change their activity periods to coincide with a low level of human activity. Nocturnal grizzly bears are associated with high intensity human activity. Grizzly bears in the Swan Valley and U.S.-2 corridor are more nocturnal than individuals in less human impacted areas.
167. The Forest Service represents that the Project “complies with all the direction of the Swan Valley Grizzly Bear Conservation Agreement.”
168. In 1997, the Forest, in cooperation with Plum Creek Timber Company, Montana Department of Natural Resources and Conservation, and FWS, approved an agreement for access management and timber harvest scheduling in the intermingled ownership lands of the Swan Valley, which was called the

Swan Valley Grizzly Bear Conservation Agreement (SVGBCA).

169. The SVGBCA prohibits any increase in TRD and ORD, and any decrease in core. It states: “The Forest Service hereby agrees not to take management actions that increase total road density or open road density or to decrease Core Areas on its ownership.”
170. The SVGBCA does not qualify the terms “increase” or “decrease” with the term “net.”
171. The SVGBCA states that if the definitions found in the agreement are more conservative than the Flathead Forest Plan in regard to the grizzly bear, the definitions of the SVGBCA will be used.
172. The Project authorizes an increase in both TRD and ORD during the Project. During Project implementation, ORD in the Glacier Loon subunit increases from 22% to 38%, and TRD increases from 43% to 46%.
173. The SVGBCA states: “The long-term goal is that no more than 21% of a BMU Subunit shall exceed the Open Road density of one mile per square mile.” The short term standard is no more than 33% ORD. During Project implementation, the Project fails both standards.
174. The SVGBCA states: “The Parties agree to limit the number of Active Subunits within the Conservation Area by concentrating Commercial Use

during the Restricted Period in four (4) out of the eleven (11) BMU Subunits on a rotational basis, leaving the other seven (7) BMU Subunits as Inactive Subunits during the Restricted Period for a minimum of three (3) years.

175. The EA does not disclose this requirement or demonstrate compliance with it by listing all projects that are currently being implemented in the Swan Valley, and disclosing the subunits affected by those projects.
176. The SVGBCA states: “At no one time during the Restricted Period will more than: two BMU Subunits be Active Subunits within the Mission Range BMU; one BMU Subunit be an Active Subunit within the Big Salmon BMU; and one BMU Subunit be an Active Subunit within the Bunker BMU.”
177. The EA does not disclose this SVGBCA requirement or demonstrate compliance with it.
178. There is currently an active timber sale in the adjacent Hemlock Elk Grizzly Bear Subunit (Hemlock Elk) and other current timber management activities on subunits to the east of the project area, across Highway 83, in the Meadow Smith, and Buck Holland subunits (Cooney McKay, Meadow Smith, Summit MPB Salvage).
179. The Glacier Loon and Buck Holland subunits are scheduled for “active” status from 2012-2014, and must be “inactive” from 2015 through 2020.

180. The Forest Service anticipates that Project timber harvest will take 2-3 years after the sale date.
181. Even if logging commenced immediately, it would still extend into 2015, which is when the Project subunits must be inactive.
182. The SVGBCA states: “Parties will evaluate Cover across all ownerships and will manage their lands so that a minimum of 40% of all land in each BMU Subunit in the Conservation Area is maintained in Cover.”
183. For the Project, the Forest Service only analyzed cover across National Forest lands in the Project area; it did not assess cover across all ownerships in each BMU subunit affected by the Project.
184. In 1986, the Interagency Grizzly Bear Committee (IGBC) developed the Interagency Grizzly Bear Guidelines (IGBC Guidelines) in order to promote conservation of the grizzly bear.
185. The Forest has incorporated the IGBC Guidelines into its Forest Plan (Appendix OO) as binding requirements. The Forest Plan states: “Ensure that all management activities and projects are planned, designed, and implemented in accordance with the Interagency Grizzly Bear Guidelines [].”
186. The IGBC Guidelines establish grizzly bear management situations.
187. The Project is located in Management Situation-1 (MS-1).

188. Management direction for MS-1 lands requires the following: “Grizzly habitat maintenance and improvement, and grizzly-human conflict minimization will receive the highest management priority. Management decisions will favor the needs of the grizzly bear when grizzly habitat and other land use values compete. Land uses which can affect grizzlies and/or their habitat will be made compatible with grizzly needs or such uses will be disallowed or eliminated.”
189. The Forest Service represents that the Project “is in accordance with the Interagency Grizzly Bear Guidelines”
190. The Forest Service asserts that the Project is compatible with grizzly bears and favors them for a number of reasons including the following: (a) purported “[s]trict adherence to a grizzly bear subunit rotation by major landowners and cooperators (USDA Forest Service, DNRC, and The Nature Conservancy) that leaves every subunit in the Swan Valley inactive for a minimum of 3 years;” (b) purported “[r]estriction of commercial activities in spring habitats during the spring period;” (c) purported “[o]pen and total road density restrictions;” (d) purported road decommissioning; (e) purported “maintenance of a minimum of 40 percent cover across all ownerships in the affected subunits;” (f) purportedly “[c]ontributing to security in linkage zones

by reclaiming or restricting roads;” and (g) “land acquisition endeavors.”

191. Regarding (a), as discussed above, the Project will extend into a designated inactive period for both affected subunits, and the EA completely fails to map out all of the existing ongoing and planned projects in the Swan Valley and disclose which subunits they affect and when they will be implemented, which does not indicate “strict adherence” to the rotational schedule.
192. Regarding (b), the Project allows commercial activities in the spring in 32 units across 392 acres. Units 1-14, 19-26, 30-34, 90, 92, 94, 200, and 205 may be logged in the spring.
193. Regarding (c), as discussed above, the affected subunits in the Project area do not comply with the road density restrictions found in A19; they do not comply with the road density restrictions found in the A19 biological opinion; and they do not comply with the road density restriction found in the SVGBCA. More specifically, the subunits do not comply with 19/19/68 before, after, or during the Project; there has been a net increase in TRD and a net loss in core since the last incidental take statement in 2005; and there will be an increase in density during the Project, as well as a net increase in density after the Project until such time as the “temporary” roads are fully revegetated.

194. Regarding (d), the Forest Service's purported "road decommissioning" does not actually comply with the applicable A19 and IGBC definitions, and may not be implemented if funding is unavailable.
195. Regarding (e), the Forest Service explicitly declined to include private lands in its hiding cover percentage for the Project, thus it cannot assert that it has analyzed hiding cover "across all ownerships." Moreover, it did not assess hiding cover for each affected subunit, but only for the Project area.
196. Regarding (f), the Project does not increase core, which is used interchangeably with the term secure habitat, thus the Project does not increase grizzly bear security.
197. Finally, regarding (g), although "land acquisition" has taken place, the benefit of such land acquisition would presumably be that the Forest Plan Amendment 19 standards for 19/19/68 would now be applied to the newly acquired lands. As demonstrated by this Project, the Forest Service is refusing to apply the 19/19/68 standards, thus there has been no benefit to grizzly bears from the land acquisition thus far.
198. The Forest Service states that direct and indirect effects of the Project on grizzly bears would include a decrease in forage, a decrease in hiding cover across the project area, a decrease in habitat security, and an increase in

potential for displacement during Project implementation.

199. Despite the Project's failure to comply with numerous required management thresholds, including the threshold above which take occurs, the agencies concluded that the Project would not likely adversely affect the grizzly bear.

LYNX

200. The Canada lynx is an ESA -listed species that is present on the Forest
201. FWS listed lynx in 2000 primarily because lynx are sensitive to logging and the Forest Service was failing to protect lynx habitat from logging on National Forests.
202. In 2000, in accordance with the Lynx Conservation Assessment and Strategy, 109 lynx analysis units (LAUs) were mapped on the Forest.
203. An LAU is the approximate size of an area used by an individual lynx (10 to 20 mi²).
204. Within LAUs on the Forest, the Forest Service mapped areas that it believes provide potential lynx habitat.
205. The Forest Service's expert research scientist and "primary lynx researcher in the northern Rocky Mountains," Dr. John Squires, has stated that it is unknown whether implementation of the Lynx Conservation Assessment and Strategy would ensure lynx viability.

206. In the most recent study of lynx on the Forest, Dr. Squires found that during winter lynx prefer to forage in forests with mature, large diameter trees, and high cover percentages. He also found that lynx avoid clear-cuts across all spatial scales.
207. In several previous studies, Dr. Squires found that lynx prefer to den in mature forest stands with multiple stories and high cover percentages.
208. The Forest Service states that the amount of lynx foraging habitat on the Forest (9%) is below the historic average of 19%.
209. After vacating its original critical habitat rule for lynx due to inappropriate political influence in the listing process, FWS re-designated Canada lynx critical habitat in 2009.
210. Subsequently, this Court found the 2009 lynx critical habitat to be unlawful, but it remains in place while FWS again re-designates critical habitat because the 2009 designation is more protective than the previous/first designation.
211. A new proposed rule is scheduled -- via court stipulation -- to be released in September, 2013.
212. The 2009 lynx critical habitat designation delineates five areas of critical habitat that are essential for the conservation of lynx.
213. Critical Habitat Unit 3 is located in northwestern Montana and a small portion

of northeastern Idaho. This area is approximately 14,000 square miles, was occupied by the lynx at the time of listing, and is currently occupied by the species.

214. Critical Habitat Unit 3 is essential to the conservation of lynx because it appears to support the highest density lynx populations in the Northern Rocky Mountain region of the lynx's range.
215. According to the 2009 FWS rule, logging is the dominant land use that threatens lynx critical habitat.
216. Prior to the designation of lynx critical habitat in 2009, in 2007, the Forest Service approved the Northern Rockies Lynx Management Direction (NRLMD). The agency amended all forest plans in Forest Service Region One to include the NRLMD.
217. The NRLMD replaced the Lynx Conservation and Assessment Strategy, but the Forest Service states that "the LCAS is still used as a document providing some of the best available science."
218. The NRLMD designates the Forest as core, occupied lynx habitat.
219. NRLMD Standard VEG S5 restricts the reduction of winter snowshoe hare habitat within a stand initiation structural stage.
220. The Project authorizes 337 acres of timber harvest that does not meet the

VEG S5 standard.

221. Thus, the agency exempted the Project from compliance with the standard.

222. NRLMD Standard VEG S6 restricts the reduction of snowshoe hare habitat within multi-story mature or late successional forests.

223. The Project authorizes 43 acres of timber harvest that does not meet the VEG S6 standard.

224. Thus, the agency exempted the Project from compliance with the standard.

225. NRLMD Standard ALL S1 states: “New or expanded . . . vegetation management projects must maintain habitat connectivity in an LAU”

226. The EA does not address or demonstrate compliance with Standard ALL S1.

227. On March 23, 2007, FWS issued a biological opinion on the effects of the NRLMD.

228. The biological opinion was identified as the first-tier of a tiered consultation framework, with the review of subsequent projects that may affect lynx as being the second-tier of consultation.

229. The 2007 NRLMD biological opinion states: “Further, site specific consultation (second tier) is required for actions that may affect listed species, including those conducted under the exceptions and exemptions.”

230. The biological opinion also states: “Second-tier biological opinions would be

issued as appropriate, where proposed actions would result in adverse effects to lynx.”

231. The agencies concede that this Project will adversely affect lynx.
232. Despite the finding of an adverse effect to lynx from the Project, FWS did not issue a second tier biological opinion for lynx for the Project.
233. The agencies also concede that this Project will adversely affect lynx critical habitat.
234. FWS issued a biological opinion for the Project’s effect on lynx critical habitat.
235. The biological opinion fails to address the impact of this Project on lynx recovery and fails to demonstrate that the Project ensures lynx recovery.

ELK

236. Elk are a big game management indicator species on the Forest and are present within the Project area.
237. The Forest’s 2008-2010 monitoring report documents a significant increase in logging on the Forest between 2000-2010, most of which was clearcutting.
238. Since 1967, elk have declined on the Forest, as have two other big game management indicator species associated with denser forests: moose and mule deer.

239. The Forest Service used the entire Project area as the analysis area for elk, despite the requirement from the best available science to use an elk herd home range as the level of analysis for elk.
240. An average elk herd home range in Montana is 18,200 acres for an entire year, and about 4,225 acres during the rut. The Project area is over twice the size of an average elk herd home range.
241. Although the EA references the best available science on elk security, Hillis et al (1991), it does not actually apply the definition of elk security area (250 acre continuous blocks at least 0.5 miles from a road) and provide a map of elk security in the Project before, during, and after the Project. It does not demonstrate that 30% of each elk herd home range will be retained in security blocks as defined by Hillis et al (1991).
242. The EA does not address or apply the best available science on elk habitat effectiveness: Christensen et al (1993). This research requires computation of linear road density, and sets thresholds for different areas depending on the management focus. This research does not allow the Forest Service to ignore administrative or contractor use on logging roads during a timber sale, and it does not allow the Forest Service to ignore roads on private lands.
243. The Forest Service's 2008-2010 monitoring report represents that the agency

has not calculated habitat effectiveness for elk since 1993.

244. The Forest Plan requires that the Forest Service maintain open road density at less than 1.0 mile/square mile or less in moist sites in elk summer habitat.

245. The EA did not address this requirement or demonstrate compliance with it.

246. The Project area as a whole exceeds this road density.

WOLVERINE

247. Wolverines are proposed for listing under the Endangered Species Act.

248. Wolverines are known to be present in the Project area.

249. The Forest Service states: “It is thought that wolverines are conserved through extensive unroaded areas and forest management standards associated with access management in roaded areas.”

250. Roads result in direct mortality to wolverines by providing access for trappers (Krebs et al 2007), and trapping is a major threat to wolverines (Squires et al 2007).

251. Female wolverines avoid roads and recently logged areas, and respond negatively to human activities (Krebs et al 2007).

252. Krebs et al (2007) states that “[f]emale wolverines, in winter and summer, have habitat associations that require careful considerations by land and resource managers. Human use, including winter recreation *and the*

presence of roads, reduced habitat value for wolverines in our studies.”

(Emphasis added.)

253. Krebs et al (2007) concludes that “precautionary steps to protect habitat should be taken until more focused research examining the behavioral and demographic responses of wolverines to human use is completed to establish thresholds for managers working to resolve conflicts in multiuse landscapes.”
254. The Forest Service’s biological assessment for the Project does not address wolverines.
255. The Decision Notice states: “[t]he Glacier Loon Analysis was reviewed based on the new publication and was found to support and be consistent with a “no jeopardy” conclusion for wolverine (Project File Exhibit H- 157).”
256. Project file document H-157 is the FWS proposed listing rule for wolverine; it says nothing about the Glacier Loon Project.

OLD GROWTH SPECIES

257. Over the last 100 years, old forests in the Interior Columbia Basin have declined by 27 to 60 percent, and large residual trees and snags have decreased by 20 percent.
258. These changes have contributed to declining habitat conditions for numerous species of wildlife associated with old growth forests, which raises concerns

about the viability of these species.

259. This decrease in old growth forest has occurred within all sub-basins of the Flathead National Forest.
260. The Forest Service states that “Amendment 21 to the Flathead’s Forest Plan, its EIS, and project file exhibits provide a transparent and well thought-out long-term strategy for the viability of old growth associated species.”
261. Amendment 21 (A21) is intended “to ensure that old growth habitat on the Flathead National Forest is maintained and restored to provide for the long-term viability of old growth associated wildlife species.”
262. Amendment 21 states: “Ensure that Forest Service actions do not contribute to the loss of viability of native species.”
263. Amendment 21 also states: “Project decisions will not result in a loss of species viability or create significant trends towards federal listing.”
264. Amendment 21 mandates: “Maintain and recruit old growth forests to an amount and distribution that is within the 75% range around the median of the historical range of variability. Where current conditions are below this amount, actively manage to recruit additional old growth.”
265. Amendment 21 directs the Forest Service to “[m]aintain ecological processes and provide for natural patch size distribution. Manage landscape patterns to

develop larger old growth patch sizes where needed to satisfy wildlife habitat requirements.”

266. Amendment 21 also mandates: “Prior to implementing vegetation management actions requiring an EA or EIS, analyze historical vegetation conditions to guide development of desired landscape conditions and to provide context for stand-level management.”
267. Amendment 21 further requires: “Restore the amount and distribution of old growth forests to within the historical range of variability. To accomplish this objective, recruit additional old growth from appropriate mid-seral stands.”
268. During the preparation of Amendment 21, extensive analysis of both current and historical vegetation conditions was conducted using a variety of tools. Data was summarized in several formats, most specifically by subbasin and potential vegetation group. Columbia River Basin modeling over a 400 year period was used to produce estimates of the historical range of variability.
269. In general, the Forest Service found that late-seral forest was below historical minimums in all sub-basins in all community types. In addition, forest patch size in late seral forests had been significantly reduced from historical patch size, based on the small scale patchwork of management activities.
270. When Amendment 21 was signed, the amount of old growth habitat in the

Swan subbasin was lower than the minimum historic percentage in the historic range of variability in the subbasin at every elevation.

271. Between 1999 and 2007, clearcutting further reduced late seral habitat on the Forest.
272. Historically, inclusive of all elevations, the Swan subbasin contained 32-40% old growth. These percentages were not disclosed to the public in the EA for the Project.
273. According to the Amendment 21 Final EIS, 75% of the median historic range of variability for the Swan subbasin is 33-39% old growth. These percentages were not disclosed to the public in the EA for the Project.
274. The Forest Service concedes that in the Swan Valley, old growth forest types, or late seral classes, are currently below the historical minimum value for all terrestrial community groups: lower montane, montane, and subalpine.
275. In the Swan Valley, the major differences between current conditions and historical conditions are that the total amount of old growth forest habitat covers less land area, the patches of old growth forest are smaller in size, and remaining old growth forest habitat has changed both structurally and in distribution. This translates into smaller blocks of older forest that are not as “secure” for old growth associated species as larger blocks of old growth

forest with more interior area.

276. The decline in old growth can be largely attributed to land clearing in the valleys, timber harvest, and road construction.
277. Based on sampling that included only National Forest lands as of 2003, the Forest Service estimates that the fifth hydrologic unit code watershed within the Swan subbasin that encompasses the Project area currently has only 9% old growth habitat. At a 90% confidence interval, old growth in the fifth code watershed could be anywhere from 0% to 20%, which is still lower than the historic minimum for the Swan subbasin.
278. In response to inquiries, the Forest Service stated that “[t]he Flathead National Forest does, in fact, maintain an inventory of old growth. Some stands are field verified while others are modeled with VMAP. . . . Map 3-6 in the Glacier Loon Environmental Assessment (EA) displays verified old growth stands in the project area, and the science and methodology used to verify old growth stands is in project file (Exhibit H-46).”
279. According to that analysis, the amount of verified old growth habitat in the Project area is 3.1 % of the Project area.
280. The percentage of effective old growth habitat in the Project area is unknown. Research indicates that some old growth associated species such as the pine

- marten need old growth in stand sizes of 250 to 500 acres to be effective.
281. Pileated woodpeckers, another old growth associated species, require 100-250 acre stands.
 282. Goshawks, another old growth associated species, require an average nesting stand size of 40 acres in west-central Montana, plus additional acres for post-fledgling habitat.
 283. The verified old growth stands in the Project range from 9 acres to 136 acres (one stand), with the average being 32 acres.
 284. An average old growth stand size of 32 acres is insufficient for all of these old growth associated species.
 285. Although a project may not harvest old growth forest, it may still affect old growth habitat and old growth associated species.
 286. Harvesting or burning adjacent to old growth can remove the edge buffer, reducing the effective size of old growth stands by altering interior habitats.
 287. Weather-related effects have been found to penetrate over 165 feet into a stand; the invasion of exotic plants and penetration by predators and nest parasites may extend 1500 feet or more.
 288. The occurrence of roads can cause substantial edge effects on forested stands; sometimes more than the harvest areas they access. Roads that are open to

the public expose many important wildlife habitat features in old growth and other forested stands to loss through firewood gathering and increased fire risk.

289. Amendment 21 designates the fisher and the lynx as old growth management indicator species for the Flathead National Forest.
290. As discussed above, lynx prefer old growth forest with large trees and high canopy cover for winter foraging habitat and for denning habitat.
291. Winter foraging habitat has been identified as the most critical component dictating lynx population size and distribution.
292. There is no NRLMD habitat standard that protects lynx winter habitat and the agencies do not know how much old growth habitat is necessary for lynx viability.
293. As discussed above, the only available information on lynx population trend indicates a potentially declining population in the Seeley area south of the Project area.
294. In addition, winter track surveys conducted along transects in the Swan Valley from 1999 to 2009 indicate a declining rate of detection for lynx.
295. Consistent winter tracking surveys indicate that the Project area is one of the few functioning forest carnivore habitats left in the Swan Valley. Other than

Jocko and Sunset ridges, Lindy ridge is one of the only places with a consistent Canada lynx detection in the Swan Valley.

296. The Forest Service concedes that carnivore surveys in the Swan Valley have detected more lynx in the Glacier Loon and Beaver Creek areas than anywhere else in the valley; indications are that this area is important habitat for Canada lynx as well as other carnivore species.
297. Fisher also prefer old growth forest with large, old trees and high canopy cover.
298. Most fisher are found in dense forest stands with over 76% canopy cover; stands with less than 50% cover are avoided.
299. A 25% increase in openings in a fisher home range reduces the probability of fisher occupancy to almost 0%.
300. The fisher population was reduced dramatically in the 1800s and early 1900s through overtrapping, predator and pest control, and alterations of forested habitats by logging, fire, and farming.
301. The Forest Service acknowledges that “extensive logging has destroy[ed] its habitat.”
302. The extent of past timber harvest is one of the primary causes of fisher decline across the United States.

303. Logging may be one of the main reasons fishers have not recovered in Washington, Oregon, and portions of California as compared to the northeastern United States.
304. Timber harvest can fragment fisher habitat, reduce it in size, or change the forest structure to be unsuitable for fishers.
305. Habitat loss and fragmentation appear to be significant threats to the fisher.
306. Fisher were historically present on the Forest.
307. The Forest Service states that between 1990 and 2000, there were 0 to 2.5 fisher detections on the Forest each year.
308. No fisher were trapped in Flathead County from 1996-2010.
309. Baited hair snares set across the Forest from 2007-2011 failed to detect a single fisher.
310. As discussed above, the Forest Service can no longer find fisher on the Forest, after over a decade of searching with snow track surveys and baited hair snags.
311. The evidence that fisher used to be located via trapping and snow track surveys in the Forest, but can no longer be found with the same methods, indicates a declining trend for fisher in the Forest.
312. Additionally, winter track surveys conducted along transects in the Swan

- Valley from 1999 to 2009 indicate a declining rate of detection for fisher.
313. The Project area is one of the last places in the Swan Valley where fisher were detected.
314. The State of Montana has ranked the fisher as “S3,” which means “potentially at risk because of limited and/or declining numbers, range, and/or habitat”
315. The agency’s conclusions on fisher viability are premised in part on a representation that “the amount of late seral forest fisher habitat is expected to remain within the 75% range of historic variability. . . .” As noted above, late seral forest in the Swan sub-basin is not within such a range.
316. Additionally, the Forest Service designated the goshawk as an old growth management indicator species for this Project.
317. Amendment 21 also designates the goshawk as an old growth associated species.
318. The Decision Notice states that the “analysis of old growth associated species” “used goshawk habitat parameters outlined by research studies [].”
319. Goshawk nest areas are typically characterized by old growth and mature forest with large trees and high canopy closure.
320. The area surrounding the nest area, the “post-fledgling area,” is generally

characterized as old growth and mature forest with at least 50% canopy cover.

321. The EA states that the Project area could support two goshawk territories.

322. However, there are no actual goshawk territories in the Project area.

323. The goshawk is ranked "S3" in Montana, which indicates that the goshawk is potentially at risk because of limited and/or declining numbers, range, and/or habitat.

324. As noted above, the most recent systematic goshawk nest survey across Forest Service Region One failed to locate a single active goshawk nest in the Swan Valley between 2000-2005.

325. Citing documents from 1997, 1998, and 2006, the Forest Service asserts that "existing demographic data are inadequate to determine goshawk population trend."

326. The agency also asserts that "No population estimates are really available for the forest or the Region 1."

327. The Forest Service bases its goshawk viability conclusions in part on a premise that "[c]urrent forest plan direction to maintain, restore, and recruit old growth forest to an amount that is within the HRV, and to protect riparian areas, is expected to continue to provide adequate amounts of nesting

habitat.” It also asserts that “[h]abitat in [Forest Service Region One] is abundant and well distributed where it occurs naturally, and more forest, and therefore nesting habitat, exists on today’s landscape than what occurred historically.”

328. The Forest Service does not explain the contradiction between these optimistic statements and the reality that the Swan sub-basin is below the historic range of variability for old growth forest at every elevation.
329. Although it is not a management indicator species, the pine marten is designated by Amendment 21 as another old growth associated species on the Forest.
330. Martens select moist and structurally complex habitats during the winter. Their winter habitat selection is for forest with high canopy cover, large live trees, large deadfall, and abundant vegetation in the understory.
331. Martens seldom use landscapes heavily impacted by logging.
332. Winter track surveys along transects from 1999 to 2009 in the Swan Valley indicate that “Pine marten track detections have been on a steep and alarming decline since this study started. Both the track detection probability and the frequency of track detections per mile have gone from relatively high to very low.”

333. The Project area provides a stronghold for the declining marten population in the Swan Valley.
334. On a state-wide basis, as of 2009, the pine marten population trend was either declining or stable. This is the conclusion in the most recent available Montana Fish, Wildlife, and Parks furbearer population report.
335. The conclusion by Northwest Connections, the non-governmental organization that conducts annual carnivore track surveys in the Swan Valley, is that “[a] concerted effort to protect and restore forest habitats for lynx, fisher, and marten is needed.”
336. The Forest’s 2008-2010 monitoring report document a significant increase in logging on the Forest between 2000-2010, most of which was clearcutting.
337. Despite all of the evidence discussed above, the Forest Service concludes that “[o]ld growth habitat is quite diverse, well-distributed, and widespread across the [Forest], and [Forest] Plan direction works strongly towards the conservation of species using old growth habitats. There appears to be little risk of population loss of old growth associated species due to forest management activities and the [Forest] is expected to maintain viable populations.”

AQUATIC SPECIES

338. The bull trout is an ESA-listed fish species that may be present in the Project area.
339. Bull trout are known to disperse widely for foraging and essentially every stream in the Swan River Valley has occasional observations of bull trout.
340. Bull trout are known to occur in Lindbergh Lake.
341. Bull trout critical habitat is present in the Project area.
342. Lindbergh Lake and the Swan River are bull trout critical habitat.
343. The Project will result in sedimentation to bull trout habitat during implementation.
344. Inland Native Fish Strategy Selected Interim Direction (INFISH) has become the standard for management of riparian areas since it was originally adopted in 1995. The intent of this strategy is to lay out management guidelines to maintain “Riparian Goals” in Riparian Habitat Conservation Areas (RHCAs) that protect water quality, stream channel integrity, sediment regime and other aquatic characteristics.
345. INFISH standard Timber Management (TM) 1 states “Prohibit timber harvest, including fuelwood cutting, in Riparian Habitat Conservation Areas . . .” The only two exceptions are for salvage or fuelwood cutting after catastrophic natural events and “where needed to attain Riparian

Management Objectives.”

346. The Project does not propose activities following a catastrophic natural event.

347. The Forest Service states that the Project “would have no impact on Riparian Management Objectives.”

348. The TM-1 prohibition was not disclosed to the public in the EA and the Project authorizes timber harvest in RHCAs.

349. The critical habitat rule for bull trout states that upland management practices such as road construction, use, and maintenance or timber harvest can affect aquatic habitat for bull trout.

350. Bull trout were less likely to use highly roaded basins for spawning and rearing and, if present in such areas, were likely to be at lower population levels. The Project’s activities can directly and immediately threaten the integrity of the essential physical or biological features of bull trout critical habitat.

351. The critical habitat rule for bull trout states that “[a]ctivities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat PCEs and therefore result in consultation for the bull trout include, but are not limited to: . . . Alterations to the designated stream segments and water bodies . . . Possible actions include vegetation manipulation, timber harvest,

road construction and maintenance . . . [and] Detrimental altering of the channel morphology of any of the designated stream segments. . . . For example, timber harvest activities and associated road construction in upland areas can lead to changes in channel morphology by altering sediment production, debris loading, and peak flows.”

352. Water howellia is an ESA-listed plant species that is present in the Project area.

353. 70% of the world’s population of water howellia is found in the Swan Valley. The Swan Valley meta-population is the only location for water howellia in Montana

354. There are 81 known water howellia occurrences in the Project area and 48 occurrences in close proximity to proposed units or haul routes.

355. In the entire Swan Valley, there are 126 occupied water howellia ponds.

356. If the Swan Valley population of 126 occupied ponds represents 70% of the world’s population, the world’s population is 180 ponds. Thus by potentially affected 48-81 occupied ponds in the Project area, the Project may affect 32-45% of the world’s population of water howellia.

357. The Forest Service concedes that “[p]otential effects to a single pond occurrence or potential habitat may have cumulative effects on the entire

meta-population and potentially affect species viability.”

358. Twenty-eight occupied water howellia ponds occur within proposed treatment areas.
359. Twenty-two of those occupied water howellia ponds and an additional 19 occupied water howellia ponds occur within 300 feet from haul routes.
360. The Forest Service states that “[a]ctivities are not planned in water howellia populations; however, the Glacier Loon project could indirectly affect these sites.”
361. There are 28 unoccupied ponds that are suitable habitat for water howellia in the Project area, of which 16 are in proposed treatment areas.
362. The Forest Service states that “there may be indirect effects to these [unoccupied but suitable] ponds.”
363. Logging and associated road building are of concern when attempting to assure survival of water howellia.
364. Water howellia-occupied wetlands are unique, glacially formed pothole basins that are sustained by a localized ground water flow system which exhibits complex ground water-surface water interaction.
365. Snow melt runoff into the wetland and infiltration in the watershed basin recharges the localized ground water flow system for each wetland. The

localized ground water flow system mitigates wetland stage and water quality in the wetlands until mid-August/early September when the wetlands partially or fully desiccate.

366. The dominant hydrological controls in these wetland systems are ground water inflow, surface water outflow (when present), and plant transpiration
367. Modeling that simulated the removal of trees in the micro-watershed basin found that micro-basin water yield increased. The increase in water yield is caused by different factors, primarily the loss of trees decreases soil-water depletion from plant transpirational demands .
368. Although occupied wetlands are surface water bodies, the localized ground water flow systems sustain them until late July and August.
369. A number of adverse impacts may occur if the watershed basin is managed in such a way that all trees are removed. First, opening the canopy allows for more solar and wind energy to reach the ground, resulting in snow melt events that occur earlier in the spring, in turn resulting in an increased amount of overland flow. Even though the wetland would receive more water from overland flow, the localized ground water system will not have the same amount of recharge due to a suspected reduction in melt water infiltration.
370. The lack of canopy would also result in an increase in direct evaporation of

wetland surface water. These additional water losses would most likely decrease available recharge to the localized ground water flow system as potential recharge is evaporated or is lost from the system by overland flow.

371. A temporary reduction in wetland volume in late summer and early fall would likely occur. The wetland would most likely dessicate at an earlier time than observed.
372. Thus, harvesting in the surrounding uplands of water howellia ponds may impair natural vegetation recovery and alter the hydrologic processes of occupied and unoccupied howellia ponds within proximity to treatment units.
373. Changes to the hydrologic processes of ponds may result in both a decrease and increase in pond inundation levels.
374. Additional disturbance of surrounding upland trees may decrease evapotranspiration of the surrounding upland trees and may result in increased inundation of ponds from runoff.
375. Also, increased canopy openings near ponds may increase evaporation of ponds, effectively reducing water levels earlier in the growing season.
376. Reproductive success of water howellia is directly linked with the fluctuation of water levels both annually and from year to year.
377. Water howellia produce seeds underwater early in the growing season when

ponds fill up and also produce seeds later in the season via above-water flowers.

378. Water howellia requires annual drying of ponds for fall germination on exposed pond substrate; however, repeated annual premature drying of ponds may reduce the ability for water howellia to replenish the seed bank from year to year.
379. In addition, prolonged inundation of ponds in a given year may reduce fall germination and result in reduced seed bank replenishment.
380. Harvest activities may increase ground water and sediment flow in some of the micro-catchments containing water howellia.
381. This may have effects on seed germination if enough sediment were to accumulate and deeply bury the existing seed bank.
382. Increased siltation may also result in shifts in the pond's vegetation composition, supporting emergent vegetation in place of submergent vegetation types.
383. The Forest Service proposes that buffers will "mitigate these potential effects" and "reduce indirect effects"
384. Buffers might be able to address potential sedimentation but not the more important concern of water yield fluctuations.

385. The Project will cause an increase in annual water yield in the Swan River Valley Bottom Area and the Upper Swan River Watershed.
386. Comments on the Project from Missoula County state: “ Management activities in these areas have the potential to affect the existing plants and potential recruitment habitat of water howellia. We do not believe that the benefits of timber harvest in this area outweigh the potential negative impacts on the water howellia at this time.”
387. Despite the undisputed presence of these bull trout, bull trout critical habitat, and water howellia, and the fact that logging and road management activities are types of actions that may affect these species and critical habitat, the Forest Service concluded that the Project would have “no effect” on bull trout, bull trout critical habitat, or water howellia.
388. Due to its “no effect,” conclusion, the Forest Service did not engage in ESA consultation with FWS regarding the impact of the Project on water howellia, bull trout, and bull trout critical habitat.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

The Project and the agencies’ analyses, actions ,and omissions regarding the grizzly bear violate the ESA, NFMA, NEPA, and the APA.

389. All previous paragraphs are incorporated by reference.
390. The agencies' conclusion that the Project will not adversely affect the grizzly bear is arbitrary and capricious. An adverse effect will certainly occur if there is "take." The most recent A19 biological opinion/incidental take statement finds that take, in the form of harm, occurs if road density exceeds the 19/19/68 thresholds. Road density exceeds this threshold in the Project area before, during, and after Project implementation. Thus, there is take. Thus, there is an adverse effect. There are also numerous other indications of adverse effects from the Project, as discussed above, including but not limited to a decrease in forage, a decrease in hiding cover, a decrease in habitat security, and an increase in the potential for displacement.
391. In fact, the Forest Service concedes the Project will have "short-term negative effects" to grizzly bears.
392. Moreover, the Project also violates the take threshold in the 2005 A19 biological opinion/incidental take statement that prohibits any increase in road density. Both ORD and TRD will increase during Project implementation.
393. The Forest Service does not have a take permit for the take in this Project area.
394. The Forest Service fails to demonstrate compliance with Amendment 19 itself

because the subunits in the Project area now have over 75% NFS lands but do not comply with 19/19/68. The EA completely fails to address this issue, and thus failed to take a hard look at it. Moreover, there has been a net increase in TRD, and a net decrease in core, in the Glacier Loon subunit.

Additionally, there will be another net increase in density after Project implementation until roads slated for decommissioning are fully revegetated.

395. The Forest Service also fails to demonstrate compliance with other Forest Plan provisions such as the hiding cover standard and the IGBC Guidelines, including but not limited to the compatible use standard.
396. The Forest Service fails to demonstrate that the Project complies with the SVGBCA, including but not limited to the ORD limit, the ORD goal, the provision prohibiting more than 4 active subunits, the provision restricting how many subunits may be active at a time during each BMU, the no increase in ORD and TRD requirement, and the requirement requiring analysis of hiding cover in each subunit across all ownerships.
397. Accordingly, the Forest Service's failures to comply/demonstrate compliance with the Forest Plan violate NFMA and NEPA; the EA fails to take a hard look at grizzly bear issues in violation of NEPA; the Forest Service's representation that it is complying with the SVGBCA and/or failure to

comply with the SVGBCA violates NEPA and/or NFMA; the agencies' conclusion that the Project is not likely to adversely affect grizzly bears violates the ESA; and the lack of an incidental take permit for this Project violates the ESA.

SECOND CLAIM FOR RELIEF

The Project and the agencies' analyses, actions ,and omissions regarding the wolverine violate the ESA and the APA

398. All previous paragraphs are incorporated by reference.
399. Wolverines are proposed for listing under the ESA and will be listed before or during Project activities.
400. Wolverines may be present in the Project area and the Project may affect them.
401. The Final Rule for ESA Section 7 consultation regulations requires that the action agency address proposed species in a biological assessment:

A biological assessment contains information concerning listed or proposed species or designated or proposed critical habitat that may be present in the action area and an evaluation of any potential effects of the action on such species and habitat. A biological assessment should be used in determining whether formal consultation or a conference is required.

51 Fed. Reg. 19940 (June 3, 1996)(emphasis added).

402. The Forest Service prepared a biological assessment for the Project for terrestrial wildlife species (lynx and grizzly bear) but did not include the wolverine in the biological assessment for the Project.
403. The agencies' failure to include the wolverine in the biological assessment for the Project violates the ESA and APA and is arbitrary and capricious.

THIRD CLAIM FOR RELIEF

The Project and the agencies' analyses, actions, and omissions regarding lynx and lynx critical habitat violate the ESA, NFMA, NEPA, and the APA.

404. All previous paragraphs are incorporated by reference.
405. During an ESA consultation, if the agencies agree that an activity is likely to adversely affect an ESA-listed species, FWS must prepare a biological opinion to ensure that the activity will not jeopardize the species.
406. A biological opinion must use the best available science at the time of consultation for the activity.
407. The agencies agree that the Project is likely to adversely affect lynx and lynx critical habitat.
408. FWS did not prepare a biological opinion for the Project to ensure that the Project will not jeopardize lynx.
409. FWS did not prepare an incidental take statement for lynx for the Project.

410. Instead of preparing a biological opinion and incidental take statement for the Project, the agencies rely on a six year old biological opinion for the regional NRLMD, which was amended to the Forest Plan in 2007. This regional biological opinion for a different activity cannot and does not adequately substitute for a biological opinion for this Project.
411. In fact, the NRLMD biological opinion states: “site specific consultation (second tier) is required for actions that may affect listed species, including those conducted under the exceptions and exemptions.”
412. It also states: “Second tier biological opinions would be issued as appropriate, where proposed actions would result in adverse effects to lynx.”
413. The agencies’ failure to complete a biological opinion/incidental take statement for lynx before authorizing and implementing the Project violates the ESA and is arbitrary and capricious. The broad-scale regional biological opinion relied upon does not address all the relevant factors for the Project and is not based on the best available science, including the declining lynx population in the Seeley area, the importance of this Project area as one of the three best remaining areas that support lynx in the Swan , and the thousands of acres of recent, ongoing, and planned lynx habitat elimination in the Seeley/Swan.

414. Accordingly, the Forest Service does not have an adequate take permit that covers the Project's incidental take of lynx.
415. Moreover, the agencies' biological assessment and biological opinion addressing lynx critical habitat in the Project area are also unlawful because they fail to address the impact of the Project on lynx recovery.
416. Additionally, neither the EA nor the Biological Assessment for lynx addresses whether the Project complies with Standard ALL S1 from the NRLMD.
417. Projects involving "fuels management" in the "wildland urban interface" are not exempt from compliance with Standard ALL S1.
418. The EA also fails to adequately assess the cumulative effects of 33,000 acres of recently eliminated lynx habitat in the Forest, in addition to ongoing, planned, and foreseeable actions that will continue to eliminate lynx habitat in the Swan Valley, which is one of the most important areas for lynx recovery and survival. The cumulative impacts of this logging on lynx survival, viability, and recovery are not adequately addressed in the EA.
419. The agencies' failures to adequately address these issues violates NFMA, NEPA, APA and ESA.

FOURTH CLAIM FOR RELIEF

The Project and the Forest Service's analyses, actions, and omissions regarding elk violate NFMA, NEPA, and the APA

420. All previous paragraphs are incorporated by reference.
421. The record indicates a declining elk population, which correlates to increased logging on the Forest. The EA fails to disclose this correlation.
422. The EA does not disclose the quantity and quality of habitat necessary for viable elk populations. Instead the EA discusses standards developed for grizzly bears.
423. The EA's hiding cover analysis fails to include private lands and fails to disclose how much hiding cover is necessary for elk. There is also no map of elk hiding cover provided in the EA. It is not clear how the agency defined or determined elk hiding cover.
424. The EA's security analysis does not apply the definition and application guidelines developed for security areas for elk from Hillis et al (1991), which is the best available science. There is also no map of elk security areas provided in the EA.
425. The EA does not address elk habitat effectiveness, as discussed in Christensen et al (1993), which is the best available science.

426. The EA fails to adequately address the impact on elk from logging road use during Project implementation, including all administrative and contractor use.
427. The EA fails to adequately address the cumulative habitat conditions perceived by elk, including cover and roads on private lands.
428. The EA fails to use the proper analysis scale for elk.
429. The EA also fails to disclose and demonstrate compliance with the Forest Plan provision restricting open road density to 1.0 mi/sq. mi. for elk in moist areas in summer habitat. The record indicates that the Project will violate this standard before, during, and after Project implementation.
430. Accordingly, the EA fails to take a hard look at elk habitat needs, fails to ensure viability and demonstrate Forest Plan compliance, and fails to address the best available science in violation of NEPA, NFMA, and the APA.

FIFTH CLAIM FOR RELIEF

The Project and the Forest Service's analyses, actions, and omissions regarding old growth management indicator species, old growth forest, and old growth species viability violate NFMA, NEPA, and the APA

431. All previous paragraphs are incorporated by reference.
432. The Forest Service is failing to comply with its Forest Plan direction that is

intended to ensure old growth species viability by conserving a certain amount of old growth habitat, i.e. their habitat proxy.

433. The Swan sub-basin does not have a sufficient amount of old growth habitat to meet the Forest Plan standard, and the Project does not designate recruitment old growth to meet that standard.
434. Surveys for old growth management indicator species (fisher, lynx, goshawk) indicate declining and potentially extirpated populations in the Project area and Swan Valley.
435. Other old growth associated species, such as the pine marten, are dramatically declining in the Swan Valley.
436. The Project allows the degradation of existing old growth stands, and allows clearcutting of mid-seral stands that could be recruitment old growth habitat.
437. Additionally, the Forest Service admits that the Project will remove suitable habitat for all of its old growth management indicator species in the area: lynx, fishers, and goshawks.
438. The Forest Service is failing to comply with its Forest Plan and failing to ensure old growth species viability in violation of NFMA. The agency's analysis of this issue in the EA fails to take a hard look, is misleading, and fails to present a full and fair discussion that honestly and openly informs the

public of the status of old growth species and habitat in the Swan Valley.

SIXTH CLAIM FOR RELIEF

The Forest Service's "no effect" conclusions for bull trout, bull trout critical habitat, and water howellia are arbitrary and capricious and violate the ESA, NFMA, NEPA, and the APA.

439. All previous paragraphs are incorporated by reference.
440. Water howellia, bull trout, and bull trout critical habitat are present in the Project area.
441. The types of activities authorized by the Project are the types of activities that may affect water howellia, bull trout, and bull trout critical habitat.
442. Any possible effect, no matter how small, and no matter whether the effect is beneficial or adverse, requires a "may affect" conclusion.
443. The Forest Service's "no effect" conclusion was arbitrary and capricious and violates the APA, ESA, NFMA, and NEPA. The agency must consult with FWS regarding these species.
444. Additionally, the logging in a RHCA violates INFISH and thus violates NFMA. In violation of NEPA, the agency did not disclose and address the INFISH TM-1 logging prohibition in the EA.

SEVENTH CLAIM FOR RELIEF

The Forest Service's failure to prepare a full EIS for this Project violates NEPA.

445. All previous paragraphs are incorporated by reference.
446. The Project falls within numerous regulatory factors that establish when an action is significant and thus must be analyzed under a full EIS.
447. For example, the Project will affect multiple ESA-listed species and will cause an admittedly adverse effect to lynx and lynx critical habitat in one of the most important areas of lynx habitat in the Swan Valley.
448. The Project area occurs within a unique area, including wetlands and ecologically critical areas. The Project area contains almost half of the world's water howellia population. Additionally, the Project area contains ecologically critical habitat for both lynx and bull trout.
449. The Project will have cumulative effects. The Forest Service concedes that "the proposed activities in combination with current and reasonably foreseeable vegetation management activities within the Glacier Loon area would contribute to negative cumulative effects to Threatened and Endangered wildlife species."
450. The Project will allow unpermitted take of ESA-listed species in the Project area, which is a violation of federal law.

451. The Forest Service's conclusion that the Project would have no significant impact is arbitrary and capricious, an abuse of discretion, and in violation of NEPA. The agency must prepare a full EIS for the Project.

VIII. RELIEF REQUESTED

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

- A. Declare that the Project violates the law;
- B. Enjoin implementation of the Project;
- C. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees under the ESA and/or under EAJA; and
- D. Grant Plaintiffs any such further relief as may be just, proper, and equitable.

Respectfully submitted this 24th Day of June, 2013.

/s/ Rebecca K. Smith

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