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Attorney for Plaintiffs

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

ALLIANCE FOR THE WILD ROCKIES,)
NATIVE ECOSYSTEMS COUNCIL, and)
COUNCIL ON WILDLIFE AND FISH,)

Plaintiffs,)

vs.)

MATTHEW JEDRA, in his official capacity as)
Forest Supervisor for the Custer Gallatin National)
Forest; AMY HAAS, in her official capacity as)
Beartooth District Ranger; UNITED STATES)
FOREST SERVICE, an agency of the U.S.)
Department of Agriculture; and U.S. FISH &)
WILDLIFE SERVICE, an agency of the U.S.)
Department of the Interior,)

Defendants.)

Cause: CV-26-51-BU-TJC
COMPLAINT

Plaintiffs Alliance for the Wild Rockies, Native Ecosystems Council, and Council on Wildlife and Fish allege as follows:

INTRODUCTION

1. On April 3, 2026, the U.S. Forest Service approved the Burnt Mountain Project, which authorizes logging, burning, and road building on 1,386 acres of National Forest lands in the Nichols, Willow, and West Fork Rock Creek watersheds immediately west of Red Lodge, Montana, and the Red Lodge Creek watershed south of Luther, on the Beartooth Ranger District of the Custer Gallatin National Forest.
2. The Burnt Mountain Project is the third iteration of this project, formerly known as the Greater Red Lodge Area Project.
3. Also on April 3, 2026, the Forest Service approved the Red Lodge Mountain Fuels Project (“RLM Project”), which authorizes logging, burning, and road building on 1,822 acres in the Nichols, Willow, and West Fork Rock Creek watersheds.
4. Plaintiffs attest that the decisions approving the challenged authorizations, analyses, and lack thereof are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with the law.
5. Defendants’ actions and/or omissions in authorizing the Burnt Mountain Project and RLM Project (collectively, the “Projects”) violate the Healthy Forests

Restoration Act (“HFRA”), 16 U.S.C. § 6501 *et seq.*; the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321, *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.*

6. Plaintiffs request that the Court set aside the Burnt Mountain Project and RLM Project decisions pursuant to 5 U.S.C. § 706(2)(a) and enjoin their implementation.

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

JURISDICTION & VENUE

8. 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.

9. An actual controversy exists between Plaintiffs and Defendants. Plaintiffs’ members have been at the forefront of conservation efforts in the Greater Yellowstone Ecosystem for decades, and have fought against all odds, including immense political pressure and the vast resources of the federal government, to ensure the ecological integrity of the region. Plaintiffs’ members live in, use, and

enjoy the area affected by the Burnt Mountain and RLM Project 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.

10. The aesthetic, recreational, scientific, spiritual, and educational interests of Plaintiffs' members have been and will be adversely affected and irreparably injured if Defendants fail to comply with the law. These are actual, concrete injuries caused by Defendants' failure to comply with mandatory duties under HFRA, NEPA, NFMA, 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.

11. Plaintiffs exhausted all available administrative remedies. Plaintiffs submitted timely written comments on the Forest Plan and both Projects.

12. The Court has jurisdiction to review Plaintiffs' APA claims. Defendants' issuance of the Burnt Mountain Project Finding of Applicability and No Extraordinary Circumstances and RLM Project Finding of Applicability and No Extraordinary Circumstances were final administrative actions of the U.S. Forest Service.

13. Venue is proper in this Court under 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e).

PARTIES

14. Plaintiff Alliance for the Wild Rockies is a tax-exempt, 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, including members living in the area of the Projects. Members of the Alliance work as guides, outfitters, and researchers, who observe, enjoy, and appreciate Montana's native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future. Alliance's members' professional and recreational activities are directly affected by Defendants' failure to perform their lawful duties under HFRA, NEPA, NFMA, ESA, and the APA. 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. Native Ecosystems Council brings this action on its own behalf and on behalf of its adversely affected members.

16. Plaintiff Council on Wildlife and Fish (the "Council") is a public interest organization (tax-exempt, non-profit) formed to ensure the maintenance of

biological diversity and the ecological integrity of all natural ecosystems through the enforcement and administration of laws such as the HFRA, NEPA, NFMA, ESA, and all other laws that require the recognition, discussion and conservation of such ecosystems and protect the organic or inorganic components that comprise such natural ecosystems. The Council's registered office is in Bozeman, Montana. The Council's members are in Montana. They enjoy and appreciate indigenous wildlife, fish, spiritual connection and renewal, clean water, and high-quality aquatic and terrestrial habitat. Council members expect to continue these practices well into the future, including in and around Carbon County. The Council's members' professional, spiritual and recreational activities are directly affected by Defendants' failure to perform their lawful duty to protect and conserve these ecosystems as set forth below. Council on Wildlife and Fish brings this action on its own behalf, on behalf of its adversely affected members and on behalf of numerous, voiceless life forms eminently threatened with displacement, injury, and/or death.

17. Defendant Matthew Jedra is named in his official capacity as the Forest Supervisor for the Custer Gallatin National Forest. As Forest Supervisor, Mr. Jedra is the federal official responsible for all Forest Service officials' actions and/or inactions challenged in this case.

18. Defendant Amy Haas is named in her official capacity as the Beartooth District Ranger. Ms. Haas signed the Findings of Applicability and No Extraordinary Circumstances for the Burnt Mountain and RLM Projects.

19. Defendant U.S. Forest Service is an administrative agency of the United States government within the U.S. Department of Agriculture and is responsible for the lawful management of our national forests, including the Custer Gallatin National Forest.

20. Defendant U.S. Fish and Wildlife Service is an agency of the United States government within the Department of Interior responsible for management of endangered and threatened species.

21. Plaintiffs have exhausted all available administrative remedies. Plaintiffs timely submitted written comments on each Project and the Forest Plan.

FACTUAL ALLEGATIONS

The Affected Area

22. Both Projects are located in the Beartooth Mountains in the Greater Yellowstone Area, in a mountainous region of south-central Montana, in Carbon County.

23. The area is highly valued by people living, visiting, and recreating in and around the area.

24. The town of Red Lodge is west of some of the logging and burning units for

both Projects.

25. Red Lodge has become a tourist destination due to its outdoor recreation opportunities, including its proximity to ample recreation trails in the Custer Gallatin National Forest, the Beartooth Highway, and Yellowstone National Park.

26. In 2024, tourism injected \$88,408,000 into the Carbon County economy.

27. The RLM Project and Burnt Mountain South Unit encompass Nichols Creek, Willow Creek, and West Fork Rock Creek watersheds west of the town of Red Lodge.

28. The Willow Creek project units surround the Palisades Campground and Palisades and Willow Creek trails, which are some of the most popular hiking and mountain biking trails for locals and visitors in the area. The Red Lodge Mountain ski area is in the northwest corner of the RLM Project area.

29. The Nichols Creek project units surround another heavily-used recreation area, the Upper and Lower Nichols Creek trails.

30. The West Fork Rock Creek project units surround the Timbercrest Girl Scout Camp, Wild Bill Lake recreation area, and numerous trailheads and campgrounds providing recreators access to the Beartooth mountains and the Beartooth-Absaroka Wilderness.

31. The Burnt Mountain North Unit encompasses the West Red Lodge Creek watershed south of the town of Luther, about 11 miles as the crow flies from Red

Lodge and a 19-mile, 30-minute drive.

32. Though less popular for recreation, West Red Lodge Creek also offers access to the Beartooth-Absaroka Wilderness.

33. The Burnt Mountain and RLM Project areas provide habitat for lynx, grizzly bears, moose, elk, wolverines, migratory birds, and other wildlife.

34. Grizzly bears, lynx, and wolverine are listed as threatened under the Endangered Species Act. The area also contains designated critical habitat for lynx.

The Project Approval Process

Burnt Mountain Project

35. In May 2015, the Forest Service authorized logging, burning, and road-building in the West Red Lodge Creek watershed and the Willow and Nichols Creek watersheds. The project was called the Greater Red Lodge Area Project (“GRLA Project”). The Forest Service also authorized the reconstruction of the Nichols Creek Road.

36. Plaintiffs sued to enjoin both decisions. The District of Montana granted Plaintiffs a preliminary injunction in November 2016, and the Forest Supervisor withdrew the decisions in 2017. *Alliance for the Wild Rockies v. Marten*, CV-15-99-M-BMM, 2016 U.S. Dist. LEXIS 162123 (D. Mont. Nov. 22, 2016).

37. Defendants issued a Supplemental Environmental Impact Statement for the GRLA Project in December 2019 and re-authorized the GRLA Project on March 3,

2021.

38. In July 2021, Plaintiffs again sued to enjoin the GRLA Project.

39. The District of Montana enjoined the GRLA Project on summary judgment motions in August 2023. *Alliance for the Wild Rockies v. U.S. Forest Serv.*, CV 21-84-M-DLC, 2023 U.S. Dist. LEXIS 148464 (D. Mont. Aug. 23, 2023).

40. On July 9, 2025, the Forest Service initiated a Scoping Period for the Burnt Mountain Project, which again proposed logging and road-building in the Willow Creek, Nichols Creek, West Fork Rock Creek, and West Red Lodge Creek watersheds.

41. The Forest Service provided a 30-day public comment period during the scoping period, during which Plaintiffs submitted comments.

42. On April 3, 2026, the Forest Service announced it had authorized the Burnt Mountain Project through a categorical exclusion under the Healthy Forests Restoration Act's provision for "hazardous fuels reduction projects," 16 U.S.C. § 6591d.

43. Under 16 U.S.C. § 6591d, "hazardous fuels reduction projects" are excluded from the environmental review process generally required for federal actions under NEPA, so long as the project is, in relevant part, no greater than 3,000 acres and does not present any "extraordinary circumstances" warranting additional NEPA review. Any project authorized under this exemption also must be consistent with

the area's governing forest plan.

44. Extraordinary circumstances include but are not limited to the presence of federally-listed threatened or endangered species or designated critical habitat. 7 C.F.R. § 1b.3(f).

45. Pursuant to these requirements, the Forest Service issued a Finding of Applicability and No Extraordinary Circumstances authorizing the Burnt Mountain Project ("Burnt Mountain FANEC").

46. The Burnt Mountain FANEC concluded that there is no uncertainty about the effects of the Burnt Mountain Project on certain resource conditions, including but not limited to federally-listed species.

RLM Project

47. On June 15, 2022, the Forest Service announced a Scoping Period for the RLM Project, with a 30-day public comment period. Plaintiffs timely submitted comments.

48. On September 30, 2024, the Forest Service issued a Decision Memo authorizing 1,864 acres of logging, burning, and road construction in the West Fork Rock Creek and Willow Creek watersheds through HFRA's categorical exclusion for hazardous fuels reduction projects.

49. The Forest Service withdrew the Decision Memo on March 11, 2026.

50. On April 3, 2026, in this same letter announcing the Burnt Mountain Project,

the Forest Service announced that it had authorized the RLM Project, again through HFRA's categorical exclusion for hazardous fuels reduction projects.

51. The Forest Service issued a FANEC for the RLM Project, which concluded that there is no uncertainty about the effects of the RLM Project on certain resource conditions, including but not limited to federally-listed species.

Project Activities

52. The RLM Project authorizes logging, burning, and road building on 1,822 acres in the West Fork Rock Creek, Nichols Creek, and Willow Creek watersheds west of the town of Red Lodge over 15 years starting in 2026. This includes three years of "high intensity" helicopter logging.

53. The Burnt Mountain Project authorizes logging, burning, and road building on 1,386 acres in the West Fork Rock Creek, Nichols Creek, and Willow Creek watersheds—the Burnt Mountain South Unit—and in the West Red Lodge Creek watershed—the Burnt Mountain North Unit—over 10 years starting in 2026.

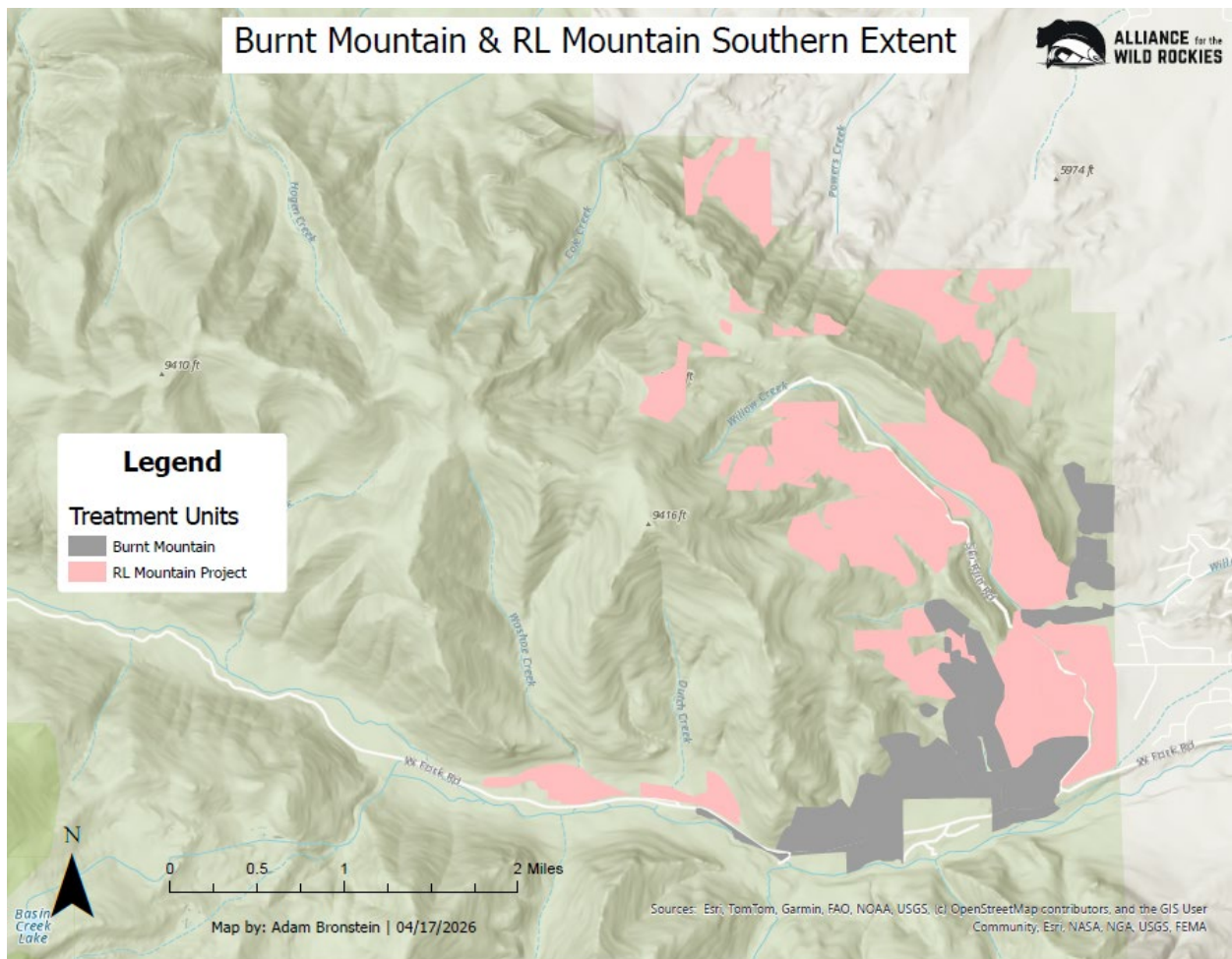
54. The Burnt Mountain and RLM Project units in Nichols Creek and in Willow Creek overlap, adjoin, and, in some cases, interlock like puzzle pieces.

55. The Burnt Mountain units in West Fork Rock Creek abut the RLM Project units in West Fork Rock Creek, connecting the West Fork Rock Creek units to the Nichols Creek units.

56. Together, the Burnt Mountain South Units and the RLM Project units

authorize: 81 acres of clear cuts; 328 acres of patch clearcut, called “modified group selection harvest”; 568 acres of commercial thinning; 1,326 acres of non-commercial thinning; 184 acres of additional “fuel breaks,” which the Forest Service describes as more extensive thinning; 235 acres of fuel break thinning inside existing project units; and 749 acres of prescribed burning inside existing units. Two hundred acres of logging in the RLM Project will be helicopter logging.

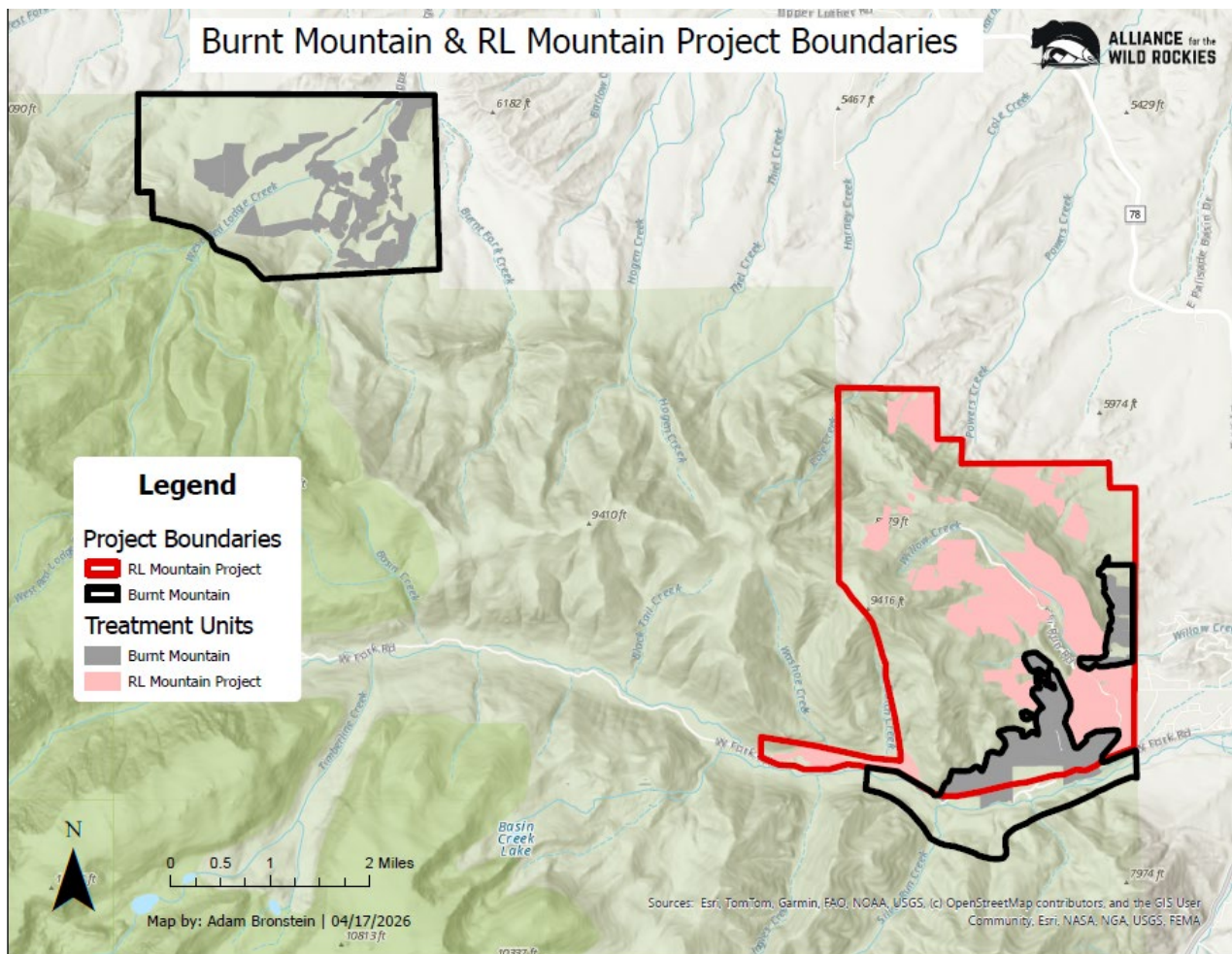
57. A map depicting the interconnectedness of the Burnt Mountain South Units and the RLM Project units is provided below:



58. The Burnt Mountain North Units in West Red Lodge Creek south of Luther include 306 acres of clear cuts, 169 acres of commercial thinning, and 249 acres of non-commercial thinning.

59. Together, the Burnt Mountain and RLM Projects authorize tree cutting on 3,211 acres.

60. A map depicting all the logging units for both Projects is provided below:



61. The RLM Project authorizes 4.2 miles of temporary roads.

62. The Burnt Mountain Project authorizes 5.3 miles of temporary roads,

including immediately adjacent to the Palisades trail.

63. The RLM Project authorizes 10 miles of road maintenance on existing roads.

64. Though the Burnt Mountain Project does not authorize road maintenance, the road maintenance authorized by the RLM Project on Nichols Creek Road provides access to the Burnt Mountain South Units in Nichols Creek.

65. Further, the RLM Project is being offered as part of the same timber sale as the Burnt Mountain Project.

66. In effect, the RLM Project and Burnt Mountain Project are a single, coordinated logging project.

67. Together, the Projects exceed HFRA's 3,000-acre limit for an agency to use a categorical exclusion for a hazardous fuels reduction project.

68. Thus, the Forest Service's use of a categorical exclusion to separately approve each Project improperly circumvented HFRA's limitations, thereby unlawfully invoking an exemption from NEPA review.

69. The Forest Service acknowledges that the Projects likely will affect a variety of environmental resources in the action area, including but not limited to wildlife, at-risk plants, water resources, and soils.

70. The RLM Project documents do not consider the cumulative effects of the Burnt Mountain Project.

71. The Burnt Mountain Project FANEC does not mention the RLM Project.

72. The Burnt Mountain Project specialist reports sometimes consider the cumulative effects of the RLM Project, and to varying degrees.

73. The At-Risk Plants report does not mention the RLM Project.

74. The Burnt Mountain Project Wildlife Specialist Report considers the cumulative effects of the RLM Project on Endangered Species Act-listed species but not other species, including migratory birds.

75. Additionally, while some of the Burnt Mountain Project specialist reports recognize that the distance between the RLM Project and Burnt Mountain Project is “zero miles” to between two and three miles, the Soils Effects Analysis claims that the Burnt Mountain Project “does not overlap in space” with the RLM Project.

76. In sum, the Burnt Mountain Project documents inconsistently characterize the relationship between the Burnt Mountain and RLM Projects despite their overlapping geography, shared implementation structure, and interconnected project units and road systems.

77. As a result, the Burnt Mountain Project documents inconsistently evaluate whether and to what extent the environmental effects of the RLM Project are relevant to the Burnt Mountain Project’s analyses of wildlife, soils, at-risk plants, and other environmental resources.

78. This inconsistent treatment of the relationship between the Projects obscures the scope and significance of their combined environmental effects, including effects

to federally-listed species and their habitat.

Grizzly Bear

79. The grizzly bear is an ESA-listed threatened species that is present on the Custer Gallatin Forest.

80. The action area for grizzly bears for the Burnt Mountain Project is the Rock Creek and Stillwater Bear Analysis Units (“BAU”).

81. The action area for grizzly bears for the RLM Project is the Rock Creek BAU.

82. FWS considers grizzly bears “may be present” in both BAUs.

83. Human activities are the primary factor impacting grizzly bears and the ability of bears to find and access foods, mates, cover, and den sites. These activities include human-caused mortality, motorized access and human intrusions into secure habitat; timber, energy, and mineral development; private land development; climate change; and the loss of important food sources. Helicopter logging, particularly the resulting noise, can displace grizzlies from secure habitat.

84. Protecting large blocks of secure habitat for grizzly bears that are free from human intrusion and influence is critical to grizzly bear conservation.

85. FWS’s Biological Opinion for the Forest Plan (“Forest Plan BiOp”) explains that female grizzly bears select for areas with greater secure habitat. Survival is also higher in such areas.

86. FWS’s Forest Plan BiOp explains, “[w]here roads isolate secure habitats,

grizzly bears are forced to travel through areas of higher mortality risk to meet their life history needs.”

87. Secure habitat for grizzly bears is generally any area large enough for a grizzly bear to forage for 24-48 hours without incurring (significant) hazards associated with roads. The average size of areas used by grizzly bears for foraging during a 24- to 48-hour period varies by study but generally includes 270 to 370 acres, 716 acres, or 2245 acres. Core security areas in the Northern Continental Divide Ecosystem (“NCDE”) were set at greater than a minimum of 2,500 acres. There is no optimal or “best” sized secure habitat area for grizzlies, but anything less than 2,500 acres entails significant risk of human-caused mortality for a grizzly bear.

88. Despite these home range sizes, the Forest Plan adopted a definition for secure habitat for grizzly bears as those areas at least 10 acres in size and at least 500 meters from an open or gated motorized access route or a recurring helicopter flight line at low elevations.

89. The Forest Plan BiOp provides no legitimate scientific basis for including areas as small as 10 acres in the calculation for secure habitat.

90. In consultation for both the Burnt Mountain and RLM Projects, the Forest Service and FWS applied the 10-acre patch size for secure habitat in analyzing the effects of the Projects on grizzly bear secure habitat.

91. Applying the 10-acre patch for secure habitat, FWS estimates that the Rock

Creek BAU contains 127,153 acres, with 83.97% of that acreage considered secure.

92. The agencies do not disclose the acreage of the Stillwater BAU, but state that 85.55% of the BAU's acreage is considered secure.

93. By including patches of lands as small as 10 acres in the secure habitat calculation, FWS overestimates the percentage of land in each BAU that is truly secure for grizzly bears, and therefore distorts the baseline for grizzly bear secure habitat.

94. Applying the 10-acre patch for secure habitat, to its analysis of the effects of the Burnt Mountain Project, the Forest Service concluded that the construction of 5.3 miles of temporary roads would cause temporary decreases in secure habitat of approximately 0.4% in the Rock Creek BAU and a 0.04% in the Stillwater BAU. The Forest Service states this would temporarily displace individual grizzly bears.

95. Applying the 10-acre patch for secure habitat to its analysis of the effects of the RLM Project, the Forest Service and FWS initially estimated that construction of 6.2 miles of temporary roads would cause a temporary decrease in secure habitat of approximately 0.48% in the Rock Creek BAU. Combined with the 0.25% temporary decrease in secure habitat caused by the 200 acres of authorized "high intensity" helicopter logging, the agencies concluded that the secure habitat would decrease by approximately 0.73% in the Rock Creek BAU. The Forest Service states this would temporarily displace individual grizzly bears. The agencies did not update

their analyses after changing the total temporary road building to 4.2 miles.

96. The Forest Service states that the Burnt Mountain and RLM Projects are expected to temporarily decrease secure habitat in the Rock Creek BAU by 1.15%.

97. Based in part on this analysis, the Forest Service concludes in the Burnt Mountain Biological Assessment that the Burnt Mountain Project was not likely to adversely affect grizzly bears because its effects are expected to be “insignificant.” FWS concurs with this analysis in the Burnt Mountain Biological Opinion (“Burnt Mountain BiOp”). The Forest Service relies on these analyses in concluding in the Burnt Mountain FANEC that there was no uncertainty as to the effects of the Project on grizzly bears.

98. Likewise, the Forest Service concludes in the RLM Biological Assessment that the RLM Project was not likely to adversely affect grizzly bears because its effects were proportionally insignificant. FWS concurred with this analysis in the RLM Project Biological Opinion (“RLM BiOp”). The Forest Service relies on these analyses in concluding in the RLM Project FANEC that there was no uncertainty as to the effects of the Project on grizzly bears.

Lynx

99. The Canada lynx is an ESA-listed threatened species that is present on the Custer Gallatin National Forest.

100. Canada lynx may be present in the Burnt Mountain and RLM Project area,

and lynx critical habitat is present in the project area. The Projects authorize logging in GYA Critical Habitat Unit 5.

101. The Forest Service concludes that the Burnt Mountain Project is likely to adversely affect lynx and its critical habitat. FWS concurs, stating that potentially significant effects to lynx and lynx critical habitat may occur due to logging on lynx foraging habitat/snowshoe hare habitat.

102. The Forest Service concludes that the RLM Project may affect but is not likely to adversely affect lynx and its critical habitat. However, FWS's RLM BiOp states that the Forest Service found that the RLM Project was likely to adversely affect lynx. Regardless, FWS again states that potentially significant effects to lynx and lynx critical habitat could occur due to logging on lynx foraging habitat/snowshoe hare habitat.

103. In accordance with the 2000 Lynx Conservation Assessment and Strategy ("LCAS"), four Lynx Analysis Units ("LAU") were identified and mapped on the Custer National Forest, all on the Beartooth Ranger District. The LCAS recommended the establishment of LAUs and their use as the appropriate scale for investigating the effects of projects on lynx. LAUs are about the size of an individual female lynx's range and contain all components of lynx habitat in all seasons. LAUs also serve as the geographic areas to assess compliance with the Northern Rockies Lynx Management Direction ("NRLMD").

104. The Burnt Mountain Project occurs within the 151,336-acre Rock Creek Lynx LAU and the 160,101-acre Rosebud LAU.

105. The RLM Project occurs within the Rock Creek LAU.

106. The NRLMD was completed in 2007 and amended 18 Forest Service Northern Region Forest Plans, including the then-Custer Forest Plan.

107. As such, the Forest Service must comply with the NRLMD to show compliance with the current Custer Gallatin Forest Plan and NFMA.

108. The NRLMD includes specific goals, objectives, standards, and guidelines that apply to “mapped lynx habitat on National Forest System land [in the Northern Rockies region] presently occupied by Canada lynx.”

109. The NRLMD defined “lynx habitat” as follows:

Lynx habitat – Lynx habitat occurs in mesic coniferous forest that experience cold, snowy winters and provide a prey base of snowshoe hare. In the northern Rockies, lynx habitat *generally occurs between 3,500 and 8,000 feet of elevation, and primarily consists of lodgepole pine, subalpine fir, and Engelmann spruce*. It may consist of cedar-hemlock in extreme northern Idaho, northeastern Washington and northwestern Montana, or of Douglas-fir on moist sites at higher elevations in central Idaho. It may also consist of cool, moist Douglas-fir, grand fir, western larch and aspen when interspersed in subalpine forests. Dry forests do not provide lynx habitat. (LCAS).

(emphasis added).

110. The NRLMD defined “lynx habitat in an unsuitable condition” as:

lynx habitat in the stand initiation structural stage where the trees are

generally less than ten to 30 years old and have not grown tall enough to protrude above the snow during winter. Stand replacing fire or certain vegetation management projects can create unsuitable conditions. Vegetation management projects that can result in unsuitable habitat include clearcuts and seed tree harvest, and sometimes shelterwood cuts and commercial thinning depending on the resulting stand composition and structure. (LCAS).

111. However, in the Custer Gallatin Forest Plan, the Forest Service adopted new definitions of lynx habitat and unsuitable lynx habitat based on an internal Forest Service document, referred to as Canfield 2016. Canfield 2016 removes lodgepole pine and all elevations below 6,000 feet from mapped lynx habitat, effectively characterizing those areas as unsuitable lynx habitat.

112. The Forest Service's Biological Assessment for the Forest Plan ("Forest Plan BA") states that, in 2017, the Custer and Gallatin forests had a total of 971,082 acres of lynx habitat. The Forest Service does not disclose the acreage of lynx habitat on the Forest based on the 2001 mapping.

113. Applying Canfield 2016 decreases lynx habitat on the Custer Gallatin Forest from 971,082 acres to 846,606 acres.

114. The loss of more than 120,000 acres of mapped lynx habitat in the Custer Gallatin Forest is a significant change. However, the Forest Service did not amend the definition of lynx habitat and/or lynx habitat in an unsuitable condition from NRLMD in adopting Canfield 2016.

115. FWS's Forest Plan BiOp restates the Forest Service's new lynx habitat

figures. However, FWS does not meaningfully analyze the biological implications of removing more than 120,000 acres from mapped lynx habitat nor compare pre- and post-remapping habitat conditions within individual LAUs.

116. Canfield 2016 was not based on lynx survey or occurrence data and is not peer-reviewed. It is not the best available science.

117. The best available science, cited by the agencies as Olson 2021, is based on 30-year lynx survey data and is peer-reviewed.

118. FWS characterizes Olson 2021 in the Forest Plan BiOp as identifying substantially less lynx habitat than Canfield 2016. However, FWS, without explanation, omits from its consideration Olson 2021's low-probability mapped habitat. FWS does not reconcile that interpretation with Olson's methods and conclusions. As shown in the map below, Olson 2021 shows the entire Custer Gallatin Forest as mapped lynx habitat.

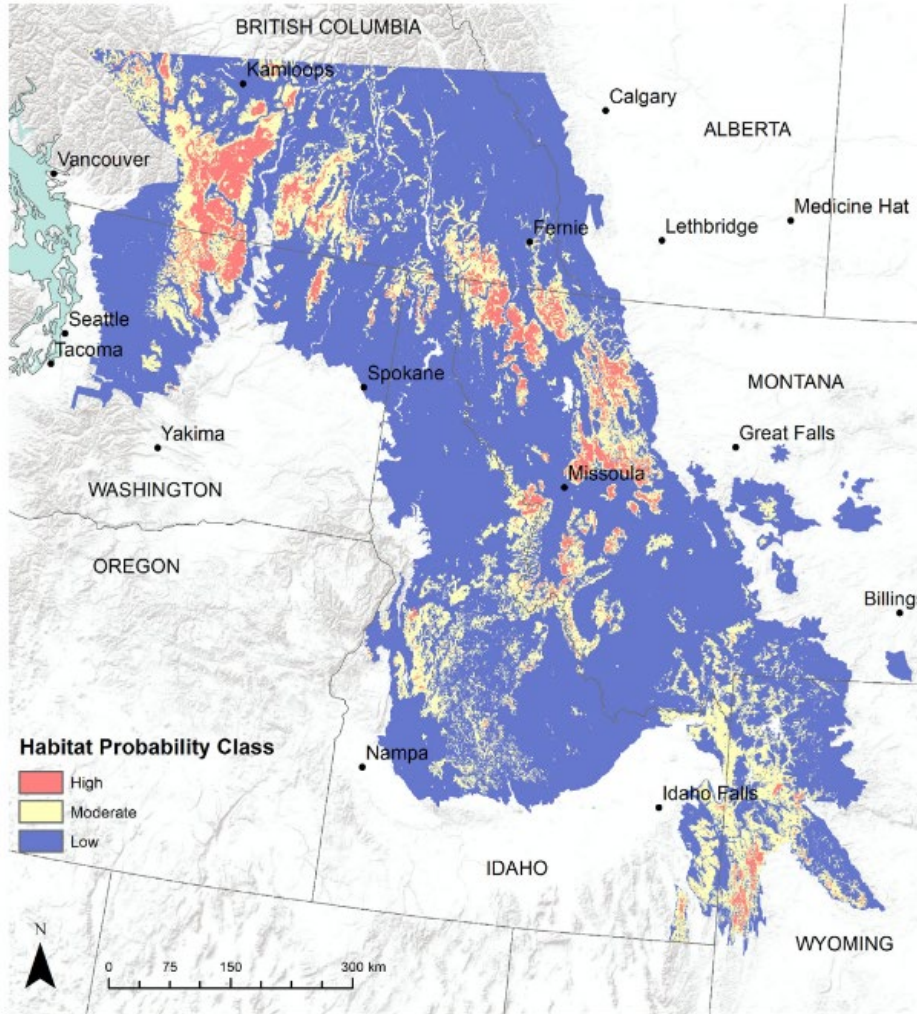


FIGURE E2 Categorical spatial predictions of Canada lynx relative habitat capability across the study region in the northwest United States, as generated by the top-performing species distribution model. Model thresholds are based on correctly assigning 85% of Canada lynx withheld GPS locations for the "High" category and 80% of independent lynx locations for the "Moderate" category. These thresholds provide a more conservative delineation of lynx habitat than the 90%/85% thresholds provided in the main paper

119. The Forest Service applies the Canfield 2016 methodology for mapping “lynx habitat” in analyzing and disclosing the impacts of the Projects on lynx.

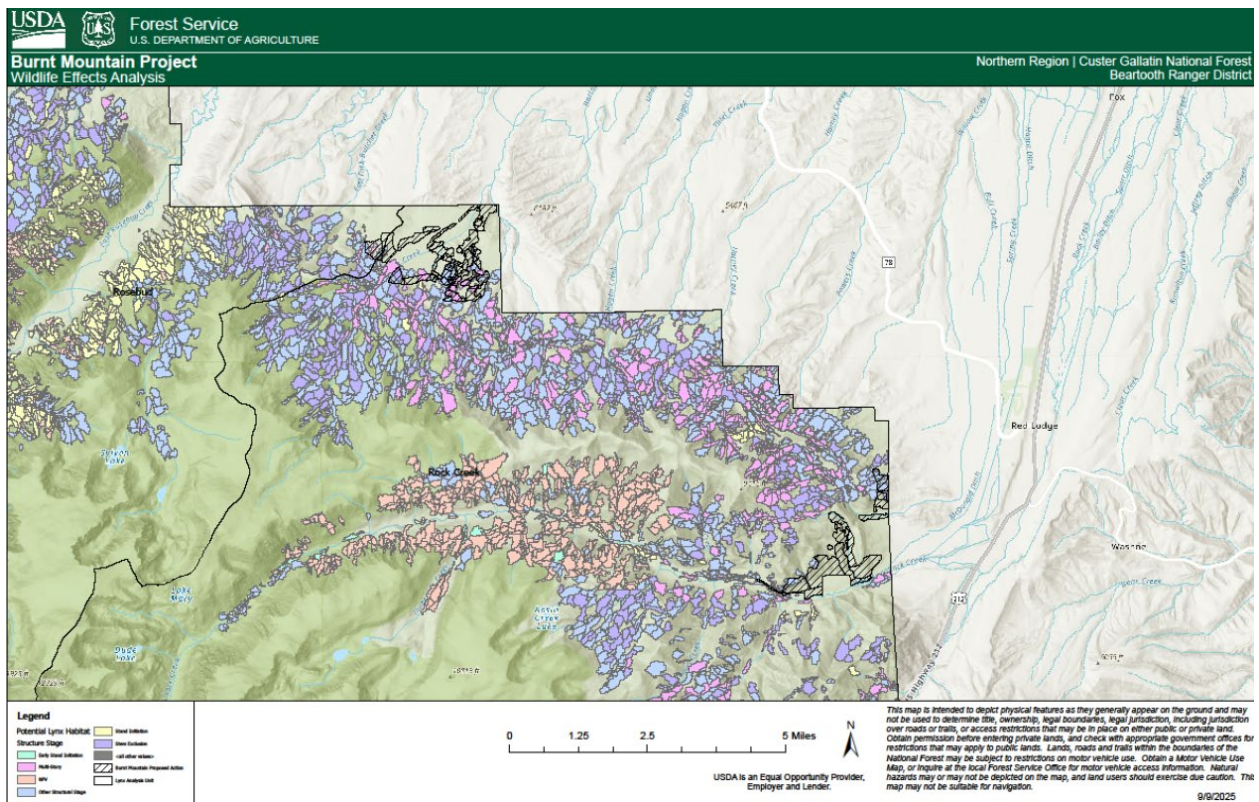
120. In the Burnt Mountain and RLM Project areas, the dominant cover type is Douglas-fir, lodgepole pine, and aspen, with smaller amounts of Engelmann spruce, ponderosa pine, and limber pine.

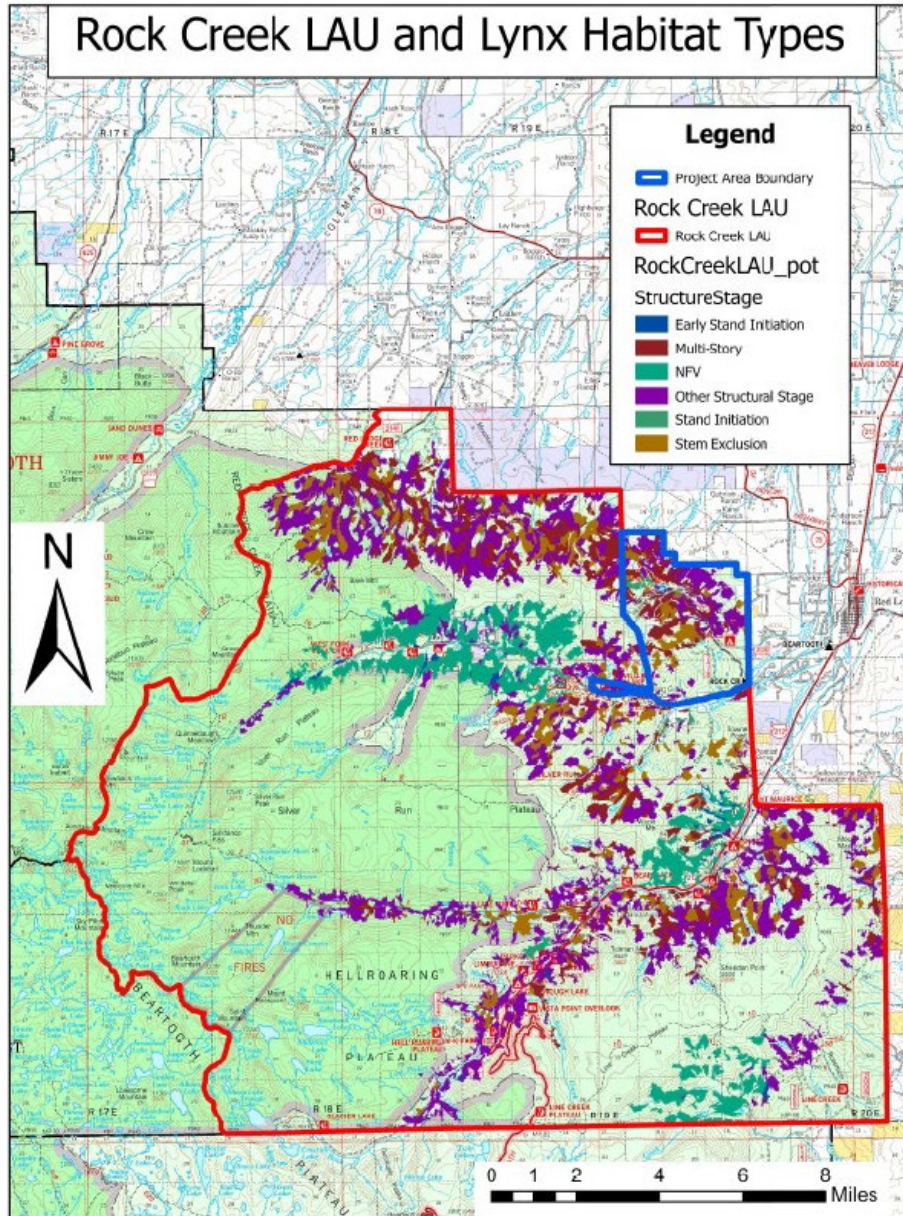
121. Applying Canfield 2016, the Forest Service states the acres of mapped lynx habitat in the Rock Creek LAU decreased from 76,262 acres under the 2001 LCAS

habitat definition to 32,561 acres—a 43,701-acre, or 57%, change.

122. None of the Burnt Mountain Project documents compare mapped lynx habitat in the Rosebud LAU under the 2001 LCAS and Canfield 2016 methodologies. To the best of Plaintiffs’ knowledge based on mapping obtained in the previous litigation, the acres of mapped lynx habitat in the Rosebud LAU decreased from 58,005 acres to 30,841 acres—a 27,164-acre, or 47%, change.

123. The resulting lynx habitat maps for the Burnt Mountain and RLM Project, respectively, are shown below.





124. The Burnt Mountain and RLM Project documents claim that these maps “more closely align with the LCAS definition than previous lynx habitat maps for the Beartooth District by eliminating dry forests.” The documents then go on to conclude that “[s]ince mapping was over inclusive, included acres that did not provide lynx habitat, and more accurate vegetation layers are now available, this

change in potential lynx habitat will have no effect on lynx.”

125. However, the Forest Service does not address in any of the documents for the Projects or the Forest Plan BA why reducing the applicable elevation band and removing lodgepole pine from the definition of lynx habitat “more closely aligns” with the LCAS and NRLMD definition. None of those documents analyze how excluding these habitat components affects lynx occupancy, habitat use, movement, or project-level habitat function. Nor did the agencies explain how removing those areas from mapped lynx habitat altered the analyses of the Projects’ effects or reduced the amount of habitat disclosed as affected by logging, thinning, burning, road construction, and associated activities. In the Biological Opinions for the Projects and the Forest Plan, FWS also fails to analyze the biological consequences of those exclusions.

126. The baseline resulting from the agencies’ application of Canfield 2016 excludes the habitat components expressly identified in LCAS and NRLMD as important to lynx and therefore may materially understate the actual amount of lynx habitat in the area of the Projects and affected by the logging and associated activities authorized by the Projects.

127. Meanwhile, FWS admits that Olson 2021 characterizes the entire Burnt Mountain Project area as lynx habitat.

128. The agencies do not discuss whether the RLM Project is mapped as lynx

habitat under Olson 2021. To the best of Plaintiffs' knowledge, Olson 2021 characterizes all the RLM Project area as lynx habitat.

129. The Forest Service's reliance on that altered habitat baseline to evaluate the Projects' effects on lynx and lynx critical habitat minimizes the disclosed impacts.

130. Additionally, without explaining these biological consequences, the Forest Service lacked a rational basis to conclude that its lynx habitat baseline accurately reflected the extent of lynx habitat affected by the Projects.

131. As FWS relied on the same altered habitat baseline in its consultation regarding the Projects' effects on lynx and lynx critical habitat, FWS's analyses and conclusions on the Projects' impacts on lynx and lynx critical habitat, including its jeopardy and adverse modification conclusions, lacked a rational basis.

132. The Forest Service relied on this altered lynx habitat baseline not only to evaluate the Projects' effects on lynx, but also to assess compliance with NRLMD standards and guidelines applicable to mapped lynx habitat.

133. Based on the new maps, the Forest Service states that the Projects will modify 1,624.88 acres in the Rock Creek LAU and 57.89 acres in the Rosebud LAU.

134. The Forest Service concludes that the Projects comply with the NRLMD and Forest Plan.

Whitebark Pine

135. Whitebark pine is a slow-growing conifer occurring at high elevations across

the western United States and Canada. It is considered long-lived, with trees documented at 500 to more than 1,000 years old. One of the tree's defining features is its needles, which are attached to the branches in clumps of five.

136. The tree is considered a keystone species, or a species that increases the biodiversity of a community, because of the critical role it plays in the lifecycle of many other species. Its seeds are rich in fat and protein, serving as a food source for a variety of wildlife, including grizzly bears, red squirrels, and Clark's nutcracker.

137. It is also considered a foundation species, as it serves to define the structure of the forests it occupies and to control ecosystem dynamics. Whitebark pine is known to stabilize soil, regulate runoff, and delay snowmelt, which reduces the potential for spring flash floods and provides higher streamflow in the summer.

138. As such, the health of the whitebark pine is central to the health of the entire ecosystem, including the Greater Yellowstone Ecosystem.

139. In 2022, FWS listed whitebark pine as threatened under the Endangered Species Act.

140. The listing decision noted that, at the time, 51% of all standing whitebark pine trees in the United States were dead, with more than half of that mortality occurring within the last two decades.

141. The listing decision identified four stressors primarily contributing to the decline in whitebark pine: climate change, white pine blister rust, mountain pine

beetle, and altered fire regimes.

142. The listing decision for whitebark pine explains that the tree is particularly vulnerable to warming temperatures caused by climate change because it is adapted to cool, high-elevation habitats, and “there is little remaining habitat” for whitebark pine to migrate to higher elevations.

143. The Forest Service estimates the Burnt Mountain Project will affect 240 acres of whitebark pine habitat. The Burnt Mountain Project authorizes commercial harvest in whitebark pine habitat, as well as post-logging burns on 132.1 acres of whitebark pine habitat.

144. As such, the Forest Service concludes that the Burnt Mountain Project is likely to adversely affect whitebark pine.

145. Specifically, the Forest Service states that “[w]hitebark pine of all life stages may be adversely affected by project activities through damage or mortality.”

146. Additionally, the Forest Service recognizes that “The level of white pine blister rust present in the action area is unknown and predicting the effects of harvest treatments [in the Burnt Mountain units] on the presence of white pine blister rust are speculative.” In other words, the Forest Service does not know how the whitebark pine’s primary threat is impacting it in the Burnt Mountain Project area, and how the Project will influence that threat.

147. In 2025, the Forest Service issued the Rangewide Whitebark Pine

Programmatic Biological Assessment for Forest Management Activities — U.S. Forest Service Regions 1, 2, 4, and 5. Its purpose was “to analyze the potential effects of the proposed federal actions (forest management in the United States Forest Service (USFS) Regions 1, 2, 4, and 5) on whitebark pine (*Pinus albicaulis*), a threatened species, pursuant to section 7(a)(2) of the ESA.” Region 1 includes the Custer Gallatin National Forest.

148. In response to this Programmatic BA, FWS issued the Rangewide Whitebark Pine Programmatic Biological Opinion for Forest Management Activities — U.S. Forest Service Regions 1, 2, 4, and 5 – California, Idaho, Montana, Nevada, and Wyoming (“Programmatic BiOp”).

149. The Programmatic BiOp explicitly states, “The extent to which stressors associated with the proposed action extends into the environment varies widely based on environmental conditions and site-specific geography.”

150. For this Project, FWS relied entirely on the Programmatic BiOp to fulfill its ESA § 7 consultation duties. In the Project BiOp, FWS states, in its entirety, “Project consultation for whitebark pine (*Pinus albicaulis*) is covered under the [Programmatic BiOp] and will not be addressed further.”

151. FWS never issued a Project-level biological opinion nor a no jeopardy determination for whitebark pine for the Burnt Mountain Project beyond mentioning that the species “will not be addressed further.” Without such a biological opinion,

FWS omits any discussion of the baseline for whitebark pine in the action area, the effects of the Burnt Mountain Project on whitebark pine, its cumulative effects (including of the RLM Project) on whitebark pine, and a jeopardy determination for the species.

152. Further, neither FWS's biological opinion nor the Forest Service's Burnt Mountain Project documents adequately analyze site-specific stressors like white pine blister rust.

153. In sum, even though the Forest Service concluded that the Burnt Mountain Project is likely to adversely affect whitebark pine, triggering formal consultation under the ESA, FWS's biological opinion does not include any site-specific analysis of whitebark pine, including a detailed discussion of the Project's environmental baseline, effects, cumulative effects, or a determination that the Project is not likely to jeopardize the continued existence of the species.

CAUSES OF ACTION

COUNT I

The Forest Service's segmentation of the Burnt Mountain and RLM Projects violates HFRA, NEPA, and the APA.

154. All previous paragraphs are incorporated by reference.

155. Under HFRA, 16 U.S.C. § 6591d, "hazardous fuels reduction projects" are excluded from the environmental review process generally required for federal actions under NEPA, so long as the project is, in relevant part, no greater than 3,000

acres and does not present any extraordinary circumstances warranting additional NEPA review.

156. Generally, NEPA requires agencies to avoid dividing a single project into multiple actions, each of which has individually insignificant effects, but together have a substantial impact.

157. Here, the Forest Service separately authorized the Burnt Mountain Project and RLM Project under HFRA's hazardous fuels reduction project exemption.

158. Both projects were authorized on the same day, announced in the same letter from Ranger Haas, are expected to begin in 2026, are expected to last at least 10 years, and will be offered as part of the same timber sale.

159. Both projects authorize logging, burning, and road-building in the Willow, Nichols, and West Fork Rock Creek watersheds west of Red Lodge. Many of the Burnt Mountain South Units and RLM Project units overlap, adjoin, and, in some cases, interlock like puzzle pieces.

160. Certain road maintenance authorized by the RLM Project provides access to the Burnt Mountain South Units.

161. In effect, the Projects are a single, coordinated landscape-scale logging project that the Forest Service has chosen to implement through two categorical exclusions.

162. Combined, the Projects authorize 3,211 acres of tree cutting.

163. This is more than the 3,000-acre limit for a categorical exclusion under 16

U.S.C. § 6591d.

164. Accordingly, the Forest Service's decision to authorize both the Burnt Mountain and RLM Fuels Projects pursuant to a categorical exclusion under 16 U.S.C. § 6591d is unlawful. This categorical exclusion is unavailable for these Projects, and the Forest Service may not rely on it to justify its failure to prepare an EA or EIS for the Projects. The agency's failure to prepare an EA or EIS for the Burnt Mountain and RLM Fuels Projects violates HFRA, NEPA, and the APA.

COUNT II

The U.S. Fish & Wildlife Service's failure to rely on the best available science and consider important factors violates the ESA and APA.

165. All previous paragraphs are incorporated by reference.

166. In analyzing the effects of an action on listed species and their critical habitat, FWS is required to rely on the best scientific and commercial data available. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(d).

167. As described, a 10-acre patch for grizzly bear secure habitat is not the best available science. *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 811 F. Supp. 3d 1206, 1225–28 (D. Mont. 2025).

168. Yet, FWS relies on the 10-acre patch size for grizzly bear secure habitat in the Forest Plan BiOp, Burnt Mountain BiOp, and the RLM Project BiOp.

169. FWS does not explain why, despite the best available science and the District of Montana court's ruling, it continues relying on the 10-acre patch size for grizzly

bear secure habitat.

170. As such, FWS's analyses and conclusions regarding the impacts of the Forest Plan, the Burnt Mountain Project, and the RLM Project on grizzly bears are arbitrary and capricious. FWS's concurrence that the Project is not likely to adversely affect grizzly bears is also thus inaccurate in further violation of the ESA.

171. As described, FWS fails to provide a reasoned explanation in the Forest Plan BiOp, Burnt Mountain BiOp, and the RLM Project BiOp for departing from the governing lynx habitat definitions and mapping in applying Canfield 2016.

172. FWS further fails to provide any meaningful details or analysis on the effects removing lodgepole pine and lower elevation lynx habitat in the Forest Plan BiOp, Burnt Mountain BiOp, and the RLM Project BiOp. FWS also fails to provide any meaningful detail or analysis on the effects of the corresponding reductions in mapped lynx habitat from the baseline protections, including those the maps produced by the Forest Service for the Burnt Mountain and RLM Projects.

173. Last, FWS fails to rely on the best available science—Olson 2021—in mapping lynx habitat in the Custer Gallatin Forest, the Burnt Mountain Project area, and the RLM Project areas. FWS fails to provide a reasoned and materially accurate explanation for not relying on such best available science.

174. Accordingly, FWS's analyses and conclusions in these Biological Opinions are arbitrary and capricious. FWS's conclusion that the Burnt Mountain Project will

not jeopardize lynx nor adversely modify its critical habitat, and its concurrence with the Forest Service that the RLM Project is not likely to adversely affect lynx, are inaccurate.

175. For these reasons, FWS's Biological Opinions for the Forest Plan, Burnt Mountain Project, and RLM Project violate the ESA.

COUNT III

FWS's failure to conduct a site-specific analysis of the Burnt Mountain Project's environmental baseline, effects, cumulative effects, and/or provide a no-jeopardy determination for whitebark pine violates the ESA and APA.

176. All previous paragraphs are incorporated by reference.

177. The ESA requires FWS to prepare a biological opinion for ESA-listed species that includes an action's environmental baseline, its effects, its cumulative effects, and a determination of whether an action is likely to jeopardize the continued existence of the listed species.

178. FWS cannot rely entirely on a programmatic biological opinion to satisfy ESA § 7. Instead, FWS must prepare a site-specific biological opinion and no-jeopardy determination for listed species. *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1068 (9th Cir. 2004); *see also* 50 C.F.R. §§ 402.02, 402.14(g). "*Gifford* does not relieve FWS entirely of its duty to analyze site-specific data in reaching its jeopardy determination." *Native Ecosystems Council v. Krueger*, 63 F. Supp. 3d 1246, 1251 (D. Mont. 2014).

179. In this case, FWS acted arbitrarily and capriciously in violation of ESA and APA by not preparing a biological opinion analyzing the Burnt Mountain Project's environmental baseline, effects, and cumulative effects on whitebark pine and by not issuing a site-specific no-jeopardy determination for whitebark pine.

180. To the extent that FWS tiered the Burnt Mountain Project BiOp to the Programmatic BiOp, that tiering is also arbitrary and capricious because the effects of the two actions are not commensurate and FWS does not provide the requisite baseline and detailed discussion of the action's impacts to whitebark pine, in violation of ESA and APA.

COUNT IV

The Forest Service incorrectly concluded that no extraordinary circumstances exist for both Projects in violation of HFRA, NEPA, and the APA.

181. All previous paragraphs are incorporated by reference.

182. The Forest Service improperly authorized both Projects under the § 6591d categorical exclusion because extraordinary circumstances exist. 16 U.S.C. § 6591d(b)(4).

183. An extraordinary circumstance exists when the significance of the environmental effects of an action are uncertain or the effect is found to be significant. 7 C.F.R. § 1b.3(f).

184. Here, the Forest Service arbitrarily and capriciously forgoes analysis of the cumulative impacts of the RLM Project on certain environmental resources while

conducting such analysis for other resources in the action area in the Burnt Mountain Project documents.

185. As to grizzly bear, the Forest Service applies the 10-acre patch size for secure habitat in analyzing the size of secure habitat in the Rock Creek BAU and Stillwater BAU. The resulting baseline overestimates the amount of secure habitat in the BAUs and therefore materially understates the effects of the Projects on grizzly bear and its secure habitat.

186. Accordingly, the Forest Service lacks a rational basis to conclude that the Projects' effects on grizzly bear are certain and insignificant.

187. As to lynx, the Forest Service applies a new definition of lynx habitat and new lynx habitat mapping protocol that dramatically reduce mapped lynx habitat without explaining its consistency with the LCAS or the NRLMD or analyzing the reduction's effect on habitat components affecting lynx.

188. The resulting baseline excludes the habitat components expressly identified in LCAS and NRLMD as important to lynx and therefore may materially understate the actual amount of lynx habitat in the area of the Projects and affected by the Projects.

189. The Forest Service's reliance on that altered habitat baseline minimizes the impacts of the Projects on lynx, as well as the acres of project activities considered exempt from substantive lynx protections.

190. Accordingly, because the Forest Service fails to analyze the effects of applying Canfield 2016 and altering the habitat baseline, the Forest Service lacks a rational basis to conclude that the Projects' effects on lynx and lynx critical habitat are certain and insignificant.

191. As to whitebark pine, the Forest Service admits that the Burnt Mountain Project is likely to adversely affect whitebark pine, and that the prevalence of white blister rust and the effects of the Burnt Mountain Project on blister rust are unknown and speculative.

192. At the same time, FWS declined to conduct any project-specific analysis of this issue, nor the species' baseline, effects, cumulative effects, and potential jeopardy for the Burnt Mountain Project.

193. In the absence of site-specific analysis addressing one of whitebark pine's primary threats, the Forest Service lacks a rational basis to conclude that the Burnt Mountain Project's effects on whitebark pine are certain and insignificant.

194. Finally, the Forest Service's segmentation of the two Projects obscured their cumulative effects, and by extension the significance of their combined environmental effects.

195. Therefore, the agency's certainty and insignificance determinations for both Projects are arbitrary and capricious. Its no extraordinary circumstances determinations are therefore also arbitrary and capricious.

196. Accordingly, the Forest Service’s decision to authorize the Burnt Mountain and RLM Fuels Projects pursuant to a categorical exclusion under 16 U.S.C. § 6591d is unlawful. This categorical exclusion is unavailable for both Projects, and the Forest Service may not rely on them to justify its failure to prepare an EA or EIS for the Projects. The agency’s failure to prepare an EA or EIS for the Burnt Mountain and RLM Fuels Projects violates HFRA, NEPA, and the APA.

COUNT V

The Forest Service’s failure to demonstrate compliance with the NRLMD violates NFMA, HFRA, and the APA.

197. All previous paragraphs are incorporated by reference.

198. NFMA, 16 U.S.C. § 1604(i), and HFRA, 16 U.S.C. § 6591d(e), require the Forest Service to demonstrate that its actions comply with the applicable Forest Plan.

199. As described, the Forest Plan and Projects rely on a lynx habitat mapping protocol that redefines lynx habitat and unsuitable lynx habitat in a way that is inconsistent with the NRLMD definition of lynx habitat.

200. Specifically, the Canfield 2016 excludes habitat components expressly identified in the LCAS and NRLMD—lodgepole pine and lower-elevation habitat—as constituting lynx habitat.

201. The Forest Service has not sought an amendment of the NRLMD in adopting these new definitions of lynx habitat and unsuitable lynx habitat and the resulting lynx habitat maps. Without an amendment, the Forest Plan does not comply with the

NRLMD, in violation of NFMA and the APA.

202. Further, because the Forest Service relies on Canfield 2016's altered habitat baseline to evaluate effects of the Projects and their compliance with lynx standards and guidelines, the Forest Service fails to demonstrate that the Projects comply with the NRLMD, in violation of NFMA, HFRA, and the APA.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request this Court:

1. Declare that the RLM Project and Burnt Mountain Project violate the law;
2. Vacate the RLM Project Finding of Applicability and No Extraordinary Circumstances and Burnt Mountain Project Finding of Applicability and No Extraordinary Circumstances;
3. Enjoin implementation of the RLM Project and Burnt Mountain Project;
4. Vacate FWS's biological opinions for the revised Forest Plan, Burnt Mountain Project, and RLM Project;
5. Remand this matter back to the Forest Service and FWS with instructions to comply with HFRA, NEPA, NFMA, and ESA as outlined herein.
6. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney's fees as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 16 U.S.C. § 1540(g), and/or any other applicable statute; and
7. Grant Plaintiffs any such further relief as may be just, proper, and equitable.

Respectfully submitted this 18th day of May, 2026.

/s/ Elizabeth M. Forster
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Attorney for Plaintiffs