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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

KETTLE RANGE CONSERVATION
GROUP,

Plaintiff,

v.

U.S. FOREST SERVICE, GLENN
CASAMASSA, Pacific Northwest
Regional Forester, U.S. Forest Service,
RODNEY SMOLDON, Forest
Supervisor, Colville National Forest,
TRAVIS FLETCHER, District Ranger,
Republic Ranger District, U.S. Forest
Service.

Defendants.

Case No. 2:21-cv-161

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

National Forest Management Act,
National Environmental Policy Act,
and Administrative Procedure Act

I. INTRODUCTION

1
2 1. Plaintiff Kettle Range Conservation Group (“KRCG” or “Plaintiff”)
3 challenges the final decision by the United States Forest Service (“Forest Service”)
4 to proceed with the Sanpoil Project (“the Project”), because of its failure to perform
5 a meaningful analysis of the environmental impacts of allowing timber harvests,
6 controlled burns, and road work within 47,956 acres (the “Project Area”) of the
7 Colville National Forest (“Colville Forest” or “Forest”). KRCG also challenges the
8 Forest Service’s final decision approving the 2019 Colville National Forest Land
9 Management Plan (“2019 Forest Plan” or “Plan”), because it fails to protect old-
10 growth trees from logging through projects such as the Sanpoil Project.

11 2. The Project Area lies in the heart of the majestic Kettle River Range, a
12 remote landscape that features mountain peaks rising to more than 7,000 feet,
13 towering forests of old-growth ponderosa pine, open sagebrush meadows, and
14 countless lakes, rivers, creeks, streams, and wetlands. The Project Area features
15 spectacular hiking trails and sections of remote wilderness, including three
16 Inventoried Roadless Areas (“Roadless Areas”) and a large portion of the Bald Snow
17 Recommended Wilderness Area.

18 3. The Project Area is also home to a wide variety of plants and animals,
19 including many species categorized as sensitive, threatened, or endangered by either
20 the federal government or the state of Washington. Packs of state endangered gray

1 wolves roam through the Project Area, where cameras have also captured images of
2 rare Canada lynx, while the Project Area also provides valuable habitat for grizzly
3 bear and wolverine. Whitebark pine trees cling to the mountains at the harshest
4 elevations, old-growth forests provide nesting habitat for the northern goshawk and
5 sensitive species of woodpecker, and lowland riparian areas support sensitive
6 species of bat, frog, and trout.



A whitetail buck pauses in a Sanpoil Project Area meadow. Photo courtesy of KRCG.

7 4. The Sanpoil Project would allow timber harvests in 8,410 acres of the
8 Project Area and prescribed burns in another 19,129 acres, which would open 10,585
9 acres for increased cattle grazing, and require the construction of 4 miles of
10 temporary roads and improvements to 8 miles of crude “non-system” roads. This
11 activity would significantly impact Forest ecosystems—transforming complex

1 forests into clear-cut wastelands, damaging stands of old-growth trees, spreading
2 invasive species, degrading riparian areas, compromising unique habitats, severing
3 vital wildlife corridors, despoiling pristine wilderness and prime recreational areas,
4 and displacing sensitive, threatened, and endangered species.

5 5. The National Environmental Policy Act (“NEPA”) requires the Forest
6 Service to take a “hard look” at such potential environmental impacts before
7 approving a project. The Forest Service did not do so here. It failed to describe or
8 analyze how the Project would affect specific areas, habitats or features within the
9 Project Area, skimmed over its potential direct impacts to sensitive, threatened, and
10 endangered species, and disregarded the potentially grave cumulative impact the
11 Project might have on the Forest ecosystem when combined with several other recent
12 and planned timber projects in the immediate area.

13 6. In designing the Project, the Forest Service also disregarded its own
14 objectives for preserving scenic quality and the integrity of existing Forest
15 structures—objectives set just a year earlier in the 2019 Forest Plan. The Project also
16 puts old-growth forests at risk, because the 2019 Forest Plan removed protections
17 for old-growth trees without proper analysis under NEPA and the National Forest
18 Management Act (“NFMA”).

19 7. The Forest Service refused to consider viable alternatives for the
20 Project that would have minimized environmental impact and preserved valuable

1 wilderness areas, because it was impermissibly focused on maximizing timber
2 revenue. It also avoided doing a full analysis of the environmental impacts of the
3 Project through an Environmental Impact Statement (“EIS”), despite the Project’s
4 broad scope, controversial nature, impact to sensitive wildlife species, and alteration
5 of unique geological and recreational areas.

6 8. Plaintiff thus challenges the Forest Service’s decision to proceed with
7 the Sanpoil Project, and its final Record of Decision (“2019 Plan ROD”) for the 2019
8 Forest Plan, due to violations of NFMA, NEPA, and the Administrative Procedure
9 Act (“APA”).

10 **II. JURISDICTION AND VENUE**

11 9. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 701-
12 706 (APA), 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory relief), 2412
13 (costs and fees) and 1346 (United States as defendant). This cause of action arises
14 under the laws of the United States, including the APA, 5 U.S.C. §§ 701-706, NEPA,
15 42 U.S.C. §§ 4321-4370m-12, NFMA, 16 U.S.C. §§ 1600-1614, and those statutes’
16 implementing regulations.

17 10. The actions challenged are final agency actions, properly subject to
18 judicial review under the APA. An actual, justiciable controversy exists between the
19 parties, and the requested relief is therefore proper under 28 U.S.C. §§ 2201-02 and
20 5 U.S.C. §§ 701-06.

1 11. Plaintiff has exhausted all available administrative remedies.

2 12. Venue is proper in this Court under 28 U.S.C. § 1391, because a
3 substantial part of the events or omissions giving rise to the claims herein occurred
4 within this judicial district.

5 13. The federal government has waived sovereign immunity in this action
6 pursuant to 5 U.S.C. § 702.

7 **III. PARTIES**

8 14. Plaintiff KETTLE RANGE CONSERVATION GROUP is a rural,
9 grassroots, non-profit environmental charity formed in 1976 in Republic,
10 Washington, with a membership of about 500 people. KRCG's mission is to defend
11 wilderness, protect biodiversity, and restore ecosystems of the upper Columbia River
12 Basin. KRCG's work includes oversight of federal management of the Okanogan
13 and Colville National Forests; promotion of dry and damaged forest restoration;
14 environmental education for citizens, business, and community groups; preservation
15 of wilderness; and protection of fish and wildlife.

16 15. KRCG is a founding board member of the Northeast Washington Forest
17 Coalition ("NEWFC"), a collaborative organization created in 2002 by groups
18 representing the interests of the timber industry, such as Vaagen Brothers Lumber,
19 and recreational and conservation interests, such as Conservation Northwest and the
20 Lands Council. NEWFC's purpose is to work with the Forest Service on projects in

1 the Colville Forest that promote ecological forest restoration, aquatic restoration,
2 wildland protection, recreation, and economic stability in the surrounding area.
3 NEWFC has cooperated with the Forest Service on a number of projects, and in
4 2009, it helped the Forest Service develop a project called Northeast Washington
5 Forest Vision 2020 (“Vision 2020”), which received funding through the
6 Collaborative Forest Landscape Recreation Act (“CFLRA”). Because NEWFC
7 operates by consensus, all board members, including KRCG, must approve any
8 comments and objections submitted to the Forest Service. The Sanpoil Project
9 marked the first time NEWFC had ever filed an objection to a Forest Service project.

10 16. KRCG brings this action on its own behalf and on behalf of its members
11 and supporters, many of whom live near the Project Area, and who visit it for
12 recreational and professional pursuits. Plaintiff’s members, supporters, and staff
13 enjoy using the Project Area for recreation, including hiking, skiing, camping,
14 backpacking, boating, fishing, and wildlife viewing. Plaintiff’s members,
15 supporters, and staff have engaged in these activities in the past and intend to do so
16 again in the near future. They gain aesthetic enjoyment from the beauty of the Project
17 Area, including the old-growth forests, subalpine meadows, and diverse riparian
18 areas that would be impacted by commercial logging, road construction, burning,
19 and increased grazing. Plaintiff’s members also enjoy observing, attempting to
20 observe, hearing, seeing evidence of, and studying many species of fish and wildlife

1 that live in the Project Area, including the many sensitive, threatened, and
2 endangered species that the Project may displace. The opportunity to enjoy the
3 beauty of the Project Area and its wildlife is of significant interest and value to
4 Plaintiff's members, supporters, and staff, and they are dedicated to ensuring the
5 long-term health of the Forest as a whole. The legal violations alleged in this
6 Complaint therefore cause direct injury to the aesthetic, conservation, recreational,
7 scientific, educational, inspirational, and wildlife preservation interests of KRCG
8 and its members, supporters, and staff.

9 17. KRCG's members, supporters, and staff have an interest in ensuring
10 that the Forest Service fulfills its obligation to manage the Forest as a whole, and the
11 Project Area specifically, in a manner that does not impair the diversity, viability, or
12 resiliency of the landscape and native wildlife.

13 18. On its own and through its membership in NEWFC, KRCG participated
14 in the comment and objection phases of the development of the Sanpoil Project and
15 the 2019 Forest Plan, acting behalf of its members, supporters, and staff, who have
16 an interest in ensuring that the Forest Service complies with all applicable federal
17 statutes and regulations while authorizing forest management projects. Plaintiff's
18 members, supporters, and staff have an interest in ensuring that the Forest Service
19 fulfills its obligation to manage the Forest in a manner that does not impair the
20 diversity, viability, or resiliency of either the ecological values of the forest, or the

1 native wildlife that live there. The interests of KRCG and its members, supporters,
2 and staff have been, and are being, adversely and irreparably injured by Defendants'
3 failure to comply with federal law, and this injury would continue until and unless
4 the relief requested in this Complaint is granted. These are actual, concrete injuries,
5 traceable to Defendants' conduct, that would be redressed by the requested relief.

6 19. Defendant U.S. FOREST SERVICE is an agency of the United States
7 within the Department of Agriculture and is charged with managing the public lands
8 and wildlife of the Colville National Forest, in accordance and compliance with
9 NEPA, NFMA, the APA, and their implementing regulations.

10 20. Defendant GLENN CASAMASSA is the Pacific Northwest Regional
11 Forester for the Forest Service. He is sued in his official capacity as the
12 decisionmaker who signed the final Record of Decision for the 2019 Forest Plan
13 challenged herein.

14 21. Defendant RODNEY SMOLDON is the Forest Supervisor for the
15 Colville National Forest, responsible for its management in compliance with NEPA,
16 NFMA, and the APA. Defendant Smoldon is sued in his official capacity.

17 22. Defendant TRAVIS FLETCHER is the District Ranger for the
18 Republic Ranger District, named as the responsible official for the Sanpoil Project.
19 Defendant Fletcher is sued in his official capacity.

IV. LEGAL FRAMEWORK

A. National Forest Management Act

23. NFMA is the primary statute governing the administration of national forests. 16 U.S.C. §§ 1600-1614. NFMA and its implementing regulations provide for forest planning and management by the Forest Service on both the forest level and the individual project level.

24. At the forest level, NFMA requires the Forest Service to develop, maintain, and revise a Land and Resource Management Plan (“Forest Plan”) for each national forest. 16 U.S.C. § 1604(a). Forest Plans consist “of broad, long-term plans and objectives for the entire forest.” *All. for the Wild Rockies v. United States Forest Serv.*, 907 F.3d 1105, 1109 (9th Cir. 2018). They are “designed to manage forest resources by balancing the consideration of environmental and economic factors.” *Native Ecosystems Council v. Weldon*, 697 F.3d 1043, 1056 (9th Cir. 2012).

25. A Forest Plan must establish natural resource management practices forest-wide, and provide for sustained yields and multiple uses, including the coordination of outdoor recreation, livestock grazing, timber harvest, and soil conservation, as well as the protection of watersheds, riparian areas, wilderness, and fish and wildlife species habitat and diversity. 16 U.S.C. § 1604(e), (g). The Forest Service must provide for and foster public participation in the development, review, and revision of Forest Plans. *Id.* § 1604(d).

1 26. NFMA also requires the Forest Service to adopt additional regulations
2 for its Forest Plans. *Id.* § 1604(g)(3). These guidelines must ensure that Forest Plans
3 “provide for diversity of plant and animal communities” and “for steps to be taken
4 to preserve the diversity of tree species.” 16 U.S.C. § 1604(g)(3)(B).

5 27. The Forest Service adopted forest planning regulations in 1982. 47 Fed.
6 Reg. 43,026-43,052 (Sept. 30, 1982) (“1982 Rules”).¹ The Forest Service revised
7 these regulations in 2012, but included transitional provisions allowing it to elect to
8 apply the 1982 Rules to the development or revision of Forest Plans initiated prior
9 to 2012. 36 C.F.R. § 219.17(b)(3). The Forest Service elected to apply the 1982
10 Rules to the development of the 2019 Forest Plan, which it began in 2003.

11 28. The 1982 Rules define “diversity” as the “distribution and abundance
12 of different plant and animal communities and species within the area covered by a
13 land and resource management plan.” 1982 Rules § 219.3. The Rules further specify
14 that “diversity shall be considered throughout the planning process” and “inventories
15 shall include quantitative data making possible the evaluation of diversity in terms
16 of its prior and present condition.” 1982 Rules § 219.26.

17 29. The 1982 Rules also require that “wildlife habitat shall be managed to
18 maintain viable populations of existing native and desired non-native vertebrate

¹ Also available at <https://www.fs.fed.us/emc/nfma/includes/nfmareg.html>. In this Complaint, citations to the 1982 Rules will be in the form “1982 Rules § 219.xx.”

1 species in the planning area.” 1982 Rules § 219.19. To meet this requirement, the
2 Forest Service must ensure that sufficient habitat is “well distributed” throughout a
3 forest planning area. *Id.*

4 30. The 1982 Rules require a Forest Plan to designate certain “management
5 indicator species,” whose “population changes are believed to indicate the effects of
6 management activities,” including those activities that affect “vegetation type [and]
7 timber age classes[.]” 1982 Rules § 219.19(a)(1). Planning alternatives are to be
8 evaluated in terms of “both amount and quality of habitat and of animal population
9 trends of the management indicator species.” 1982 Rules § 219.19(a)(2).

10 31. Under NFMA, all site-specific actions must be consistent with the
11 governing Forest Plan. 16 U.S.C. § 1604(i); *see* 1982 Rules § 219.15 (“vegetation
12 management practices...shall be defined in the forest plan with applicable standards
13 and guidelines and the reasons for the choices”). A project or activity is consistent
14 if it conforms to the components of a Forest Plan, including its standards, guidelines,
15 and desired conditions. *All. for the Wild Rockies*, 907 F.3d at 1110.

16 32. When undertaking projects that involve “vegetative manipulation of
17 tree cover,” the Forest Service must choose alternatives that are “best suited to the
18 multiple-use goals established for the area with potential environmental, biological,
19 cultural resource, aesthetic, engineering, and economic impacts,” as stated in the

1 applicable Forest Plan, and not select alternatives “primarily because they will give
2 the greatest dollar return or the greatest output of timber[.]” 1982 Rules § 219.27.

3 **B. National Environmental Policy Act**

4 33. NEPA is the “basic national charter for protection of the environment.”
5 40 C.F.R. § 1500.1(a). NEPA has two fundamental purposes: (1) to guarantee that
6 agencies take a “hard look” at the consequences before taking an action, by ensuring
7 that “the agency, in reaching its decision, will have available, and will carefully
8 consider, detailed information concerning significant environmental impacts”; and
9 (2) to ensure that “the relevant information will be made available to the larger
10 audience that may also play a role in both the decision making process and the
11 implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490
12 U.S. 332, 349-350 (1989).

13 34. To that end, NEPA requires federal agencies to prepare a detailed EIS
14 for all major federal actions that may significantly affect the quality of the human
15 environment. *See* 42 U.S.C. § 4332(C). An agency may first prepare an
16 Environmental Assessment (“EA”) to determine whether it needs to prepare an EIS.
17 40 C.F.R. §§ 1501.4(b); 1508.9.² An EA is a concise public document that briefly

² The Council on Environmental Quality (“CEQ”) promulgates regulations implementing NEPA that are binding on all federal agencies. 40 C.F.R. §§ 1500-1518.4. In 2020, CEQ adopted new NEPA regulations with an effective date of September 14, 2020. *See* 85 Fed. Reg. 43304-43376. The prior regulations were still

1 describes the proposal, examines alternatives, considers environmental impacts, and
2 provides a list of individuals and agencies consulted. 40 C.F.R. § 1508.9. If the
3 agency concludes there is no significant impact associated with the proposed project
4 or activity, it may issue a Finding of No Significant Impact (“FONSI”) in lieu of
5 preparing an EIS. 40 C.F.R. § 1501.4(e).

6 35. NEPA analyses must consider a range of reasonable alternative actions
7 and thoroughly assess direct, indirect, and cumulative environmental effects of the
8 proposed alternatives. *See* 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1502 and 1508.
9 Cumulative effects are “the impact on the environment which results from the
10 incremental impact of the action when added to other past, present, and reasonably
11 foreseeable future actions regardless of what agency (Federal or non-Federal) or
12 person undertakes such other actions.” 40 C.F.R. § 1508.7. To take the required
13 “hard look,” agencies must consider all past, present, and “reasonably foreseeable”
14 future impacts, even when preparing an EA. *Idaho Sporting Congress, Inc. v.*
15 *Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002).

in place when the 2019 Forest Plan was adopted, and the Forest Service chose to
apply those regulations to the Sanpoil Project, which was nearly final when the 2020
regulations became effective. *See, e.g.*, Draft Decision Notice and Finding of No
Significant Impact (“Draft Sanpoil FONSI”) at 7 (evaluating finding of no
significant impact based on the standards of pre-2020 regulations). All citations to
NEPA regulations thus refer to the pre-2020 regulations.

1 36. When an agency proposes a project that would be implemented without
2 further, site-specific NEPA review, it must disclose the details of its proposed action
3 at a site-specific level and perform a detailed environmental analysis of the
4 reasonably foreseeable impact of those site-specific actions. *See Se. Alaska*
5 *Conservation Council v. United States Forest Serv.*, 443 F. Supp. 3d 995, 1006,
6 1011-12 (D. Alaska 2020).

7 37. Agencies are required to evaluate both the context and intensity of an
8 action to determine the significance of its impact on the environment. 40 C.F.R. §
9 1508.27. Context refers to the significance of the action with regard to society as a
10 whole, the affected region, the affected interests, and the locality. *Id.* § 1508.27(a).
11 Both short- and long-term effects are relevant to the action’s context. *Id.*

12 38. In evaluating intensity, an agency must consider ten “significance”
13 factors, including: (1) impacts that may be both beneficial and adverse; (2) any
14 effects on public health or safety; (3) unique characteristics of the geographic area,
15 such as proximity to ecologically critical areas; (4) the level of controversy about
16 potential environmental effects; (5) the degree of uncertainty, or existence of unique
17 or unknown risks; (6) if it sets possible precedent for future actions; (7) the
18 cumulative impacts of the action and other related actions; (8) any effect on
19 scientific, cultural, or historical resources; (9) any effect on an endangered or

1 threatened species or its habitat; and (10) if the action might violate federal, state, or
2 local requirements imposed to protect the environment. 40 C.F.R. § 1508.27(b).

3 39. The presence of any of these factors is sufficient to indicate the project
4 may have a significant impact to the environment, necessitating the preparation of
5 an EIS. *Ctr. for Biological Diversity v. Nat'l Hwy. Traffic Safety Admin.*, 538 F.3d
6 1172, 1220 (9th Cir. 2008). Indeed, an agency must prepare an EIS if any substantial
7 questions exist regarding whether an action may have a significant effect on the
8 environment, including if it may have a cumulatively significant effect when
9 considered along with other past, present, and reasonably foreseeable actions. *Blue*
10 *Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

11 40. Once it determines that an action may have a significant effect on the
12 environment, an agency must develop and publish a draft EIS, and then solicit
13 comments from the public. 40 C.F.R. §§ 1502.9 and 1503. An agency must respond
14 to those public comments in its final EIS, including addressing any scientific
15 evidence cited in those comments that contradicts its conclusions. 40 C.F.R. §§
16 1502.9(b), 1503.4; *see Ctr. for Biological Diversity v. United States Forest Serv.*,
17 349 F.3d 1157, 1167-68 (9th Cir. 2003). Agencies “must respond explicitly and
18 directly to conflicting views in order to satisfy NEPA’s procedural requirements.”
19 *Earth Island Institute v. Forest Service*, 442 F.3d 1147, 1172 (9th Cir. 2006).

1 41. The Forest Service uses the NEPA process at both broad, programmatic
2 levels, including the development of Forest Plans, and at the individual project or
3 “site-specific” level, including the development of logging projects.

4 **C. Administrative Procedure Act**

5 42. Agency actions taken pursuant to NFMA and NEPA are reviewable
6 under the APA, which provides a right of judicial review to persons “adversely
7 affected or aggrieved by agency action within the meaning of a relevant statute[.]”
8 5 U.S.C. § 702.

9 43. Under the standards of the APA, an agency action is unlawful if it is
10 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with
11 law.” 5 U.S.C. § 706(2). Under this standard, an agency must “examine the relevant
12 data and articulate a satisfactory explanation for its action including a ‘rational
13 connection between the facts found and the choice made.’” *Motor Vehicle Mfrs.*
14 *Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). A rule
15 or decision is arbitrary and capricious if “the agency has relied on factors which
16 Congress has not intended it to consider, entirely failed to consider an important
17 aspect of the problem, offered an explanation for its decision that runs counter to the
18 evidence before the agency, or is so implausible that it could not be ascribed to a
19 difference in view or the product of agency expertise.” *Id.*

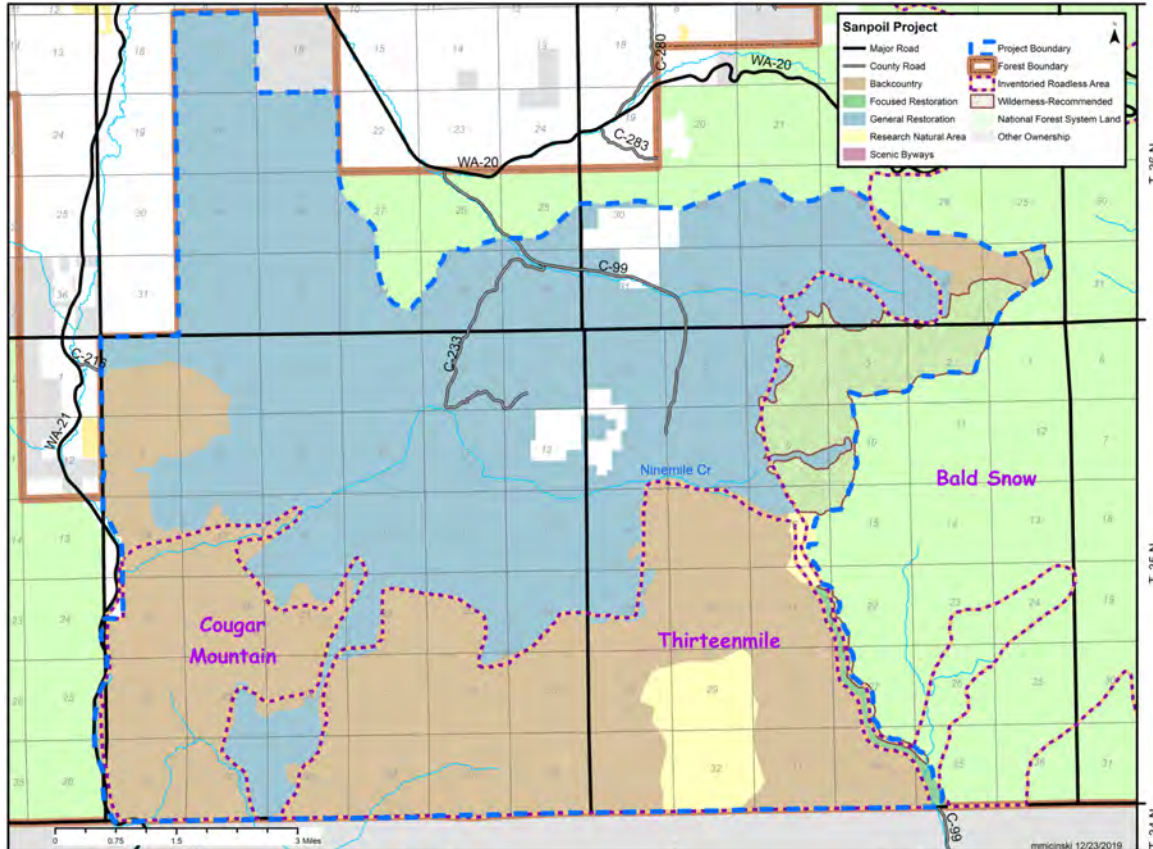
V. FACTS

A. Project Area Includes Diverse Landscapes and Wilderness Areas

44. The Project encompasses 47,956 acres within the Republic Ranger District of the Colville Forest. The Project Area lies in the heart of the Kettle River Range—2,700 square miles of rugged mountains and diverse landscapes, ranging from old-growth forests to subalpine meadows to riparian habitats, with wetlands, springs, rivers, and lakes. The Project Area contains a mix of forest types: stands of Douglas-fir and old-growth ponderosa pine are interspersed with mesic spruce, while subalpine fir predominates around riparian ecosystems.

45. The Project Area offers myriad recreational opportunities, including hiking, camping, mountain biking, horseback riding, Nordic skiing, snowshoeing, hunting, fishing, and seasonal berry picking. Hikers enjoy the spectacular vistas the area has to offer on sections of the Pacific Northwest National Scenic Trail, Kettle Crest National Recreation Trail, Edds Mountain Trail, Thirteenmile Trail and the Snow Peak Trail.

46. The Project Area encompasses two Roadless Areas, Cougar Mountain and Thirteenmile, and contains a portion of a third, the Bald Snow Roadless Area. Roadless Areas are specific parcels of land with wilderness characteristics that the Forest Service has designated for special protection, and in which road construction and commercial timber harvesting is prohibited.



Map from Sanpoil EA, displaying the large portion of the Project Area covered by Cougar Mountain, Thirteenmile, and Bald Snow Roadless Areas, and the Bald Snow Recommended Wilderness Area.

1 47. The Project Area also overlaps a portion of the Bald Snow
 2 Recommended Wilderness Area. If the Forest Service’s recommendation is
 3 approved by Congress, this area would be preserved through the National
 4 Wilderness Preservation System, and thus recognized as “an area where the earth
 5 and its community of life are untrammled by man[.]” 16 U.S.C. § 1131(c).



View of Thirteenmile Roadless Area within the Project Area. Photo courtesy of KRCG.

1 **B. Project Area is Home to Sensitive, Threatened, and Endangered Species**

2 48. The Project Area is home to a rich diversity of species, ranging from
3 deer, elk, and moose, to cougar, bobcat, and black bear. Its forests host numerous
4 bird species, including owls, hawks, and woodpeckers, while its riparian habitats are
5 home to several varieties of frogs, salamanders, and trout.

6 49. Numerous species in the Project Area have been designated as
7 sensitive, threatened, or endangered—either nationwide or within the state of
8 Washington. Whitebark pine, a candidate for the federal endangered species list,
9 inhabits the harshest subalpine locations, and serves vital ecological functions such
10 as preventing soil erosion, retaining snowpack, and sustaining birds and bears.

1 | Meanwhile, old-growth forests within the Project Area provide unique habitat for
2 | many species, including populations of northern goshawks, which are a sensitive
3 | species for Forest Service Region 6, the region that includes the Colville Forest, as
4 | well as candidates for the state endangered species list. Logging is the largest threat
5 | to the survival of northern goshawks in Washington.

6 | 50. These primeval forests are also inhabited by the pileated woodpecker,
7 | another candidate for the state endangered species list, and provide habitat for white-
8 | headed woodpecker, a Region 6 sensitive species and state candidate species, and
9 | the great gray owl, a Region 6 sensitive species.

10 | 51. The Western bumblebee, a Region 6 sensitive species that is in rapid
11 | decline throughout the West, inhabits the meadows in the Project Area. Meanwhile,
12 | riparian areas are home to the little brown bat, another Region 6 sensitive species,
13 | and the Townsend's big-eared bat, a Region 6 sensitive species and state candidate
14 | species, which is threatened by human disturbance and destruction of its roost sites.
15 | The area's cold streams contain populations of interior Redband trout, a Region 6
16 | sensitive species, while the Columbia spotted frog, a state candidate species, is
17 | suspected to live in its shallow ponds and backwaters.

18 | 52. The Project Area is also a vital habitat corridor and prime habitat for
19 | the gray wolf, grizzly bear, wolverine, and Canada lynx.

1 53. The Forest Service indicates that two packs of gray wolves, the
 2 Strawberry and Nc'icn Packs, have territories that include portions of the Project
 3 Area, while the Washington Department of Fish and Wildlife (“WDFW”) reports
 4 that a newer pack, the Kettle Range Pack, has settled into territory just to the north
 5 of the area. Gray wolves are a Forest Service Region 6 sensitive species, and a state-
 6 listed endangered species.³

Seclusion/core habitat for grizzly bears in the Sanpoil project area

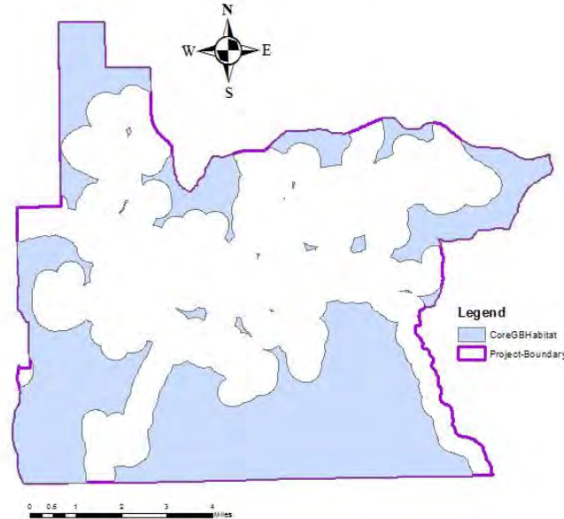


Figure 2 from the Sanpoil Project BE shows core habitat for grizzly bears in the Project Area.

7 54. One of the two recovery areas for grizzly bear in Washington, the
 8 Selkirk Mountains Grizzly Bear Recovery Area, crosses into the northern portion of
 9 the Forest near the Canada border, and is thought to have a population of at least 50

³ Washington law defines “endangered” as any wildlife species native to the state of Washington that is seriously threatened with extinction throughout all or a significant portion of its range within the state. WAC 232-12-297.

1 to 60 grizzly bears. Although grizzly bears have not been documented in the Project
2 Area, WDFW has previously captured images of grizzly bears on its remote cameras
3 elsewhere in the Kettle Range. The Forest Service has designated those parts of the
4 Project Area that are at least 500 meters away from roads and motorized trails as
5 core habitat for grizzly bear, a species that requires large expanses of undisturbed
6 wilderness. Grizzly bears are listed as endangered in Washington and threatened
7 across the nation, and their survival is jeopardized by increased habitat
8 fragmentation caused by human activity.

9 55. Only about 20 wolverines are estimated to live in Washington, and the
10 species is a candidate for state protection. No wolverines have been spotted in the
11 Project Area, but wolverines are known to live in low densities across large home
12 ranges, and there have been confirmed sightings of the infamously elusive species
13 elsewhere within the Kettle Range. Although the Forest Service disputes that the
14 Project Area provides suitable denning habitat for wolverines, it concedes that it
15 contains potential foraging habitat and vital travel corridors for the species.
16 Wolverine are under increasing threat as climate change causes their habitat,
17 characterized by deep snow and high altitudes, to become increasingly fragmented.

18 56. The eastern side of the Project Area overlaps with two Lynx Analysis
19 Units (“LAUs”): the West Sherman LAU and the Hall Creek LAU. LAUs contain
20 core habitat components required to support the Canada lynx, a federally listed

1 threatened species. Washington has listed the lynx as a state endangered species
 2 because of its “small and restricted population, and an increase in the number and

Figure 1: Distributions of lynx habitat conditions in the portions of the West Sherman and Hall Creek LAUs within Sanpoil Planning Area

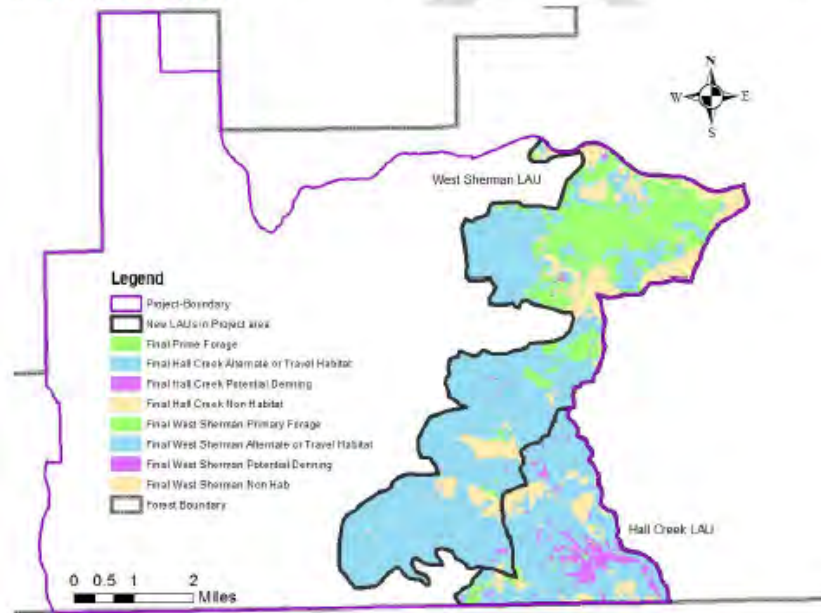


Figure 1 from the Sanpoil Project BE shows habitat potential within two Lynx Analysis Units.

3 severity of threats” to the species. Lynx prefer boreal forests that contain subalpine
 4 fir and lodgepole pine forest cover, and require healthy populations of snowshoe
 5 hare. Lynx are a rare sight in Washington, but a camera trap survey performed in
 6 2016 and 2017 captured three photos of lynx in and just outside the Project Area.

7 57. A March 2020 article in *The Journal of Wildlife Management*
 8 documents these camera traps, which caught four pictures of lynx in the whole Kettle
 9 Range area. See King et al., *Will Lynx Lose Their Edge? Canada Lynx Occupancy*
 10 *in Washington*, 84 *The Journal of Wildlife Management* 705, at 8 (May 2020) (“2020
 11 Lynx Study”). Researchers could not determine if the photographs indicated a small

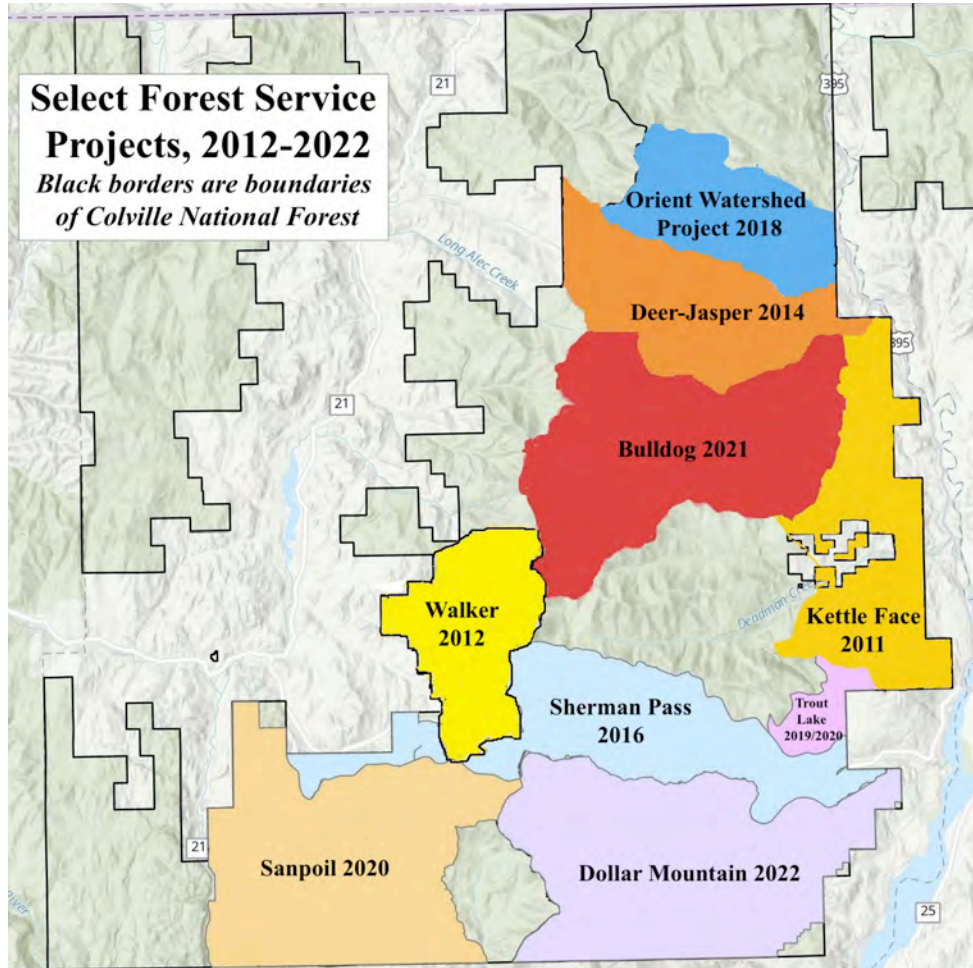
1 resident population of lynx or transient individual lynx. *Id.* at 13. However, the 2020
2 Lynx Study notes that the Kettle Range was once a stronghold for lynx, and still
3 provides the second largest block of potential habitat for lynx in the state. *Id.* at 3.

4 58. The 2020 Lynx Study discusses the “precarious status of lynx in
5 Washington today and in the future,” and emphasizes that as the climate warms,
6 preserving the species within the state will probably require “maintaining the
7 greatest quantities of lynx habitat at high elevation as possible refugia...where
8 favorable snow conditions may persist for some time.” *Id.* at 14. The study’s data
9 supports other recent studies indicating it may take 35-40 years for lynx habitat in
10 Washington to regenerate after it is damaged by fire or certain forest treatments. *Id.*
11 at 12; *see also* Holbrook et al., *Spatio-temporal responses of Canada lynx (Lynx*
12 *canadensis) to silviculture treatments in the Northern Rockies*, 422 U.S. Forest
13 Ecology and Management 114, 114-124 (2018).

14 **C. Forest Service Approves Several Timber Projects in Same Area**

15 59. Within the last decade, the Forest Service has approved at least eleven
16 timber harvest projects within the Colville Forest, which have impacted at least
17 179,331 acres. The Forest Service implemented seven of these projects in areas that

1 are either adjacent or in close proximity to the Sanpoil Project.⁴ The Forest Service
 2 plans to start two more projects in this same area over the next two years.



Map of Forest Service projects in the vicinity of the Sanpoil Project. Courtesy of KRCG.

3 60. In 2011, the Forest Service approved the **Kettle Face Fuel Reduction**
 4 **Project (“Kettle Face Project”)** following a FONSI, authorizing 16,203 acres of
 5 ongoing treatments, including various forms of logging, such as “commercial

⁴ Six of these projects are depicted in the KRCG map, above. The West Zone Project is not shown because it was implemented in scattered pockets around the Forest.

1 thinning” and “precommercial treatments,” and prescribed burns, which the Forest
2 Service calls “fuels treatments.” The Forest Service evaluated the “cumulative
3 effects area” for lynx for this project as all of the “LAUs on the Kettle Crest, which
4 cover a total of about 199,000 acres.” Kettle Face EA, Chapter 3 at 161.

5 61. In 2012, the Forest Service approved the 6,555-acre **Walker Fuels**
6 **Reduction Project (“Walker Project”)** following a FONSI, authorizing
7 “commercial thinning,” “precommercial treatments,” and “fuels treatments.”

8 62. In 2013, the Forest Service approved the **West Zone Project** subject to
9 a categorical exclusion to NEPA, and as a result, it did not evaluate the project’s
10 potential environmental impacts. This project applied “precommercial thinning” to
11 2,099 acres scattered across different portions of the Colville Forest.

12 63. The Forest Service approved the **Deer Jasper Restoration Project**
13 **(“Deer Jasper Project”)** in 2014, again following a FONSI, allowing timber
14 treatments over 25,128 acres, including “commercial thinning,” “shelterwood
15 removal,” and “underburning.”

16 64. In 2016, the Forest Service authorized the **Sherman Pass Project**,
17 authorizing timber harvests and burns over 34,043 acres directly adjacent to the
18 Sanpoil Project Area. *See* Environmental Assessment for the Sherman Pass Project
19 (“Sherman EA”) at 6. The Sherman Pass Project involves 7,998 acres of “mechanical
20 thinning,” 7,366 acres of “mechanical ladder fuels reductions,” and 7,322 acres of

1 “non-mechanical thinning,” along with 4,475 acres of “underburning” and 3,984
2 acres of “mechanical piling and pile burning.” *Id.* at 23-25. The project authorized
3 the construction of 20 miles of temporary road, along with repairs and reconstruction
4 of another 90 miles of existing road. *Id.* at 27-30.

5 65. The Forest Service acknowledged the Sherman Pass Project would
6 effect threatened, sensitive, and endangered species, and evaluated its cumulative
7 effects along with past and anticipated future projects in nearby areas, including the
8 Sanpoil Project. The Forest Service noted that “at least four wolf packs travel the
9 cumulative effects area,” and that the Sherman Pass Project, along with the “Orient,
10 Deer-Jasper, [and] Sanpoil” may reduce habitat suitability for gray wolves by
11 reopening roads and allowing increased access for poachers. *Id.* at 113-14.

12 66. The Forest Service indicated the project would include “harvest in high-
13 quality foraging habitat” for Canada lynx, which “could adversely affect” the
14 species. Sherman Pass TES Report at 61. It estimated the project would impact 1,020
15 acres of lynx denning habitat, including portions of the West Sherman LAU. *Id.* at
16 60; *see also id.* at 55. The Forest Service recognized it had already “harvested timber
17 in several Lynx Analysis Units within the cumulative effects analysis area,”
18 including in the Walker Project immediately to the north. Sherman EA at 116. It
19 predicted that cumulative impacts from its projects could decrease the quality of the

1 lynx habitat corridor, while an associated increase in road density might reduce
2 foraging habitat for snowshoe hare, primary lynx prey. *Id.*

3 67. The Forest Service predicted the Sherman Pass and Sanpoil projects
4 would increase grazing range and “produce changes in livestock management,
5 habituation of livestock on the landscape, changes in natural barriers, and changes
6 to the available forage base.” *Id.* at 94. It acknowledged that “implementation of the
7 Walker, Deer Jasper, and Sanpoil projects may reduce access to the Kettle Crest
8 National Recreation Trail.” Sherman EA at 91. Taken together, these projects would
9 “result in a cumulative decline in the level of natural and undeveloped environment,
10 outstanding opportunities for solitude, and primitive and unconfined recreation”
11 associated with proposed wilderness areas, including Bald Snow. *Id.* at 90.

12 68. The Forest Service indicated the Sherman Pass Project would provide
13 more “open” views into the Forest, and maintain “mosaic stand conditions,” by
14 leaving tree clumps, canopy gaps, and complex patches of vegetation. *Id.* at 145.
15 Overall, the project was purportedly designed to create “[l]andscape character
16 changes [that] would be seen as thinned stands of trees and a more open forested
17 canopy character.” *Id.* at 146.

18 69. Following implementation, however, KRCG and other members of
19 NEWFC complained the Forest Service had provided incomplete and misleading
20 information about how treatments in the Sherman Pass Project would be applied,

1 and allowed “heavy-handed shelterwood logging” and “clearcuts” in sensitive and
 2 scenic areas.



At left, a photograph from a parking area adjacent to the Sherman Pass following project “treatments.” At right, untreated forest area roughly 100 yards away. Photos courtesy of KRCG.

3 70. In 2018, the Forest Service approved the **Orient Watershed Project**
 4 (“Orient Project”) following a FONSI. This project allowed timber harvests over
 5 9,670 acres of the Colville and prescribed burns over 6,570 acres. The Forest Service
 6 described the scope for analyzing cumulative impacts to lynx as consisting of “the
 7 LAUs on the Kettle Crest, which cover a total of about 199,000 acres.” Orient Project
 8 BE at 24. In its cumulative effects analysis, the Forest Service thus considered
 9 several large projects planned for that area, including the Sanpoil Project. *Id.* at 24.

10 71. In 2019, the Forest Service approved the **Trout Lake Insect and**
 11 **Disease Restoration Project** (“Trout Lake Project”) based on a NEPA categorical

1 exclusion, allowing 2,973 acres of commercial thinning, larger-scale “regeneration”
2 cuts, and fuel reduction treatments. Most of the Trout Lake Project Area was marked
3 for “commercial thinning” with “regeneration,” although the Forest Service
4 indicated it would retain clumps of larger trees, and only allow clearcuts in very
5 limited circumstances. In all areas, the Forest Service indicated it would leave large,
6 downed logs, woody debris, and “snags.”⁵



Unit 7 of the Trout Lake before “treatment,” showing a mix of Douglas-fir, ponderosa pine, and western larch, including both healthy trees and snags. Photo courtesy of KRCG.

⁵ “Snags” are dead or dying trees that are still standing, and left to decompose naturally. Birds, small mammals, and other wildlife, including owls and woodpeckers, use snags for nests, nurseries, storage areas, foraging, roosting, and perching.



Unit 7 of the Trout Lake Project after “treatment,” showing a large clearcut with no snags or downed logs. Photo courtesy of KRCG.

1 72. The Forest Service plans to start the **Bulldog Project** as early as the
2 summer of 2021. The Bulldog Project will encompass 44,000 acres to the northeast
3 of the Sanpoil Project, implementing prescribed burns and timber harvests over
4 15,405 acres. Among other effects, the Bulldog Project will impact the U.S. and
5 Indian LAUs (where lynx footprints were found in 2020), as well as three known
6 territories of the Northern goshawk, the territory of one known wolf pack, and
7 potential habitats for grizzly bear and wolverine. The project’s timber harvests are
8 expected to result in increased stream temperature and sedimentation.

1 73. Meanwhile, the Forest Service is also planning the **Dollar Mountain**
2 **Project** for 2022, which will encompass 50,784 acres directly east and adjoining the
3 Sanpoil Project, and which will likely involve commercial timber harvests, thinning,
4 and prescribed burns. This Dollar Mountain Project will overlap with 9,300 acres of
5 the Bald Snow Roadless Area.

6 **D. 2019 Forest Plan Sets New Guidelines for Forest Conditions**

7 74. In 2019, the Forest Service issued the 2019 Plan ROD, adopting a
8 Revised Colville Forest Plan to replace the Colville National Forest Land and
9 Resource Management Plan approved in 1988 (“1988 Forest Plan”).

10 75. In the 1988 Forest Plan, the Forest Service identifies the pileated
11 woodpecker and American marten as management indicator species to help monitor
12 the health of habitats with large, old-growth trees. *See* Environmental Impact
13 Statement for 1988 Forest Plan at III-35, Table III-4. However, the Forest Service
14 abruptly stopped monitoring these species less than a decade later—the last time
15 either species was mentioned in a Forest Service monitoring report was in 1997.

16 76. In 1995, the Forest Service amended the 1988 Forest Plan to include
17 the Revised Interim Standards for Timber Sales on Eastside Forests (“Eastside
18 Screens Standard”), which prohibits the harvest of trees greater than 21 inches in
19 diameter. *See* Final Programmatic Environmental Impact Statement for the 2019
20 Plan (“2019 Plan FEIS”) at 47. The Forest Service generated the Eastside Screens

1 Standard based on recommendations from a panel of experts assembled from several
2 prominent scientific organizations, following a collaborative study on the necessity
3 of protecting old-growth forests that was requested by Congress.

4 77. The 2019 Forest Plan eliminates the Eastside Screens Standard and its
5 prohibition on harvesting trees greater than 21 inches. 2019 Plan ROD at 8. Instead,
6 it outlines multiple instances where the Forest Service would allow removal of trees
7 with diameters over 20 inches, including to protect public health or safety, limit the
8 spread of infestation or disease, facilitate management of emergency situations,
9 “meet, promote, or maintain desired conditions for structural stages,” “promote
10 special plant habitats,” and when “strategically critical to reinforce, facilitate, or
11 improve effectiveness of fuel reduction in wildland-urban interfaces.” 2019 Forest
12 Plan at 42 (“FW-GDL-VEG-03. Large Tree Management”).

13 78. While it has prescriptions for the percentages of different tree species
14 that should be present in forests with old-growth characteristics, the 2019 Forest Plan
15 does not set a minimum amount of old-growth habitat to be preserved in the Forest.

16 79. The documents supporting the 2019 Forest Plan also do not provide a
17 qualitative assessment of the current health of old-growth stands—nor do they
18 indicate how or whether the Forest Service continued to monitor the health of these
19 stands after it stopped tracking the old-growth management indicator species nearly
20 20 years beforehand. Indeed, the Wildlife Reports supporting the 2019 Plan FEIS

1 draw only cursory conclusions about the status of the pileated woodpecker and
2 American marten. It gives the woodpecker a “C” for its “Current Viability Outcome”
3 and the marten a “B-C,” without further discussion of either species.

4 80. The 2019 Forest Plan sets up Scenic Integrity Objectives for each
5 management area, and mandates that project-level activities should be designed to
6 meet those objectives. 2019 Forest Plan at 88 (“FW-OBJ-SCE-01”). An area
7 categorized with a “high” Scenic Integrity Objective, for example, should be left in
8 a state that “appears unaltered,” so that “management activities are unnoticed and
9 the landscape character *appears* unaltered.” *Id.* at 194 (emphasis in original).

10 81. The 2019 Forest Plan also lists “desired conditions” for different
11 elements of the Forest, and mandates that site-specific projects “describe any short-
12 term, or negligible long-term, adverse effects the project may have on the
13 maintenance or attainment of any desired condition.” *Id.* at 170. One of the Plan’s
14 “desired conditions” is to move certain types of forest structure towards their
15 “historical range of variability.” *Id.* at 34 (“FW-DC-VEG-03”). Another desired
16 condition indicates habitat conditions should be kept “consistent with the historical
17 range of variability...and contribute to the viability of surrogate species and
18 associated species.” *Id.* at 59 (“FW-DC-WL-03”).

E. Plaintiff Submitted Comments on Forest Plan Revision

1
2 82. In comments on the Draft EIS for the 2019 Forest Plan, KRCG noted
3 that the 2019 Forest Plan’s approach to managing old-growth areas is ambiguous
4 and would not improve ecological resilience. Relying on multiple scientific studies,
5 KRCG recommended the Forest Service preserve the Eastside Screens Standard.
6 NEWFC submitted a similar comment, criticizing the Forest Service for abandoning
7 the Eastside Screens Standard and the scientific consensus supporting it.

8 83. The Forest Service responded that the 2019 Forest Plan contains new
9 guidelines for managing old-growth trees to replace the Eastside Screens Standard,
10 insisting that “maintaining a [21 inch] diameter limit reduces the ability to attain the
11 desired future condition of having a majority of most vegetation types in late
12 structure.” 2019 Plan FEIS at 1025.

13 84. NEWFC objected again to the new standards for old-growth harvest in
14 its comments to the 2019 Plan FEIS. Noting the high ecological value of old-growth
15 stands, NEWFC challenged the departure from the Eastside Screens Standard in
16 favor of more liberalized treatment of old-growth trees, citing to a scientific
17 consensus that old-growth trees need additional protection. NEWFC also criticized
18 the Forest Service for its monitoring failures, which led to a lack of reliable, baseline
19 information about the health and prevalence of old-growth.

1 85. The Forest Service responded that the new standard provides “the
2 Forest with more flexible strategies to allow forest managers to better integrate old
3 forest conservation goals with other land management objectives.” 2019 Forest Plan
4 —Old Growth Final Issue Paper at 3-4. The issue paper asserts that “a broad body
5 of science now supports a more ecologically-based approach,” but does not
6 specifically identify or cite to any of this science. *Id.* at 3. The Forest Service did not
7 address the objections regarding its failure to monitor and gather baseline data.

8 **F. KRCG and NEWFC Comment on Initial Sanpoil Project Plans**

9 86. The Forest Service published a scoping letter for the Sanpoil Project on
10 December 14, 2016 and opened a comment period.

11 87. NEWFC commented that the Forest Service could not adequately
12 promote forest health and resiliency without taking larger, landscape-level
13 restoration into account, such as the type of planning described in the Vision 2020
14 program. NEWFC also expressed concern about Forest Service’s plans to create
15 shaded fuel breaks, asking for more details about the activity, including proposed
16 treatment areas and their proximity to riparian areas, Roadless Areas, and proposed
17 wilderness. NEWFC also requested that the Forest Service consider restoration to
18 preserve the area’s old-growth.

19 88. The Forest Service released a draft EA for the Project on February 6,
20 2019 and opened another comment period.

1 89. NEWFC submitted comments on the draft EA, indicating it would not
2 support any activities that would remove areas from potential consideration as
3 recommended wilderness. It also questioned how the Forest Service could have
4 completed an environmental assessment without understanding the status of the 67
5 miles of “existing non-system road templates” that it planned to restore.

6 90. Three NEWFC board members, representing KRCG, Conservation
7 Northwest, and the Lands Council, submitted an addendum raising additional
8 concerns. The NEWFC board members asked the Forest Service to provide site-
9 specific prescriptions, such as more detailed maps with numbered roads and
10 geolocation data, to give the public critical information necessary to understand and
11 make informed judgments about the Project’s specific environmental impacts. They
12 noted that the coarse scale of the maps provided, coupled with a lack of specificity
13 about the proposed treatments, “makes it extremely difficult to do field survey[s]
14 and understand what you are proposing to do.” NEWFC Comment Addendum at 2.

15 91. The NEWFC board members also challenged the Forest Service for
16 failing to evaluate the cumulative effects of the Project along with the adjoining
17 Sherman Pass Project and expressed concern about the Project’s potential impact on
18 certain sensitive species, including the Canada lynx, grizzly bear, and wolverine.
19 Because of these potential impacts, the uncertainty over the Project’s specifics, and

1 the potential for significant cumulative impacts, the board members called for the
2 Forest Service to complete an EIS.

3 92. The NEWFC board members expressed a deep concern that the Forest
4 Service would allow “heavy-handed shelterwood logging” and “clearcuts,” similar
5 to what they had seen with the Sherman Pass Project. *Id.* They indicated that
6 allowing such treatments in the upper Sanpoil watershed would ruin the views from
7 “some of the most valuable scenic trails and high peaks in the Kettle Range” for
8 decades to come and urged the Forest Service to give weight to these social
9 considerations. *Id.* at 3.

10 93. Finally, the board member addendum again questioned the use of
11 shaded fuel breaks, noting they are controversial, and that science has not confirmed
12 their efficacy at promoting forest resiliency. In particular, the board members
13 challenged the Project’s plan to place fuel breaks near Roadless Areas, which are
14 “one of the most important biologically diverse wildland complexes” in the Forest,
15 asserting that it was “unconscionable to suggest” that these treatments would not
16 “significantly degrade wildlife habitat suitability.” *Id.* at 1.

17 **G. Forest Service Releases Biological Assessment**

18 94. The Forest Service prepared a Biological Assessment for the Sanpoil
19 Project (“Sanpoil BA”) and sent it to the U.S. Department of Fish and Wildlife (“Fish
20 and Wildlife”) in September 2018. The Sanpoil BA acknowledges that the Forest

1 Service did not have accurate estimates of wildlife within the Project Area, and that
2 they would be “difficult if not unfeasible to obtain.” Sanpoil BA at 16. In particular,
3 the Forest Service noted it is “unlikely that all activity centers such as dens or nests
4 have been found.” *Id.* Lacking complete information, the Sanpoil BA indicates that
5 the Forest Service assumes the Project Area is potentially occupied by listed species.

6 95. The Sanpoil BA concludes that there would be no adverse impact to
7 any federally listed species, including the lynx. It indicates that planned actions
8 would occur in 3,638 acres of the West Sherman and Hall Creek LAUs, including
9 2,587 acres of lynx habitat. *Id.* at 21. Yet the Sanpoil BA concludes that there would
10 be no adverse impact to lynx, based largely on the assumption that any negatively
11 impacted habitat would quickly regenerate. The impacted acres of primary prey
12 habitat, for example, would return to prime quality “within 15-20 years.” *Id.* at 22.
13 Likewise, the Forest Service suggests that any impact to lynx denning habitat would
14 be negated after about “15 years.” *Id.* at 21-2. Alternate prey habitat would similarly
15 be negatively impacted for only “up to 20 years.” *Id.* at 22. The Sanpoil BA does not
16 provide a scientific basis for these regeneration predictions.

17 96. The Sanpoil BA dismisses the recent photographs of lynx near and
18 around the Project Area as just “one recently documented individual,” although it
19 does not explain this conclusion. *Id.* at 23. It likewise does not explain its conclusion

1 that although this individual lynx may be “displaced,” the Project is not likely to
2 have any significant impacts on the individual. *Id.*

3 97. Fish and Wildlife responded to the Sanpoil BA in December 2018
4 (“Fish and Wildlife Concurrence”), agreeing with the Forest Service’s finding that
5 the Project “may affect, but is not likely to adversely affect lynx.” *See* FWS
6 Concurrence at 6. The Fish and Wildlife Concurrence largely parrots the conclusions
7 of the Sanpoil BA, including its assumption that the quality of denning habitat would
8 be restored after 15 years, and that the 2016-2017 camera trap survey captured a
9 photograph of only one lynx. *Id.* at 5-6. The Fish and Wildlife Concurrence also
10 concluded that:

11 “lack of lynx dens in the project area indicate lynx would remain transient
12 through the project area, rather than residents. Disturbance during project
13 activities may cause any individuals to be displaced from the area but the
14 effects would be insignificant to transient individuals...Therefore the
15 proposed action may affect, but is not likely to adversely affect lynx.”

16
17 *Id.* at 6.

18 **H. Forest Service Releases Final EA and Draft FONSI Describing Action**

19 98. On May 27, 2020, the Forest Service published the final Environmental
20 Assessment (the “Sanpoil EA”) and draft Decision Notice and Finding of No
21 Significant Impact (“Draft Sanpoil FONSI”). The Sanpoil EA identifies three
22 purposes for the Project: (1) to “promote forest health and resiliency”; (2) increase
23 “water quality, watershed function, and aquatic habitat”; and (3) “[s]upport

1 infrastructure and jobs in the Tri-County area” through timber harvest. Sanpoil EA
2 at 4-5.

3 99. The Sanpoil EA indicates the Project is proceeding under the Vision
4 2020 proposal, developed in conjunction with NEWFC, and subject to CFLRA. *Id.*
5 at 8. The Forest Service indicates the Project will fulfill the “Vision 2020 CFLRA
6 landscape restoration strategy” to “increase ecosystem resistance and resilience to
7 disturbance, restore old-growth structure and function, and reduce wildfire risk and
8 fire management costs[.]” *Id.*

9 100. The Sanpoil EA discusses two alternative courses of action: the
10 “Proposed Action,” which includes timber harvests, burns, and road work, and a
11 “no-action” alternative. The Sanpoil EA mentions five alternatives the Forest
12 Service eliminated from detailed study, including a Project that involved no
13 temporary road construction. *Id.* at 14. The Forest Service dismissed this alternative,
14 in part, because “there would be a substantial reduction in the amount of wood
15 products and economic benefit in the Tri-county area.” *Id.* The Forest Service also
16 dismissed an alternative that would have eliminated treatments in the Roadless
17 Areas, claiming that large landscape burns in these areas would improve wildlife
18 habitat, and that roadside ladder fuel reductions were required to accomplish these
19 large burns. *Id.* at 15.

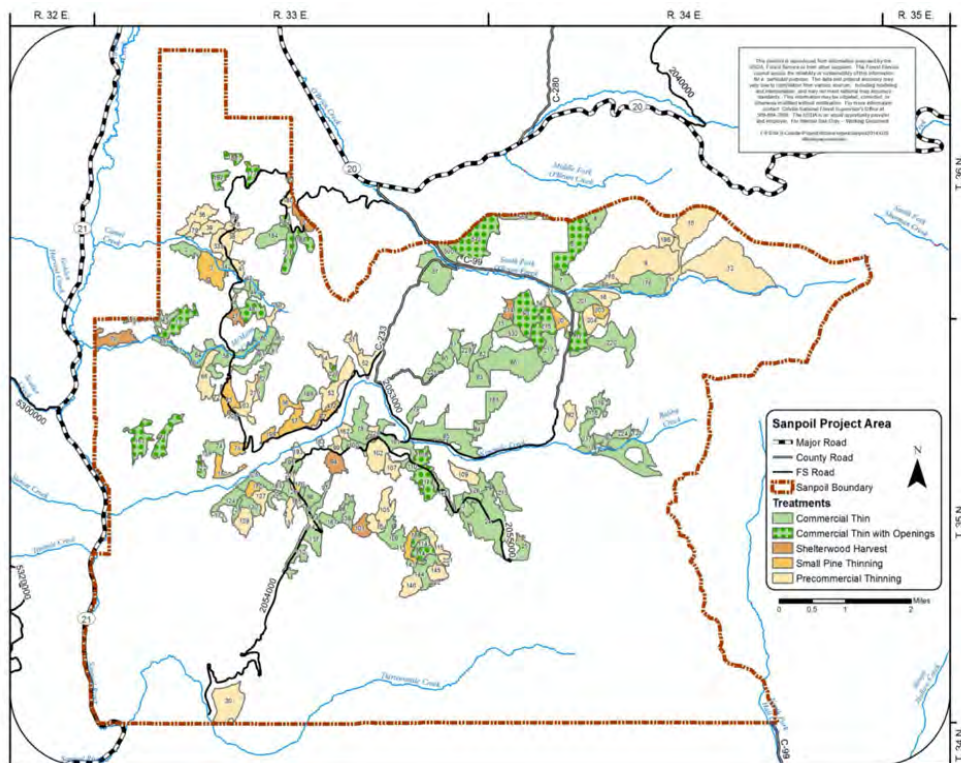
20 101. The Sanpoil EA describes three types of activities under the Proposed

1 Action: “silviculture treatments;” “fuels treatments;” and “roads.” *Id.* at 15-16.

2 These treatments would be applied in “units”—polygons dividing the Project Area.

3 *1. Sanpoil EA Describes Massive Logging Project*

4 102. The Sanpoil EA describes various types of logging under the Proposed
 5 Action, including “variable density commercial thinning;” “commercial thinning
 6 with openings for insect and disease;” “small pine thinning;” “shelterwood
 7 treatments;” and “precommercial thin[s].” *Id.* at 16-17. The Forest Service described
 8 how those treatments would be applied across the Project Area through a single,
 9 small-scale map, without road numbers or geolocation data to allow those units and
 10 their boundaries to be identified. *Id.* at 21.



Map of proposed silviculture treatments from Figure 6 of the Sanpoil EA.

1 103. In a Silviculture Report dated May 26, 2020, the Forest Service
2 indicates how many acres of each type of logging would occur in each type of forest
3 structure. Silviculture Report at 19. For example, “late closed” structure, defined as
4 areas containing trees over 20 inches in diameter and canopy cover of over 40%,
5 would be subject to 509 acres of “commercial thin and machine pile burn,” 185 acres
6 of “commercial thin with openings,” and 526 acres of “precommercial thin[ning].”
7 *Id.* Overall, the Forest Service prescribes 3,200 acres of logging within late closed
8 structure forests, or 18% of the total Project treatments. *Id.* at 20.

9 104. The Forest Service describes each type of treatment in vague, general
10 terms. For example, “variable density commercial thinning” would target “less
11 vigorous trees” for harvest; “commercial thinning with openings for insect and
12 disease” treatments would leave “small group openings” in areas of “very poor
13 vigor;” and “precommercial thin[ning]” would “leave the largest, most vigorous
14 disease free trees for the residual stand.” Sanpoil EA at 16-17. The EA also lists
15 other activities these treatments “may” involve: replanting “may occur” in the
16 openings created via “commercial thinning with openings for insect and disease;”
17 during “small pine thinning,” openings of up to 30% of the stand “may occur;” after
18 which planting “may occur if needed to attain full stocking levels.” *Id.* Similarly, to
19 provide hiding cover for wildlife “[w]ithin ungulate winter range, where the

1 opportunity exists,” the Forest Service would “to the extent feasible,” “retain clumps
2 or patches of shrubs and trees to provide hiding cover.” *Id.* at 32.

3 105. Nowhere does the Sanpoil EA or any of its supporting documents
4 include vital, site-specific details, including how the units on the Project map would
5 look after harvest, what diameter of trees would be logged in each unit, how many
6 trees would be cut down or burned in each location, when different treatments would
7 occur relative to each other, what the spacing would be between the trees that remain,
8 or how these treatments would vary in across single units. As applied to many areas,
9 the descriptions are broad enough to encompass anything from a selective culling of
10 dead and diseased trees to large clearcuts of healthy forest.



Unit 14 of the Sherman Pass Project following “treatment.” Photo courtesy of KRCG.

1 106. The Sanpoil EA assumes that logging from the Project would generate
2 50 million board-feet of timber over a 10-year period. Sanpoil EA at 35. That many
3 board feet would fill an estimated 10,000 to 12,000 logging trucks.

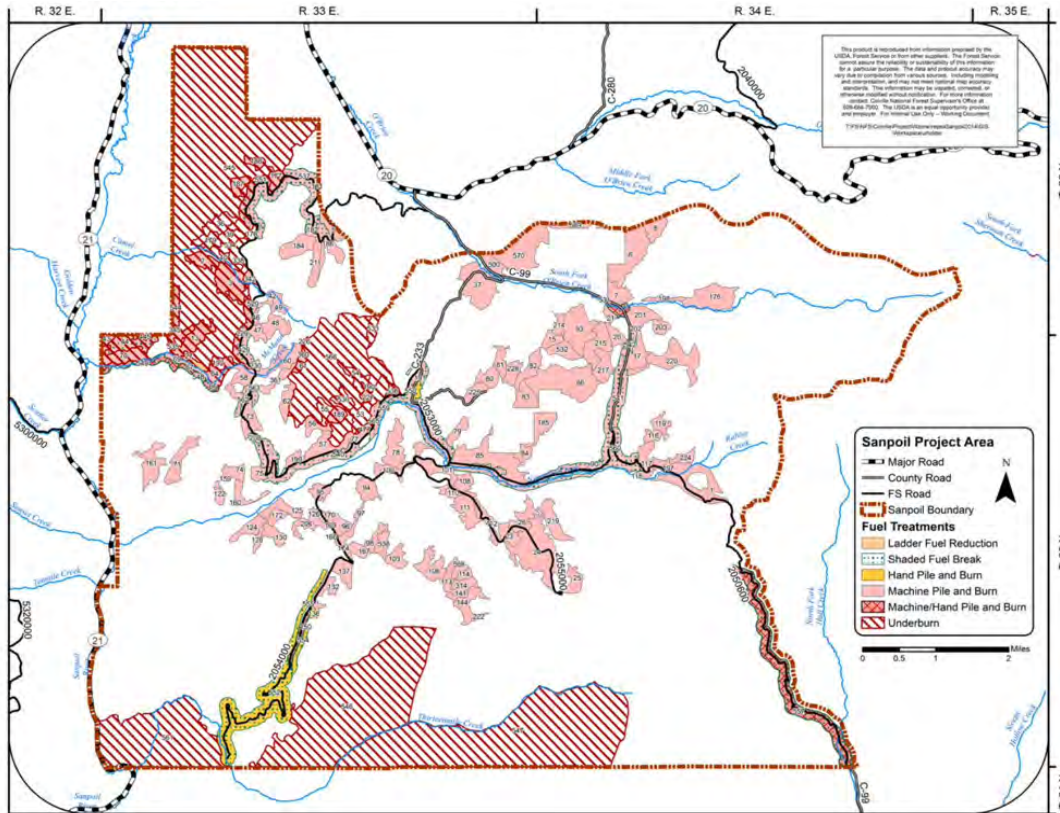
4 2. *Sanpoil Project Includes Burning Large Sections of Forest*

5 107. The Proposed Action includes six potential fuels treatments: “ladder
6 fuel reductions;” “shaded fuel breaks;” “underburning;” “hand piling;” “machine
7 piling;” and “fireline construction.” *Id.* at 17-19.

8 108. The Sanpoil EA provides some detail about “shaded fuel breaks,”
9 indicating they would result in trees thinned “to a spacing of 5-15 feet between the
10 crowns of individual trees,” with “larger trees with thicker bark, higher crowns,
11 and/or fuller, vigorous crowns” preferred for retention. *Id.* at 17. The other fuel
12 treatments are described in general, subjective terms. During underburning, “fuels”
13 would be ignited “at a measured pace” during “predetermined burning conditions.”
14 *Id.* at 18. Meanwhile, “ladder fuel reductions,” may involve “a variety of
15 methods...includ[ing] hand felling with chainsaws, removal of small diameter trees
16 with a feller-buncher or the mulching of understory trees with a boom mounted or
17 vertical shaft mastication head.” *Id.* at 17.

18 109. Fuels treatments “may be completed during the same entry as a
19 commercial harvest,” and proper “fireline construction...may range from a few
20 inches dug with a hand tool to a dozer line many feet wide[.]” *Id.* at 17, 19. The

1 Sanpoil EA provides a map of the Project Area, showing the vast amount of Forest
 2 to be treated. *Id.* at 22.



Map of proposed fuels treatments, from Figure 7 in the Sanpoil EA.

3 3. Sanpoil Project Allows Roadwork to Facilitate Logging and Burning

4 110. The Proposed Action would decommission 2.6 miles of road, construct
 5 or reopen 12 miles of temporary roads, construct 0.25 miles of new permanent road,
 6 make improvements necessary to use about 8 miles of crude “non-system” roads,
 7 and engage in the “restoration” of 67 miles of “existing non-system road templates.”
 8 *Id.* at 16, 23, 26-27. If the non-system roads are “reasonably accessible” and have
 9 “resource concerns,” they would be restored through “full obliteration or hydrologic
 10 stabilization,” while the rest would be allowed to recover naturally. *Id.* at 27.

1 111. The Sanpoil EA does not indicate where the raw material for the road
2 work would come from, and it is not mentioned in any of the supporting materials.
3 However, internal emails indicate the Forest Service would use a gravel pit located
4 in the northeastern portion of the Project Area, near the Gibraltar Trailhead, in an
5 area used as a dispersed camp site. The emails acknowledge that the pit has not been
6 included in any recent NEPA reviews and should be in the Sanpoil analysis.

7 112. While the Sanpoil EA includes two maps identifying the location of all
8 other proposed road activities, neither map shows the 67 miles of “existing non-
9 system road[s]” identified for restoration. *Id.* at 24-25, 27. The Forest Service
10 acknowledged that that when it issued the EA, the condition and status of these roads
11 had still “not been validated by field surveys.” *Id.* at 27.

12 **I. Sanpoil EA Describes Project’s Effects on Environment and Recreation**

13 113. In analyzing the Project’s effects on wildlife, the environment and
14 recreational interests, the Sanpoil EA purports to consider all the “relevant past,
15 present, and reasonably foreseeable future actions,” which it indicates are
16 represented in maps and tables in Appendix A. *Id.* at 34. Appendix A discusses past
17 fires and commercial harvests on nearby private land, as well as minor upcoming
18 projects such as campground restorations and highway maintenance, while making
19 a cursory reference to predicted effects of the neighboring Sherman Pass Project,
20 which authorizes timber harvests and burns on over 34,043 acres. *See id.* at 62 (Table

1 15) (noting that the Sherman Pass Project “treatments could also result in changes
2 to livestock management, habituation of livestock to the landscape, changes in
3 natural barriers, and changes to the available forage base”). The Sherman Pass
4 Project is not discussed elsewhere in either Appendix A or the rest of the Sanpoil
5 EA or supporting materials. Neither Appendix A nor any other part of the Sanpoil
6 EA or its supporting materials analyzes the effects of many other recent or
7 anticipated Forest Service projects, including Kettle Face, Walker, West Zone, Deer
8 Jasper, Trout Lake, Orient Watershed, Bulldog, and Dollar Mountain.

9 114. In Table 7, the Sanpoil EA quantifies how the Project would alter the
10 prevalence of different forest structure types within the Project Area. It indicates the
11 Project would move some forest structures away from the 2019 Forest Plan’s desired
12 conditions, including stands of mid-open Douglas-fir and subalpine fir/lodgepole
13 pine as well as late-open subalpine fir/lodgepole pine. *Id.* at 35.

14 115. Overall, the Forest Service is noncommittal about the effects the Project
15 will have on forest structure, indicating the Project might be “neutral” with regard
16 to progress toward desired plan conditions; might “maintain or make progress”
17 toward one or more desired conditions in the long term, but “adversely affect
18 progress toward or maintenance of one or more desired conditions in the short term;”
19 or might make progress toward one or more of the desired conditions in the long
20 term, while also “adversely affect[ing] progress toward other desired conditions in a

1 negligible way over the long term.” Silviculture Report at 30-31. The Sanpoil EA
2 does not show how the Project would impact forest structure on the landscape scale,
3 or when compared to the historical forest structure that projects such as Vision 2020
4 were attempting to replicate.

5 116. The Forest Service is equally vague about how the Project will affect
6 any particular portion of the Project Area, providing no more detail than included in
7 its small-scale maps. It indicates that the Project will not clear-cut any area larger
8 than 40 acres, but otherwise says only that “openings resulting from the project
9 would be commensurate with patch size and historical conditions for size and
10 distribution reflecting natural disturbance processes and desired conditions
11 described in the Forest Plan.” *Id.* at 31.

12 117. The Sanpoil EA suggests the Forest Service *cannot* determine the
13 environmental consequences of some aspects of the Project, because it has not
14 designed them yet. For example, the EA indicates that treatments “*would be*
15 *designed* and implemented to reduce stand density, canopy layering, and the
16 preponderance of Douglas-fir and subalpine fir,” and that silviculture prescriptions
17 “*would be designed* to move stand-level susceptibility from a “High” or “Moderate”
18 level to a “Moderate” or “Low” level *or be designed* to maintain a “Low” level of
19 susceptibility.” Sanpoil EA at 34 (emphasis added). The Sanpoil EA also indicates
20 the Project would enhance the “extent and vigor” of quaking aspen through conifer

1 felling, but that the “extent to which this would occur is estimated to be on the order
2 of 50-500 acres within the footprint of planned activities[.]” *Id.* Furthermore, “the
3 exact extent or location of each meadow and aspen stand affected is uncertain.” *Id.*

4 118. The Sanpoil EA concludes that the implementation of shaded fuel
5 breaks, ladder fuel reduction, and hand and machine pile burning would “likely
6 reduce the quality of the existing semi-primitive non-motorized classes of dispersed
7 recreation and the natural appearing landscapes” along the perimeter of the Roadless
8 Areas. *Id.* at 53. However, it fails to evaluate the impact of logging activities or road
9 work on recreational or scenic areas, including the use of the gravel pit near the
10 Gibraltar trailhead.

11 119. The Sanpoil EA also concludes that no other activities would combine
12 to have a cumulative impact on the “number of acres suitable for designation” as
13 Roadless Areas. *Id.* at 54. The EA does not explain the contradiction between this
14 conclusion and the findings of the Sanpoil Recreation Report, in which the Forest
15 Service acknowledges that the “proposed fuel reduction and pile burning activities
16 may reduce the number of [Roadless Area] acres that may be considered as
17 recommended wilderness.” Sanpoil Recreation Report at 12.

18 120. The Sanpoil EA also fails to consider other projects that would have a
19 cumulative impact on recreation, including any meaningful analysis of the
20 cumulative impact of the Sherman Pass Project, and any analysis at all of any of the

1 projects excluded from Appendix A, including Kettle Face, Walker, West Zone,
2 Deer Jasper, Trout Lake, Orient Watershed, Bulldog, and Dollar Mountain. *Id.* at 54.
3 By contrast, the Sherman Pass EA disclosed that the impact of the “Walker, Deer
4 Jasper, and Sanpoil projects would result in a cumulative decline in the level of
5 natural and undeveloped environment, outstanding opportunities for solitude, and
6 primitive and unconfined recreation,” and that they may reduce access to the Kettle
7 Crest National Recreational Trail. Sherman Pass EA at 90-91.

8 121. Evaluating the impact to aquatic habitats, the Forest Service concludes
9 that since treatments along rivers and streams “are designed to primarily remove
10 smaller trees and leave the largest trees the changes in canopy cover are expected to
11 be small and transient in nature.” Sanpoil EA at 39. The accuracy of this statement
12 cannot be evaluated, however, because the Forest Service does not provide specific
13 treatment prescriptions to indicate how many trees would be removed from riparian
14 areas and which types of trees would remain near aquatic habitats.

15 122. The Forest Service also claims that direct and cumulative effects to
16 “sediment delivery, stream temperature, large woody debris recruitment and
17 effective stream length and passage of both organisms and stream material are
18 minor, minimal, transient in nature, and short-term.” Sanpoil EA at 38. The Sanpoil
19 EA does not discuss other Forest Service projects impacting the same watersheds,
20 including, for example, the O’Brien Creek watershed. *Id.* at 37-38. In the Sanpoil

1 Hydrology Report published on May 22, 2020, the Forest Service acknowledges that
2 “two other Forest Service projects” are in progress within the effects area of the
3 O’Brien Creek watershed. Hydrology Report at 23. However, the Forest Service
4 does not identify these projects, or analyze their cumulative effects. The Sherman
5 Pass EA, however, acknowledges that both it and the Walker Project may impact the
6 O’Brien Creek watershed by altering water yield and peak flows in relevant rivers.
7 Sherman Pass EA at 83.

8 123. In analyzing impacts to soils, the Forest Service makes specific
9 numerical determinations regarding detrimental soil conditions. While harvest
10 involving “grapple piling treatments” would approach 18% detrimental soil
11 conditions, the Forest Service claims that “[m]ost units of mechanical treatment
12 would remain under 15% detrimental soil condition[.]” Sanpoil EA at 50. However,
13 the Forest Service does not provide details on what kind of equipment will be used
14 in any particular area, or how “mechanical treatments” will vary across different
15 overlapping timber harvest types to maintain soil conditions under that specified
16 percentage.

17 124. The Sanpoil EA indicates the Proposed Action would open 10,585
18 “capable acres” within the Quartz Allotment for livestock grazing. *Id.* at 51. The
19 Quartz Allotment spans the entire Sanpoil Project Area, and neither the Sanpoil EA
20 nor its supporting documents indicate where these additional grazing acres will be

1 within the Project Area. In addition to being the source of conflicts with native
2 predators, which leads to the state-sanctioned killing of wolves, bears, and cougars,
3 the 2019 Plan FEIS acknowledges that grazing can dramatically alter native
4 ecological communities, harming both upland and riparian habitat by degrading
5 vegetation, soils, and streams. 2019 Plan FEIS at 240, 496.

6 125. In the Sanpoil Biological Evaluation (“Sanpoil BE”), the Forest Service
7 admits that “approximately 77 acres of stands that currently provide potential [lynx]
8 denning habitat would be treated with fuels treatments.” Sanpoil BE at 18. The
9 Forest Service also acknowledges that “[h]abitat quality for tree squirrels,” which
10 serve as important prey for many species, including lynx and goshawk, “could be
11 reduced for up to 20 years[.]” *Id.* at 18. However, the Sanpoil EA concludes that the
12 Proposed Action “[m]ay affect” but is “not likely to adversely affect” Canada lynx,
13 because there are “no known lynx den sites” in the Colville Forest, and “[s]tands
14 with potential den sites would be protected by avoidance.” Sanpoil EA at 41 (Table
15 10). However, the Sanpoil EA does not provide specific unit prescriptions within the
16 lynx LAUs that would allow for the accuracy of this statement to be evaluated.

17 126. As for cumulative impacts to lynx, the Sanpoil EA indicates that the
18 cumulative effects should be evaluated within the West Sherman and Hall Creek
19 LAUs, and that the “effects from this project would be cumulative to those resulting
20 from the White Mountain fire which occurred in 1988.” *Id.* Although the North Star

1 Fire is listed in Appendix A, the Sanpoil EA does not indicate that this fire will have
2 any cumulative impact to lynx, even though it well over 200,000 acres just adjacent
3 to the Project in 2015. More significantly, it does not even mention any other Forest
4 Service Projects, even though the Sherman Pass and Walker Projects also contain
5 portions of the West Sherman LAU—and the Sherman Pass TES Report
6 acknowledged that the Sherman Pass Project would include “harvest in high-quality
7 foraging habitat” for lynx and would affect “1,020 acres of lynx denning habitat.”
8 Sherman Pass TES Report at 56, 60-61.

9 127. The Sanpoil EA concludes that the Project’s direct effect on grizzly
10 bears “would be an increase in disturbance and a small reduction of core habitat
11 during...implementation.” Sanpoil EA at 41 (Table 10). It indicates hiding cover
12 “would be degraded in the short term,” although it “would be maintained along open
13 roads when possible.” *Id.* As for cumulative impacts, the Sanpoil EA acknowledges
14 that “[t]he proposed project would create a decrease in hiding cover for
15 approximately 5 years, a decrease in seclusion habitat due to an increase in human
16 disturbance, and a potential increase in forage habitat.” *Id.* It notes that those effects
17 “would be cumulative to those resulting from other similar vegetation management
18 projects that are active or proposed,” but it does not name any of those projects,
19 much less discuss their effects. *Id.*

1 128. As for gray wolves, the Sanpoil EA concludes that the Proposed Action
2 “[m]ay impact individuals but is not likely to...trend towards federal listing or loss
3 of viability.” *Id.* at 43 (Table 11). The Sanpoil EA does not discuss any cumulative
4 impacts on gray wolves, but instead directs the public to “[r]efer to grizzly bear
5 cumulative effects to forage and seclusion for analysis as effects are the same.” *Id.*
6 It does not explain how the cumulative effects on such disparate species could be the
7 same, including how the “forage” analysis was the same for grizzly bears, which are
8 omnivores, as for wolves, which are carnivores. *See id.* at 41 (discussing berry
9 production and green forage production and palatability for grizzly bear).

10 129. The Sanpoil EA indicates that the area for a cumulative effects analysis
11 on wolverine is the “Kettle Range south of the Canadian border because wolverines
12 have such large home ranges and occur at such low densities.” *Id.* at 41. It
13 acknowledges that the cumulative impacts of other “USFS vegetation restoration
14 projects throughout the cumulative effects area” would result in “additional decrease
15 in hiding cover for approximately 5 years, a decrease in seclusion habitat due to an
16 increase in human disturbance, and a potential increase in forage habitat.” *Id.* The
17 analysis does not name any of the other Forest Service projects, much less discuss
18 their impact, although it does summarily conclude that “[i]n consideration of these
19 cumulative impacts,” the Forest Service is still meeting Forest Plan standards and
20 guidelines for wolverine habitat. *Id.*

1 130. The Sanpoil EA acknowledges that the cumulative effects area for the
2 Northern goshawk is the entire Colville Forest, and grants that other “USFS
3 vegetation restoration projects” will contribute to these effects. *Id.* at 42 (Table 11).
4 However, it then refers only to the projects contained in Appendix A, which excludes
5 significant actions such as the Walker, West Zone, Deer Jasper, Bulldog, and Dollar
6 Mountain projects. *Id.* The Sanpoil EA also fails to engage in any meaningful
7 analysis of cumulative effects to the goshawk, other than to say they will be the
8 “same as direct and indirect effects described for this proposed project.” *Id.* It
9 describes these effects as “reduction of foraging habitat and a potential increase in
10 availability of food resources for the next 5-10 years,” and a “potential abandonment
11 of territories,” which could reduce the “breeding population and could affect the
12 species viability.” *Id.* Although it does not aggregate these impacts for all the Forest
13 Service projects in the area, the Sanpoil EA nevertheless concludes that they “may
14 impact individuals but [are] not likely to lead in a trend towards federal listing or
15 loss of viability.” *Id.*

16 131. The Sanpoil EA engages in a similar analysis for the cumulative effects
17 to the great gray owl, acknowledging that the effects on the species should be
18 analyzed on a forest-wide scale, but limiting its analysis to only those projects listed
19 in Appendix A. Meanwhile, it defines the cumulative effects area for the white-
20 headed and Lewis woodpecker as the lower-elevation lands west of the Columbia

1 River, but fails to consider the cumulative impact of the other projects that took place
2 west of the Columbia River, including Kettle Face, Walker, Deer Jasper, Sherman
3 Pass, West Zone, Bulldog, and Dollar Mountain. *Id.* at 42-43.

4 132. As for all sensitive bat species, the Sanpoil EA claims that project
5 activities would be located away from bat roost sites or timed to avoid periods when
6 they are occupied, although it acknowledges that activities near “unknown locations
7 could cause loss of individuals.” *Id.* at 43. In a supporting report published on May
8 22, 2020, however, the Forest Service concedes it has very little information on
9 where some of these bats live. For example, it indicates it is unable to do a viability
10 assessment for either the Townsend’s big-eared bat or the pallid bat due to a “lack
11 of knowledge to adequately map habitat[.]” Sanpoil Vegetation Management
12 Project: Additional Terrestrial Wildlife Analysis Report (“Wildlife Report”) at 8
13 (Table 1). The Sanpoil BE also notes that the highest conservation priority for the
14 Townsend’s bat is to “reduce human disturbance and destruction of roost sites.”
15 Sanpoil BE at 36. The Sanpoil EA does not explain how it can minimize human
16 disturbance or destruction of roost sites, when it has conceded that it does not know
17 where these bats live.

18 133. As for “[a]ll sensitive invertebrates,” the Sanpoil EA acknowledges that
19 “less mobile individuals could be killed,” “food plants could be damaged,” and that
20 “[t]he Proposed Action in addition to grazing would have an added negative

1 cumulative effect," because "grazing has the potential to remove forage and host
2 plants and alter the integrity of meadows and riparian habitats[.]" Sanpoil EA at 43
3 (Table 11). Although not mentioned in the Sanpoil EA, sensitive invertebrates within
4 the Project Area include the Western bumblebee, a Region 6 sensitive species in
5 alarming decline throughout the West. Without looking at the cumulative effect of
6 any other Forest Service project, or analyzing specific effects to the bumblebee, or
7 any other species in particular, the Sanpoil EA collectively reaches the conclusion
8 that the direct and cumulative effects of the project "[m]ay impact individuals but is
9 not likely to lead in a trend toward federal listing or loss of viability." *Id.*

10 134. The Sanpoil EA does not individually analyze effects on the pileated
11 woodpecker or the American marten, despite the former's status as a candidate for
12 the state endangered species list, and the fact that both species are used by the 1988
13 Forest Plan as a Management Indicator Species for the health of old-growth forests.
14 However, the Wildlife Report predicts that the Project "may affect individuals" of
15 both species but is "not likely to lead to loss of species viability." Wildlife Report at
16 11 (Table 2). It concludes that current late-closed habitat for these species is below
17 desired conditions set by the 2019 Forest Plan, but it does not address the admission
18 in the Sanpoil EA that the Project would move this category of habitat farther away
19 from those conditions. The Wildlife Report also indicates there will be no risk to

1 old-growth trees because of guidelines directing the retention of trees over 20 inches
2 in diameter, but does not address the impact of the many exceptions to that guideline.

3 **J. Plaintiff’s Objections to the Sanpoil EA and Forest Service Responses**

4 135. KRCG and NEWFC submitted detailed objections to the Sanpoil EA.
5 It marked the first time in its 18-year history that NEWFC has filed an objection to
6 a Forest Service Project.

7 136. KRCG objected that the descriptions of the Proposed Action’s
8 “silviculture” and “fuels treatments” were still vague to the point of prohibiting
9 informed public comment. KRCG noted the Forest Service had provided a small
10 number of sample unit prescriptions three days before it released the Sanpoil EA.
11 KRCG challenged the Forest Service’s failure to release draft prescriptions for the
12 entire Project.

13 137. For example, the Forest Service released a draft prescription for Unit
14 47, slated to receive shelterwood treatments, which detailed that the unit contains
15 550 trees per acre, with a basal area average of 260 square feet per acre. Harvesters
16 would have to leave “all trees over twenty-one inches diameter at breast height” and
17 “enough of [the] healthiest trees” to provide for 10 to 20 remaining trees per acre.
18 The Forest Service released planned shelterwood treatments for Unit 103, where the
19 basal area average is 200 square feet per acre, and harvesters would be directed to

1 “leave all trees” at and over twenty-one inches diameter at breast height and harvest
2 all smaller trees.

3 138. Both KRCG and NEWFC objected that the Forest Service refused to
4 provide specific prescriptions for proposed commercial harvests. They objected that
5 the maps provided were unreadable and unhelpful, such as the small-scale map of
6 commercial logging projects, which failed to include marked roadways or
7 geolocation data. KRCG told the Forest Service that “without disclosing what
8 prescriptions will be applied where, there is no way for the Forest Service to assert
9 it reasonably took a hard look at the environmental impacts of the Sanpoil project,
10 nor can the public meaningfully comment on the project.” KRCG Objection at 10.

11 139. Both KRCG and NEWFC objected that the Forest Service did not
12 evaluate the condition of the 67 miles of “existing non-system template roads” slated
13 for restoration, and therefore could not evaluate what the potential environmental
14 impacts of “restoration” of those roads would be.

15 140. KRCG and NEWFC also objected that the Forest Service failed to
16 indicate where grazing would increase across the Sanpoil Project Area, and therefore
17 did not adequately analyze the potential impacts to sensitive species.

18 141. KRCG also objected that the Sanpoil EA and its supporting reports
19 failed to adequately account for the potential direct and cumulative impacts to lynx,
20 wolves, wolverine, grizzly bear, and other wildlife.

1 142. KRCG continued its insistence that the Forest Service should prepare a
2 full EIS. because of the significant potential direct, indirect, and cumulative impacts
3 to the environment, especially considering the combined impact with the adjacent
4 Sherman Pass Project, and the upcoming Dollar Mountain project.

5 143. KRCG objected that the Forest Service only analyzed one alternative
6 for purportedly improving forest health—and that alternative was actually focused
7 on maximizing timber revenue. KRCG indicated “it is simplistic and lacking
8 investigation for the EA to limit action alternatives to one, timber-centric
9 alternative.” KRCG Objection at 14. KRCG objected that the Forest Service had
10 chosen not to analyze any alternative that included making improvements to the
11 section of the Pacific Northwest National Scenic Trail that crosses the Project Area.

12 144. NEWFC and KRCG both objected to the Forest Service’s refusal to
13 design the Project around the type of broader, landscape-level analysis described in
14 the Vision 2020 proposal, and envisioned by CFLRA, to achieve a “collaborative,
15 science-based ecosystem restoration of priority forest landscapes.” NEWFC
16 Objection at 4. The Forest Service thus failed to consider an alternative designed to
17 restore the Forest to its natural, historical structure, as the best way to create a
18 healthy, resilient Forest. Both groups supplied extensive scientific articles to support
19 the assertion that this approach is the best way to promote forest health and diversity,
20 and NEWFC offered its help in continuing to pursue this model through the Vision

1 2020 project. KRCG noted that the Draft EA included an explanation about a
2 landscape assessment and how it was applied to the Project, but that this assessment
3 was not updated in the final Sanpoil EA.

4 145. KRCG and NEWFC renewed their requests for the Forest Service to
5 eliminate shaded fuel break treatments along the Roadless Areas and along Hall
6 Creek Road, near the Bald Snow recommended wilderness. Both groups challenged
7 the Forest Service's failure to seriously consider an alternative that would have
8 eliminated treatments in these areas, and challenged the Forest Service's conclusion
9 that these treatments would not affect the eligibility of recommended wilderness and
10 Roadless Areas.

11 146. Both KRCG and NEWFC also objected that the Sanpoil Project fails to
12 comply with scenic objectives and guidelines outlined in the 2019 Forest Plan, and
13 that as a result, it would decrease the quality of recreational areas, including valuable
14 scenic trails such as the Pacific Northwest National Scenic Trail and the Kettle Crest
15 National Recreational Trail. KRCG noted that one draft unit prescription the Forest
16 Service provided would drastically change the scenic quality of an area and would
17 be "visually unacceptable." KRCG Objection at 11. KRCG also objected that the
18 Forest Service failed to analyze the cumulative effect of the Project on recreation,
19 when combined with the effects of other, nearby projects.

1 152. NEPA requires that agencies take a “hard look” at the consequences of
2 prospective actions by “carefully consider[ing] detailed information concerning
3 significant environmental impacts.” *Robertson*, 490 U.S. at 349.

4 153. When an agency proposes a project that would be implemented without
5 further, site-specific NEPA review, it must disclose the details of its proposed action
6 at a site-specific level and perform a detailed environmental analysis of the
7 reasonably foreseeable impact of those site-specific actions. *Alaska Conservation*
8 *Council*, 443 F. Supp. 3d at 1006.

9 154. When evaluating the impact of a project on the environment, an agency
10 must consider that action in conjunction with all other past, present, and reasonably
11 foreseeable future actions. *Idaho Sporting Congress*, 305 F.3d at 973. Cumulative
12 impacts must be discussed in enough detail to provide a thorough analysis of how
13 the projects will cumulatively affect the environment; a simple catalog of other
14 projects in the area is not sufficient. *Great Basin Mine Watch v. Hankins*, 456 F.3d
15 955, 971 (9th Cir. 2006).

16 155. The Forest Service failed to perform the required analysis of site-
17 specific plans for its silviculture treatments, fuels treatments, and road construction;
18 failed to fully develop those site-specific plans prior to performing its environmental
19 analysis; and failed to provide the public with site-specific information to enable the
20 public to provide meaningful comment on the analysis.

1 156. The Forest Service failed to perform sufficient direct analysis of the
2 Project's impact on several state and federal endangered, threatened, or sensitive
3 wildlife species, including, but not limited to, the gray wolf, wolverine, grizzly bear
4 and Canada lynx.

5 157. The Forest Service failed to perform adequate cumulative analysis of
6 the Project's impact on the environment, including, but not limited to, its impact on
7 riparian areas, recreation, and several wildlife species, because it failed to take into
8 account several other large projects that the Forest Service has conducted in nearby
9 areas over the past 10 years, as well as reasonably foreseeable projects that the Forest
10 Service has planned for the next few years.

11 158. The Forest Service's decision to proceed with the Sanpoil Project is
12 therefore arbitrary and capricious, pursuant to the APA. 5 U.S.C. § 706(2).

13 **B. Second Claim - The Forest Service Failed to Consider a Reasonable**
14 **Range of Alternatives**

15 159. Plaintiff realleges and incorporates by reference the preceding
16 paragraphs.

17 160. NEPA requires an agency to develop and assess appropriate
18 alternatives in any proposal involving unresolved conflicts concerning the uses of
19 available resources. 42 U.S.C. § 4332(E); 40 C.F.R. §§ 1507.2(d), 1508.9(b). The
20 Ninth Circuit has found that agencies have improperly dismissed alternatives from

1 detailed analysis when a project’s purpose and need are written too narrowly. *EPIC*
2 *v. USFS*, 234 Fed. Appx. 440, 443 (9th Cir. 2007).

3 161. Courts have found that the presence of any one of these factors, or a
4 combination of multiple, may be sufficient to indicate that the project may have a
5 significant impact to the environment, necessitating the preparation of an EIS. *Ctr.*
6 *for Biological Diversity v. Nat’l Hwy. Traffic Safety Admin.*, 538 F.3d 1172, 1220
7 (9th Cir. 2008).

8 162. In evaluating the Sanpoil Project, the Forest Service failed to analyze a
9 range of meaningful alternatives, by looking only at a “no action” alternative and the
10 proposed action. For example, the Forest Service improperly precluded serious
11 consideration of alternatives that would avoid the construction of additional roads,
12 or that would avoid construction of fuel breaks in or near Roadless Areas or
13 recommended wilderness. The Forest Service also failed to properly consider an
14 alternative planned at a landscape-scale, to restore Forest ecology to its traditional
15 structure, and did not consider recommended alternatives that would have enhanced
16 recreational resources.

17 163. The Forest Service’s decision to proceed with the Sanpoil Project is
18 therefore arbitrary, capricious, an abuse of discretion, and not in accordance with
19 law, and should be set aside pursuant to the APA, 5 U.S.C. § 706(2).

1 **C. Third Claim - The Forest Service Should Have Prepared an EIS to**
2 **Evaluate Significant Environmental Impacts of the Sanpoil Project**

3 164. Plaintiff realleges and incorporates by reference the preceding
4 paragraphs.

5 165. NEPA requires federal agencies to prepare an EIS for “major Federal
6 actions significantly affecting the quality of the human environment.” 42 U.S.C. §
7 4332(C). In considering whether a project has a significant effect on the
8 environment, agencies must consider “[w]hether an action is related to other actions
9 with individually insignificant but cumulatively significant impacts.” 40 C.F.R. §
10 1508.27(b)(7). Agencies are required to evaluate both the context and intensity of an
11 action to determine the significance of its impact on the environment. *Id.* § 1508.27.

12 166. Courts have found that the presence of any one of these factors, or a
13 combination of multiple, may be sufficient to indicate that the project may have a
14 significant impact to the environment, necessitating the preparation of an EIS. *Ctr.*
15 *for Biological Diversity v. Nat’l Hwy. Traffic Safety Admin.*, 538 F.3d 1172, 1220
16 (9th Cir. 2008).

17 167. Several factors indicate the Forest Service should have developed an
18 EIS for the Sanpoil Project, including, but not limited to, the fact that the Project:
19 (1) would have a significant environmental impact, especially when considered
20 along with the impact of other related projects the Forest Service omitted from its
21 analysis; (2) deals with issues of high controversy, including impacts on wildlife,

1 recreation, and old-growth forests, the efficacy of shaded fuel breaks, and the Forest
2 Service's failure to consider a landscape-based approach to Forest resiliency; (3)
3 contains elements of great uncertainty, including unknown impacts on several
4 wildlife species whose status the Forest Service was unable to accurately assess; the
5 uncertainty of the impact of unspecified and/or undeveloped treatments on Forest
6 structure and recreation; and the unknown cumulative impacts on wildlife,
7 recreation, and aquatic habitats; (4) would have an impact on unique geographic
8 areas, because it proposes treatments next to and within Roadless Areas and a
9 recommended wilderness area; (5) would have adverse impacts on multiple state and
10 federal sensitive, threatened, or endangered species and their habitats; and (6) would
11 set a precedent for the Forest Service to approve additional planned Projects within
12 the same area without an adequate disclosure or analysis of their site-specific or
13 cumulative impacts.

14 168. The Forest Service's failure to prepare an EIS for the Sanpoil Project
15 was therefore arbitrary, capricious, an abuse of discretion, and not in accordance
16 with law, and should be set aside pursuant to the APA, 5 U.S.C. § 706(2).

17 **D. Fourth Claim – The Sanpoil Project Does Not Adhere to the 2019 Colville**
18 **Forest Plan, in Violation of NFMA**

19 169. Plaintiff realleges and incorporates by reference the preceding
20 paragraphs.

1 170. NFMA requires that individual Forest Service projects be consistent
2 with their corresponding Land Management Plans. 16 U.S.C. § 1604(i).

3 171. The Sanpoil Project is not consistent with the 2019 Forest Plan, because
4 it fails to adhere to the Plan's Scenic Integrity Objectives, moves several Forest
5 structures and species habitats away from the desired conditions specified in the
6 Plan, and fails to meet the Plan's guidelines by diminishing the scenic quality of the
7 Forest and the wilderness characteristics of the Roadless Areas.

8 172. The Forest Service's final decision to proceed with the Sanpoil Project
9 thus violates NFMA, and should be set aside pursuant to the APA, 5 U.S.C. § 706,
10 as it is not in accordance with law.

11 **E. Fifth Claim – The 2019 Colville Forest Plan, which Enables the Sanpoil**
12 **Project, Violates NFMA, NEPA, and the APA**

13 173. Plaintiff realleges and incorporates by reference the preceding
14 paragraphs.

15 174. NFMA requires that the Forest Service provide “for diversity of plant
16 and animal communities” and “preserve the diversity of tree species.” 16 U.S.C.
17 1604(g)(3)(B). Implementing this requirement, the 1982 Rules require that “wildlife
18 habitat shall be managed to maintain viable populations of existing native and
19 desired non-native vertebrate species in the planning area.” 1982 Rules § 219.19. To
20 effectuate this goal, the 1982 Rules also require that the Forest Service identify and

1 monitor management indicator species and evaluate planning alternatives with an
2 eye towards the viability of those species. *Id.*

3 175. The 1988 Forest Plan identifies pileated woodpeckers and American
4 marten as management indicator species for old-growth forests. The Forest Service
5 stopped monitoring these species in 1997, and the 2019 Forest Plan did not replace
6 these species with a different method of monitoring the health of old-growth forests.

7 176. However, the 2019 Forest Plan eliminates the Eastside Screens
8 Standard to allow wide exceptions to its prohibition on logging large, old trees. The
9 Sanpoil Project allows for 3,590 acres of timber harvest in areas containing old-
10 growth trees, including at least 600 acres of commercial harvest.

11 177. The 2019 Forest Plan thus does not meet NFMA's mandate to ensure
12 that old-growth habitat, and the numerous ecosystem services it supports, is "well
13 distributed," and thus ensure diversity within the Forest.

14 178. In adopting the new standard for logging old-growth trees, the Forest
15 Service also violated NEPA and the APA by failing to respond to substantial public
16 comments, including by failing to ensure that the 2019 Plan FEIS adequately
17 responded to opposing scientific views.

18 179. These sections of the 2019 Forest Plan, Plan FEIS, and Plan ROD are
19 therefore arbitrary, capricious, an abuse of discretion, and otherwise not in
20 accordance with law, and should be set aside pursuant to the APA, 5 U.S.C. § 706(2).

VII. REQUEST FOR RELIEF

The Plaintiff therefore respectfully requests that this Court grant the following relief:

- A. Declare that the Sanpoil Decision Notice and FONSI and the Sanpoil EA are invalid pursuant to the APA, 5 U.S.C. § 706(2), because they are arbitrary, capricious, an abuse of discretion, and unsupported by substantial evidence in the record, and because they violate NEPA and/or NFMA, and are therefore not in accordance with law;
- B. Vacate the Sanpoil Decision Notice and FONSI and the Sanpoil EA;
- C. Remand the Sanpoil Decision Notice and FONSI and the Sanpoil EA to the Forest Service with instructions to prepare an Environmental Impact Statement in accordance with the agency’s obligations under NEPA and the APA;
- D. Enjoin the Forest Service from allowing timber harvest, prescribed burns, or roadwork within the Sanpoil Project Area until such time as the Forest Service has performed the requisite environmental analysis;
- E. Hold that the 2019 Forest Plan, Plan FEIS, and Plan ROD are unlawful under NEPA, NFMA, and the APA;
- F. Vacate the portions of the 2019 Forest Plan, Plan FEIS, and Plan ROD that are related to the new standards for logging of old-growth trees, and remand

1 to the Forest Service for new consideration in compliance with NEPA,
2 NFMA, and the APA;

3 G. Retain jurisdiction over this case until the Forest Service complies with the
4 requirements of NEPA, NFMA, and the APA;

5 H. Award Plaintiff their reasonable costs, litigation expenses, and attorneys' fees
6 associated with this litigation pursuant to the Equal Access to Justice Act, 28
7 U.S.C. § 2412; and

8 I. Grant such further relief as the Court deems just and proper.

Respectfully submitted this 12th day of May 2021.

ANIMAL & EARTH ADVOCATES, PLLC

By  _____

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