March 30, 2020

Reviewing Officer
U.S.D.A. Forest Service
Rocky Mountain Region
1617 Cole Blvd. Building 17
Golden, CO 80401
Via Email: SM.FS.r02admin-rev@usda.gov

Re:  OBJECTIONS Pursuant to 36 C.F.R. § 218.8 to Taylor Park Vegetation Management Project, Gunnison Ranger District, Gunnison National Forest

Dear Reviewing Officer:

High Country Conservation Advocates (HCCA), the Center for Biological Diversity, and Rocky Smith, collectively “Objectors,” hereby submit these objections to the Gunnison National Forest’s draft Decision Notice (DDN), Finding of No Significant Impact (FONSI) and final environmental assessment (Final EA) for the Taylor Park Vegetation Management Project.

At the same time, we acknowledge that the Forest Service made some significant improvements between its Preliminary EA and Final EA that should reduce some impacts. We appreciate that the Gunnison Ranger District listened to neighbors, conservationists, and county representatives in reducing some project impacts, especially from new road construction. We find it extremely disappointing, therefore, that near the end of the NEPA process the Forest Service added a contentious, significant, and surprising project expansion with virtually no environmental review. We must regretfully file this objection and hope that the Forest Service will eliminate those eleventh-hour and unanalyzed portions of the project that undercut the modest progress toward a more collaborative project development process. The Forest Service still has a chance to take one step forward if it removes Contingency Treatment Areas and undefined logging areas, as opposed to the two steps back the DDN represents. The Forest Service has also not responded to our concerns about accurately displaying the potential effects on lynx.

Project Objected To
Pursuant to 36 C.F.R. § 218.8(d)(4), HCCA objects to the following project:

Project: Taylor Park Vegetation Management Project, Gunnison Ranger District, Gunnison County, Colorado
Timeliness
These objections are timely filed. Notice of the DDN and FONSI was published in the Gunnison Country Times (the newspaper of record) on Thursday, February 27, 2020.

Lead Objector
As required by 36 C.F.R. § 218.8(d)(3), the Objectors designate the “Lead Objector” as follows:

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High Country Conservation Advocates
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Interests and Participation of the Objectors
Based out of Gunnison County, **High Country Conservation Advocates** (HCCA) is a non-profit organization with over 1,000 members. HCCA is actively involved in monitoring and scrutinizing National Forest management, overseeing government decision-making and compliance with environmental laws, advocating for better stewardship of natural systems, and working for improvements to environmental health. HCCA members use and plan to use the federal lands in the Gunnison District of the Gunnison National Forest, including specifically the national forest lands included within Taylor Park project area. HCCA members are affected by the proposed project activities.

HCCA has participated in all public processes for this project thus far. We submitted scoping comments on May 21, 2018; submitted comments on the Preliminary EA on May 13, 2019; and submitted comments on supplemental materials made available from the Forest Service on January 15, 2020. HCCA staff attended the Forest Service’s public meeting in Tincup on June 21, 2018. Staff are also members of the Taylor Park Adaptive Management Group and have attended most, if not all, of the meetings associated with the Group’s formation and implementation.

The **Center for Biological Diversity** is a non-profit environmental organization with over 61,000 members, and 1.6 million activist-supporters nationwide who value wilderness, biodiversity, old growth forests, and the threatened and endangered species which occur on America’s spectacular public lands and waters. Center members and supporters use and enjoy the GMUG National Forest, and the lands of the Taylor Park project area for recreation, photography, nature study, and spiritual renewal. Headquartered in Tucson, Arizona, the Center has offices in Denver and Crested Butte, Colorado.
The Center for Biological Diversity believes that the welfare of human beings is deeply linked to nature — to the existence in our world of a vast diversity of wild animals and plants. Because diversity has intrinsic value, and because its loss impoverishes society, we work to secure a future for all species, great and small, hovering on the brink of extinction. We do so through science, law and creative media, with a focus on protecting the lands, forests, waters and climate that species need to survive. The Center has and continues to actively advocate for increased protections for species and their habitats in western Colorado and across the American Southwest. The Center submitted scoping comments on May 21, 2018; submitted joint comments with HCCA, as well as their own supplemental comments on the Preliminary EA on May 13, 2019; and submitted joint comments with HCCA on January 15, 2020 on supplemental materials made available from the Forest Service.

Rocky Smith is a forest management analyst and consultant with 40 years’ experience in reviewing projects, plans, policies, and legislation concerning the management of national forests. Rocky submitted scoping comments on May 21, 2018 and submitted comments on the Preliminary EA on May 13, 2019.

I. THE FINAL EA VIOLATES NEPA BECAUSE IT FAILS TO DISCLOSE SITE-SPECIFIC IMPACTS.

Objectors raised this issue on page 8 of our joint May 13, 2019 comments on the Preliminary Draft and pages 1-6 of our joint January 15, 2020 comments on the Supplemental EA.

Selected Alternative 2 in the Final EA differs markedly from the proposed action in the preliminary EA, and from project direction contemplated in scoping documents, in that it more than triples the acreage identified for salvage logging in anticipation of potential mortality events, from 8,767 acres to 29,095 acres, while providing little to no baseline data for those acres, nor analysis of direct, indirect, or cumulative impacts of logging any or all of these additional lands. The inclusion of these Contingency Treatment Areas (CTAs), as well as 3,153 acres of “fuel treatments to be determined,” where various types of logging could be applied over a to-be-determined timeframe extending potentially two decades, is not accompanied by requisite NEPA analysis. The Final EA is devoid of the site-specific information required under NEPA, and the adaptive management framework contemplated for the project is not a legally-compliant substitute. We would likely not be filing this administrative objection had these CTAs not been added to the project decision at the tail-end of the public process.

A. NEPA Requires Agencies to Take a Hard Look at Site-Specific Impacts.

NEPA is “our basic national charter for protection of the environment.”1 It has two fundamental purposes: “(1) to ensure that the agency will have detailed information on significant environmental impacts when it makes decisions; and (2) to guarantee that this information will be available to a larger audience.”2 As discussed in greater detail in sections below, neither of these are satisfied with the Taylor

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1 40 C.F.R. § 1500.1.
2 Envtl. Prot. Info. Ctr. v. Blackwell, 389 F. Supp. 2d 1174, 1184 (N.D. Cal. 2004) (quoting Neighbors of Cuddy Mt. v. Alexander, 303 F.3d 1059, 1063 (9th Cir. 2002)); see also Earth Island v. United States Forest Serv., 351 F.3d 1291, 1300 (9th Cir. 2003) (“NEPA requires that a federal agency ‘consider every significant aspect of the environmental
Park analysis and decision. The agency is making a decision to potentially commit resources without providing detailed information and analysis upon which that decision is based, and without disclosing impacts of possible future actions.

Analyzing and disclosing site-specific impacts is critical because where, when, and how activities occur on a landscape strongly determine the nature of the impact. As the Tenth Circuit Court of Appeals has explained, the actual “location of development greatly influences the likelihood and extent of habitat preservation. Disturbances on the same total surface area may produce wildly different impacts on plants and wildlife depending on the amount of contiguous habitat between them.”\(^3\) Indeed, “location, not merely total surface disturbance, affects habitat fragmentation,”\(^4\) and therefore location data is critical to the site-specific analysis NEPA requires. Merely disclosing the existence of particular geographic or biological features is inadequate—agencies must discuss their importance and substantiate their findings as to the impacts.\(^5\) While the EA does show the locations of CTAs,\(^6\) it does not identify what areas within those will be treated, nor by what means, nor by what date, nor what the forest conditions are now, nor what other values may be found within the CTAs, nor what they would be in the future when logging would take place. The Taylor Park decision sanctions logging across a wide and diverse landscape despite the fact that the Forest Service has failed to disclose the where, when, what, and how of that logging.

In *Muckleshoot Indian Tribe v. U.S. Forest Service*,\(^7\) the Court held that the project-specific NEPA analyses that tiered to a programmatic EIS needed to consider the site specific impacts of a federal action because the programmatic EIS could not consider the site-specific impacts of later developed actions. Similarly, the Forest Service must conduct future NEPA analyses for potential projects totaling 29,095 acres of CTAs and 3,153 acres of fuel treatments, and must consider the site-specific impacts of those actions in those future NEPA analyses. The site-specific impacts that would occur as a result of the contingency and fuel treatments sanctioned by this project decision forbid the Forest Service from relying merely on the analysis in the Final EA, analysis that only adequately addresses a subset of that acreage.

Earlier this month, the District Court for the District of Alaska issued a decision underscoring the Forest Service’s legal duty to disclose the when, where, and how of logging projects before approving project-level actions. The court found unlawful the agency’s analysis of the Prince of Wales timber sale because it failed to disclose site-specific locations for roads and treatments. The District Court explains the approach the Forest Service took in the Prince of Wales EIS, describing that the document “analyzed” four alternatives, but that:

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\(^3\) New Mexico ex rel. Richardson, 565 F.3d at 706.
\(^4\) Id.
\(^5\) Or. Natural Res. Council Fund v. Goodman, 505 F.3d 884, 892 (9th Cir. 2007).
\(^6\) Final EA at 32.
\(^7\) Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800 (9th Cir. 1999).
the alternatives do not provide the specific locations or configurations of harvest or roadbuilding within the LSTA [Logging System Transportation Analysis]. Instead, the Project EIS provides that “site-specific locations and methods” for activities such as timber harvest “will be determined during implementation” over the 15-year lifespan of the Project. It explains that siting decisions and the parameters of actual timber sales will be determined pursuant to an Implementation Plan . . .However, the EIS makes clear that these subsequent, site-specific decisions will not be subject to additional NEPA review. The Forest Service terms this approach “condition-based analysis.”

The Prince of Wales EIS made assumptions “[i]n order to capture the ‘maximum effects’ of the Project.” This is strikingly similar to the Taylor Park Project, whose Final EA states: “For analysis purposes, a mass mortality salvage scenario is assumed to capture the extent of effects for the CTAs. [...] Though we analyze this scenario as full treatment of the CTAs, in reality that is extremely unlikely due to design constraints.” Despite this statement, the Final EA does not disclose the impacts of the “worst case scenario.” It does not disclose the impacts of a beetle kill across nearly 30,000 acres; it does not disclose the impacts of logging the CTAs; and it does not disclose the difference between leaving the CTA areas uncut after a beetle kill in comparison to its proposed action of logging an undefined acreage within those 30,000 acres.

The Taylor Park Final EA states: “The 29,095-acre figure from above is only the gross area of the external boundaries, and does not imply that all of the acres within would be available or practical for salvage harvest.” Likewise, the Price of Wales EIS also identified larger areas within which smaller areas of logging would later be identified, and approved the construction of 164 miles of road (the Taylor Park project approves the construction of 109 miles of road), but “the Project EIS does not include a determination—or even an estimate—of when and where the harvest activities or road construction authorized by each alternative will actually occur.” This is identical to the Taylor Park project, which “distinguishes contingency treatment areas . . . where treatments could be applied . . . These CTAs cover a large acreage to provide for adaptability in the face of potential fast changing or changed forest conditions. [...] [S]alvage treatments could be authorized within these areas.”

The court distinguishes its decision from WildEarth Guardians v. Conner where the Tenth Circuit upheld an Environmental Assessment (EA) for the Tennessee Creek Vegetation Management Project designed to address a beetle infestation in two national forests. But the issue in that case was limited specifically to the Forest Service’s analysis of impacts to lynx, and it was determined that the project was adhering to a scientifically-supported lynx conservation strategy that was included in the relevant forest plan.

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9 Id. at *7.
10 Final EA at 28.
11 Id. at 53.
12 Southeast Alaska at *19.
13 Final EA at 28 (emphasis added).
14 WildEarth Guardians v. Conner, 920 F.3d 1245, 1250-51 (10th Cir. 2019).
deficiencies in the Taylor Park EA extend beyond consideration of impacts to lynx, to the other resources and values that the agency has failed to consider before undertaking a commitment of resources.

The District Court of Alaska emphasized the purpose of preparing an EA: “An EA is meant to determine whether a proposed action will have a significant impact on the environment, such that an EIS is necessary.” As described throughout this objection, the Forest Service has not demonstrated – because it has not provided any degree of analysis supporting its determination – that salvage logging almost 30,000 acres would not have a significant impact on the environment. In distinguishing the Prince of Wales EIS from the Tennessee Creek EA, the court noted: “[A]n agency's analysis of a proposed action's maximum potential impacts may be appropriate for an EA . . . .” But that appropriateness is predicated on analysis, which the Taylor Park EA lacks. For the project at hand, the Final EA does not sustain its statement that the Forest Service has analyzed a “full treatment” scenario that considers the maximum potential impacts of the proposed action. On the contrary, the EA is not designed to address that scenario, instead providing analysis for a proposed action that does not include full treatments, if any, in CTAs.

The Tennessee Creek Project EA provides a much greater level of detail for its 13,580 acres of proposed treatment, including specific treatment types and acreages. For example:

The Service’s chosen alternative will involve 2,370 acres of clearcutting, 6,765 acres of thinning, 345 acres of precommercial thinning, and 6,040 acres of prescribed burns (some of which will overlap with the clearcutting and thinning), as well as the creation of about 21 miles of temporary roads. The EA also describes how much those treatments—spaced out over 10 to 15 years—will impact each forest type. Of the 9,480 acres of lodgepole pine stands that are treatable (not limited by slope, accessibility, or other factors preventing treatment), 6,765 will be targeted for thinning and 345 will be targeted for precommercial thinning (a process of thinning stands that were clear-cut 20-30 years earlier, so that growth can be concentrated on the more commercially valuable trees). And the Service will use clearcutting and prescribed burns to create openings in lodgepole-pine stands, but on no more than 25% of the 9,480 acres of treatable pine, and with clear-cuts limited to irregularly shaped 40-acre patches. This level of detail is completely lacking in the Taylor Park EA. Instead, we are only told that 29,095 of Engelmann spruce, lodgepole pine, and Douglas-fir are identified in CTAs for salvage logging, and provided with a single map of these general areas, a map that does not distinguish between forest types. Less than two pages of discussion are devoted to the impacts of this scenario in the Final EA. For the Forest Service to comply with NEPA it must disclose: (1) the effects of the mortality event across the

15 Southeast Alaska at *26.
16 Id. (emphasis added).
17 Final EA at 28.
18 WildEarth Guardians, 920 F.3d at 1255.
19 Final EA at 32.
20 Id. at 53.
area; (2) the effects of logging the lands subjected to the mortality event across the 30,000-acre area; and (3) the difference between doing nothing and logging within the dead or dying area. The Final EA does none of these things. It can’t be a “worst case scenario” disclosure if the agency doesn’t disclose the impacts at all.

The inclusion of this aspect of the project as a postscript after release of the Preliminary EA is not accompanied by requisite NEPA analysis. In essence, the agency is proposing to treat a large acreage of changed forest condition years down the line with an EA that analyzes treating specific areas based on current forest conditions. The two analysis scenarios do not match up, and the District of Alaska’s decision demonstrates that the management proposed by the Forest Service has not complied with the law.

B. The Final EA Fails to Disclose the Taylor Park Project’s Site-Specific Impacts

CEQ’s regulations establish specific ways agencies must analyze project-level decisions, including a detailed discussion of direct, indirect, and cumulative impacts and their significance. The Taylor Park project is a project-level decision. As a result, any analysis must include the detailed information and examination that NEPA and the CEQ regulations require because there will be no further NEPA analysis beyond the Final EA. In sanctioning 29,095 acres of logging in CTAs and 3,153 acres of “fuel treatments to be determined”, the Final EA fails NEPA’s requirement that analysis disclose specific information about the when, where, and how of agency actions.

Under the agency’s original proposed action (Alternative 1), 8,767 acres would be made available for potential treatment should there be a “Changed Condition/Mortality Event.” 21 The Preliminary EA acknowledged that “[t]his assessment does not identify specific sites for salvage clearcut.” 22 Nor is this identified in the Final EA. Having a placeholder for almost 30,000 acres of salvage clearcuts that “would remove all merchantable dead and associated live conifer, except those required to meet wildlife snag requirements”, 23 without identifying specific sites and impacts, violates NEPA.

We are concerned with the removal of “associated live conifer”. In the event of a mortality event caused by beetles, the probability is high that removing live, uninfected trees could actually increase total mortality above levels that occur from just the beetle outbreak alone. 24 Removing live trees while the outbreak is underway is likely to remove potential survivors that have genetic adaptations that confer resistance to beetles. 25 This could make future outbreaks more likely. A recent scientific study, apparently not reviewed by the Forest Service, found that “during outbreaks, beetle choice may result in strong selection for trees with greater resistance to attack. Our findings suggest that survivorship is

21 Final EA at 33.
22 Preliminary EA at 21.
23 Final EA at 214.
genetically based and, thus, heritable. Therefore, retaining survivors after outbreaks to act as primary seed sources could act to promote adaptation."26

New evidence confirms there is a genetic basis for tree survival after beetle outbreaks.27 Baker28 reviewed evidence that retaining survivors and post-disturbance natural tree regeneration from seed will further genetic adaptation to the emerging hotter climate and its associated patterns of beetle outbreaks, droughts, and fires. Key to the success of this adaptation approach is to avoid logging survivors, since this would reduce selection and genetic adaptation to emerging climate change and associated disturbances.

1. The Final EA Fails to Disclose the Project Area’s Baseline Conditions.

For the Forest Service to fulfill its obligation to take a “hard look” at the environmental effects of salvage logging 29,096 acres, the EA must focus its analysis on those areas and resources likely to be impacted by the proposed action.29 As part of that hard look, agencies must “succinctly describe the environment of the area(s) to be affected or created by the alternative under consideration.”30 NEPA requires the agency to set an appropriate baseline detailing the nature and extent of the resources in the area. The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process. “Without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment and, consequently, no way to comply with NEPA.”31

Because the CTAs are large landscapes that may (or may not) be affected by various stressors in the future, the EA cannot provide baseline information about conditions that do not yet exist and may never exist. The location and type of treatments, and their impact on the forest, could be significantly influenced by changed forest conditions, as the Final EA admits.32 The forest of 10-20 years from now may be very different from the forest of today. In addition, public uses in the increasingly-popular Taylor Park area may be very different from uses today. As such, the EA fails to disclose the values and resources anticipated in the future within the CTAs that are proposed for road construction, logging, and significant human intrusion. All the agency can do at this point is point to large areas on the landscape that could be logged, without disclosing information about the forest conditions that will exist at the time of treatment operations in those areas. The agency’s failure to disclose this information to the public violates NEPA’s hard look mandate and the requirement that agencies disclose baseline conditions.

26 Id.
27 Id.
30 40 C.F.R. § 1502.15.
31 Half Moon Bay Fishermans’ Mktg. Ass’n v. Carlucci, 857 F.2d 505, 510 (9th Cir. 1988).
32 Final EA at 28.
NEPA requires that the hard look assessment take place at the site-specific level if there are no additional NEPA processes yet to occur in the future to fully implement the project and the environmental impacts are reasonably foreseeable.33 Future forest conditions, future specific treatment types and locations, and future dates of treatments within the CTAs are all unknown. Given these unknowns, it is impracticable, and illegal, for the NEPA analysis at hand to attempt to provide baseline assessments and analysis of these relationships.

2. The Final EA Fails to Disclose the Impacts of Treatments in Contingency Treatment Areas.

Without knowing, or disclosing, specifically where it will conduct timber treatments across an almost 30,000-acre landscape, and when and what kinds of specific treatments may occur, the agency is unable to analyze, disclose, or understand the effects of the proposed action or to craft and analyze alternatives to protect these values. The Final EA is essentially a programmatic document. But its programmatic nature does not obviate the agency’s responsibility to analyze site-specific impacts. CEQ guidance states:

A broad (e.g., regional or landscape) description may suffice for characterizing the affected environment in programmatic NEPA reviews, so long as potentially impacted resources are meaningfully identified and evaluated.34

The fact that the decision would allow future salvage logging on 29,095 acres is not even acknowledged in the project’s DDN/FONSI. Rather, that document states: “Additionally, in total, Alternative 2 includes a stand-replacing prescribed fire component on 4,180 acres, increasing the project’s anticipated actionable acres to 17,714.”35 Instead, Alternative 2, in total, increases the project’s potential actionable acres to 29,095. The DDN/FONSI goes on to say that: “[Alternative 2] is more refined and detailed with its proposed actions while anticipating the need for potential treatments in the instance of a mass mortality event such as epidemic insect infestation, landscape-scale wildfire or windthrow.”36 We can find little in the Final EA reflecting this refinement and detail as it pertains to salvage logging in the instance of a potential future mass mortality event. Anticipating the need for treatments and fulfilling NEPA’s mandate to analyze site-specific impacts of those potential treatments are not the same thing.

In describing Alternative 2, the DDN/FONSI states:

33 See New Mexico ex rel. Richardson, 565 F.3d at 718-19 (requiring site-specific NEPA analysis when no future NEPA process would occur); Colo. Envtl. Coalition v. Ofc. of Legacy Mgmt., 819 F. Supp. 2d 1193, 1209-1210 (D. Colo. 2011) (requiring site-specific NEPA analysis even when future NEPA would occur because "environmental impacts were reasonably foreseeable"); cf. Wyoming v. U.S. Dept. Agric., 661 F.3d 1209, 1256 (10th Cir. 2011) (not requiring site-specific NEPA analysis because decision was “a ‘broad’ nationwide rule” allowing Forest Service to evaluate effects “generically”).
34 Council on Environmental Quality, Memorandum for Heads of Federal Departments and Agencies, Effective Use of Programmatic NEPA Reviews (December 18, 2014), at 32 (emphasis added). Exhibit 5.
35 Draft Decision Notice/FONSI at 4 (emphasis added).
36 Id.
The EA provides a matrix of potential treatments that could be applied once treatment-specific resource surveys have been completed. This flexibility allows the Forest Service to be more responsive to rapidly changing forest conditions if and when they occur.\textsuperscript{37}

This appears to authorize almost any kind of treatment in the CTAs. Also, as part of the “Implementation Process”, step 2 in the Adaptive Management Framework is “Define contingency treatment areas.”\textsuperscript{38} This clearly indicates the Forest Service intends to implement treatments in the CTAs.

The Forest Service’s response to HCCA’s previous comments regarding this concern states:

Implementation of any salvage treatments would be determined though Appendix B and follow the implementation process of Appendix E, which includes public participation and Appendix A (surveys and design features). It would comply with project design features and Table 1 decision-making triggers found in the EA. Further, \textit{Alternative 2 establishes and defines contingency treatment areas} where treatments could be applied for early beetle infestation above endemic levels or treatments should mortality events occur. \textit{A salvage scenario was assumed for analysis to capture the extent of effects.}\textsuperscript{39}

Establishing and defining areas for logging is not the same as analyzing direct, indirect, and cumulative impacts of that logging. It is unclear where the analysis of a full-blown salvage scenario across 30,000 acres is in the Final EA. The Final EA devotes approximately two pages in a section titled “Effects of Salvage Clearcutting/Overstory Removal in Alternative 2 Contingency Treatment Areas”\textsuperscript{40} to this topic, but even that acknowledges the agency’s inability to address this, with statements like: “The potential harvest volume from salvage logging of dead trees in the CTAs is not included in the numbers shown in Table 16 \textit{due to the large uncertainty surrounding where, when, and how much tree mortality could occur.}”\textsuperscript{41} The best the agency can guarantee is: “Public notice and comment on an annual basis for the upcoming cycle of treatments.”\textsuperscript{42} Notifying the public post-hoc of a decision already made undermines NEPA’s mandate that agencies “look before they leap,” rendering public comment meaningless while removing accountability.

The fact that not all of the 29,095 acres would be salvage logged does not make this more palatable. The Final EA notes that it will design treatments to avoid certain areas:

\textsuperscript{37} \textit{Id.} at 3.
\textsuperscript{38} Final EA at 235.
\textsuperscript{39} Taylor Park Public Comment/Comment Summary and Responses at 29 (emphasis added).
\textsuperscript{40} Final EA at 53.
\textsuperscript{41} \textit{Id.} at 55. This is a far cry from the ‘worst-case scenario’ the FS prepared in the \textit{WildEarth Guardians} case. This makes no assumptions at all about the greatest potential impacts to values. Instead, the Forest Service merely throws up its hands and claims an inability to predict impacts.
\textsuperscript{42} \textit{Id.} at 23.
During implementation, should epidemic level insect infestations or mortality event conditions occur, and treatment be desired, specific treatment areas would be delineated within the CTAs. These specific treatment areas would be reduced in size due to constraints from economic feasibility, design feature restrictions (e.g., WQSP-5B(D)—Limits ground disturbing activities above 40 percent slopes, WQSP-5A—Limits detrimental soils disturbance to 15 percent for the activity area), and the yellow/red light decision triggers (e.g., thresholds for maximum allowable disturbance in Lynx habitat and subwatersheds).

Avoiding some areas means concentrating logging in other areas. Because the Final EA fails to disclose where most of these values may exist that vegetation treatments are designed to protect or avoid, neither the public nor the decision-maker can understand the impact to the environment of these avoidance measures. None of these areas are identified on maps, though they clearly could be because the Forest Service identifies CTA locations. Nor is the extent of these areas described or quantified. This failure to disclose where logging will not take place, thus confining where logging will take place, violates NEPA, and deprives both the public and the decisionmaker of the information necessary to understand the action and its impacts and to conclude that the action will not have significant impacts.

3. The Final EA Fails to Disclose the Impacts of “Fuel Treatments to be Determined”.

In addition to the 29,095 acres of CTAs, the project decision also includes a placeholder for 3,153 acres of “fuel treatments to be determined.” The Final EA does not delineate what specific types of treatments would constitute fuel treatments in specific locations. Rather: “any of the treatments described above could be implemented in the fuel treatment areas.”

Treatments “described above” include commercial thinning, roadside hazard tree felling, dwarf mistletoe sanitation, pre-commercial thinning, shelterwood cutting, group selection, salvage overstory removal, salvage clearcut, overstory removal, non-commercial dwarf mistletoe edge treatment and hand treatment of edge strips in wet areas, clearcutting, clearcutting of products other than sawlogs, and dwarf mistletoe edge strip cuts.

The Forest Service is keeping on the table every possible treatment option across a 3,000-plus acre landscape for a project with a shelf life of 20 years – longer than the life of a Forest Plan.

The Final EA acknowledges that these areas contain a “diversity of vegetation types and stand conditions.” The Alternative 2 Map provided with the Final EA indicates potential fuel treatment sites scattered throughout the project area. Yet the Forest Service provides no analysis of impacts to these varied and diverse lands from the multitude of treatment options left available. For example, the impacts to wildlife of a clearcut in spruce-fir are very different from a thinning treatment in lodgepole. A

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43 Id. at 28.
44 Id. at 29.
45 Id. at 48.
46 Id. at 44-48.
47 Id. at 48.
significant percentage of the project area is thus in an analysis black hole, removed from site-specific consideration of impacts that could accrue from a combination of over a dozen different treatment options.

In our joint May 13, 2019 comments Objectors wrote:

The EA proposes 2,820 acres of fuel treatment, yet it lacks any site-specific planning or analysis for this project component. The Forest Service states: ‘Fuel treatments would include variety of tactics ranging from thinning to clearcutting.’ Especially given that many of the fuel treatments are close to human infrastructure and communities, it stands that affected members of the public would have a keen desire to know the specifics of these extensive treatments.48

The Forest Service response to HCCA’s comments is:

We work with local county governments to define Wildland-Urban interface areas in the context of adopted wildfire protection plans. WUI is defined in the Fire and Fuels Management section of the EA. Cohen’s recommendations address structure protection and avoidance of individual structure ignition. The larger WUI used in this project aims at reducing fire risk and hazard to private property over a greater general area. Additionally, treating a larger area provides more opportunity to allow natural ignition to burn with minimal influence from fire suppression efforts. Also see Alternatives Considered but Eliminated from Detailed Study.49

This does not address our concern that the Final EA’s analysis of the project’s proposed fuel treatments “lack any site-specific planning or analysis for this project component.” Supplanting NEPA analysis with potential coordination with local county government does not address this problem.

4. The Final EA’s Reliance on Adaptive Management Violates NEPA.

The Final EA improperly relies on the adaptive management process to address environmental impacts. “The Taylor Park Project EA/DN specifies this adaptive implementation framework for defining treatment locations and design, determining monitoring questions, reviewing and evaluating the effects of treatments, and adjusting management towards desired conditions and away from undesirable conditions.”50

To be effective and legal, adaptive management must disclose in this project’s NEPA documents the impacts caused by that change in management.51 Because the Final EA fails on this account, the Forest Service cannot rely on the adaptive management strategy as currently proposed.

48 At 8.
49 Taylor Park Public Comment/Comment Summary and Responses at 13.
50 Final EA at 232.
51 36 C.F.R. § 220.5(e)(2).
Forest Service’s NEPA regulations state that:

An adaptive management proposal or alternative must clearly identify the adjustment(s) that may be made when monitoring during project implementation indicates that the action is not having its intended effect, or is causing unintended and undesirable effects. The EIS must disclose not only the effect of the proposed action or alternative but also the effect of the adjustment. Such proposal or alternative must also describe the monitoring that would take place to inform the responsible official during implementation whether the action is having its intended effect.52

The preamble to the Forest Service’s regulation that adopted the adaptive management definition states that the agency must identify the proposed changes, and their impacts, in the NEPA document. “When proposing an action the responsible official may identify possible adjustments that may be appropriate during project implementation. Those possible adjustments must be described and their effects analyzed in the EIS.”53 Here, the Forest Service fails to disclose the impacts of the adjustments, specifically salvage logging on up to nearly 30,000 acres, in violation of Forest Service regulations.

5. The Agency Must Complete an EIS.

NEPA requires federal agencies to prepare an EIS before undertaking “major Federal actions significantly affecting the quality of the human environment.”54 As the Tenth Circuit has explained, “[i]f the agency determines that its proposed action may ‘significantly affect’ the environment, the agency must prepare a detailed statement on the environmental impact of the proposed action in the form of an EIS.”55

“Significance” under NEPA requires consideration of the action’s context and intensity.56 An agency must analyze the significance of the action in several contexts, including short- and long-term effects within the setting of the proposed action (including site-specific, local impacts).57 Intensity refers to the severity of the impact and requires consideration of factors that may generally lead to a significance determination, including: “(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks; (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.”58

Because the Taylor Park decision sanctions treatments years down the road in what would be a significantly changed forest, the possible effects on the environment are highly uncertain. Should the situation arrive in the future that compels the Forest Service to respond to changed forest conditions

52 Id. (emphasis added).
53 73 Fed. Reg. 43,084, 43,090 (July 24, 2008).
54 42 U.S.C. § 4332(C).
55 Airport Neighbors Alliance v. U.S., 90 F.3d 426, 429 (10th Cir. 1996) (citation omitted) (emphasis added).
56 40 C.F.R. § 1508.27.
57 Id. § 1508.27(a).
58 40 CFR 1508.27(b)
that it determines warrant salvage logging, it would be best to do additional NEPA for the CTAs shortly before they are to be treated. But if the agency insists on approving a decision that includes these CTAs now, an EIS that fully discloses the likely impact of treating these areas must be prepared. Because the Forest Service has included an expanded acreage of CTAs in its Final EA without disclosing the impacts of treating these areas, the impacts of which are unknown but could be significant, the agency must complete an EIS.

SUGGESTED REMEDIES

1. The identification of CTAs, and treatments within those CTAs, should be removed from this decision. In the alternative, the Forest Service must prepare an EIS to disclose the site-specific location, and impact, of treatments within those 29,095 identified acres.

2. The Forest Service must prepare a supplemental NEPA document to disclose the site-specific impacts of treating 3,153 acres identified as “fuel treatments to be determined.”

3. The Forest Service must prepare a supplemental NEPA document to include an adaptive management plan that meets Forest Service regulations by clearly identifying the adjustment(s) that may be made when monitoring shows triggers have been reached, and disclosing the impacts of implementing any and all of the adjustments, for treatments in CTAs.

4. If CTAs are retained in the project decision, the Forest Service must prepare an EIS that fully discloses the impacts of future treatments in the CTAs.

II. THE FINAL EA FAILS TO DISCLOSE FULLY THE PROJECT’S IMPACT ON LYNX.

Objectors addressed this issue on pp. 16-17 of our joint May 13, 2019 comments.

A. Lynx Habitat in the Project Area Is Likely Not Correctly Determined.

Table 5 in the Biological Assessment (BA) for the project describes the lynx analysis units (LAUs) that overlap the project area. Lynx habitat comprises 47-66 percent of the total acreage in each LAU, with almost all of it considered suitable.

We note that a sizable part of the project area is not in a lynx analysis unit. This is the area north and east of Taylor Reservoir; it is bisected by Forest Service Roads 762 and 209. This area is bordered by all but one of the other five LAUs within the project area. Presumably, this area, not being in an LAU, is believed to have little or no lynx habitat. That seems unlikely, as the map of proposed treatment areas for Alternative 2 shows this area with some units proposed for overstory removal and group shelterwood, indicating there is some mid- to late-successional forest in this area which could be lynx habitat.

59 See Taylor Park EA Planning Unit LAUs map at Exhibit 6.
The Canada Lynx Conservation Assessment and Strategy states: “Engelmann spruce, subalpine fir and lodgepole pine forest cover types occurring on cold, moist potential vegetation types provide habitat for lynx.”

Therefore, it seems that more land within each LAU should be lynx habitat.

Lodgepole pine and spruce-fir types comprise 65 percent of the project area. Although it is not broken out by cover type, 74 percent of the area proposed for treatment in Alternative 2 is in structural stages 3B, 3C, 4B, or 4C, which are mid- and late-seral stages with 40 percent or more canopy closure. The BA further states that “the project area’s lodgepole pine stands are predominately in the late-mid or late seral stages.”

Thus much of the lodgepole pine, as well as the spruce-fir, in the Taylor Park project area should be lynx habitat. It may not be the highest quality habitat, as it may lack sufficient horizontal cover (but see below); however, it still allows lynx to travel between areas of higher quality habitat and to disperse. Note that “[h]abitat connectivity is defined as ‘cover vegetation’ in sufficient quantity and arrangement to allow for the movement of lynx.” Most of the project area’s lodgepole pine stands should thus provide habitat that allows lynx to move between areas of higher quality habitat, within and between LAUs.

Much of the lodgepole pine in the project area is infected with the parasite dwarf mistletoe. The witches’ brooms produced by mistletoe are said to form fuel ladders that would help carry fire into the crowns of the trees having the brooms. If mistletoe witches brooms form fire ladders, then they should also provide some dense horizontal cover for lynx and its favorite prey, snowshoe hare.

In conclusion, most of the project area’s forests that have not been treated or recently burned should be lynx habitat. This should increase the total amount of lynx habitat in each LAU (and in the portion of the project area not in an LAU) over what is stated in the BA.

B. The Project Would Degrade or Destroy More Lynx Habitat Than What is Stated in the BA.

According to BA Table 12, about 3,052 acres of suitable lynx habitat would be treated. However, only 373 acres of suitable habitat would be converted to stand initiation structural stage (SISS).

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61 Final EA at 37.
62 From Final EA Table 12 at 39.
63 BA at 23; citation omitted.
64 Id. at 22.
65 See discussion at EA p. 40
67 BA at 29.
This seems very low, as the following treatment methods in Alternative 2 would convert all or most of the lynx habitat to SISS:

- Prescribed fire (4,180 acres)
- Clearcut/dwarf mistletoe edge clearcut (2,699 acres)
- Clearcut/POL (135 acres)
- Overstory removal (445 acres)
- Non-commercial dwarf mistletoe treatment (137 acres)
- Hand dwarf mistletoe treatment (101 acres).

This totals 7,097 acres. All of these treatment types would convert at least some of any existing lynx habitat to unsuitable, as overstory trees would be cut, removed, or burned. Parts of understories, some containing dense horizontal cover, would be damaged or destroyed by logging operations, if not by the treatments themselves. Clearcutting would, by definition, remove all trees and would thus eliminate habitat for lynx. Burning would involve varying, but considerable amounts of overstory mortality, up to 100 percent.

In addition, 1,257 acres of group selection treatments would convert some habitat to unsuitable. Pre-commercial thin/sanitation (3,222 acres) would reduce or eliminate hare habitat, and/or prevent or delay areas where this treatment is applied from becoming lynx habitat in the next 40 years or so.

C. The EA Fails to Analyze or Disclose the Effects on Lynx from Treatment in the “Contingency” Areas.

As described in the DDN, selected Alternative 2 “anticipat[es] the need for potential treatments in the instance of a mass mortality event such as epidemic insect infestation, landscape-scale wildfire or windthrow.”

For this alternative, the Forest Service identified “contingency treatment areas” which “cover a large acreage to provide for adaptability in the face of potential fast changing or changed forest conditions.”

In the event of a mass mortality event(s), the treatment in the contingency areas would be salvage. Salvage logging usually involves cutting and removing all the dead or dying trees. Treatments are not subject to the 40-acre opening size limitation imposed by the National Forest Management Act and the

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68 BA Table 1, pp. 4-5; see also EA Table 4, p. 29.
69 BA p. 29 states: “Prescribed fire would only be applied in timber harvest units...” However, a look at the map for Alternative 2 shows only a minor overlap between cut units and areas to be burned. Also, BA at p. 5 states that prescribed fire would be applied “[i]n lodgepole pine dominated forest where commercial timber harvest is not currently appropriate or practical due to poor access, rocky terrain, and steep slopes.” The Draft Decision notice states that Alternative 2 “includes a stand-replacing prescribed fire component on 4,180 acres”. Id. at 4; emphasis added. All of this indicates that areas to be prescribed burned are separate units, and that lynx habitat would be damaged or destroyed. The impacts on lynx habitat from burning must be accurately disclosed.
70 See BA at 5.
71 DDN at 4.
72 Final EA at 28.
73 Id.
Planning Rule on commercial logging. Where applied, this treatment would likely convert all of the lynx habitat to unsuitable.

Objectors raised this issue in our joint January 15, 2020 comments on the supplemental EA. We specifically asked for the following:

Given the new opportunity for tripling the acreage identified as Priority Treatment Areas in Alternative 2, please correctly calculate the amount of suitable [lynx] habitat that would be converted to stand initiation structural stage (SISS). Also calculate the acreage of habitat that would be reduced in quality – e.g., by death, during felling and skidding of trees – of understory trees that form dense horizontal cover. Then adjust the finding in the Biological Assessment of “not likely to adversely affect” as necessary.

However, we do not find in either the EA or BA any analysis of possible impacts to lynx habitat from treatment of the CTAs. Final EA Figure 9 shows the areas that could be treated, but there is no discussion of the impacts to lynx habitat (or to any other resources). The cumulative impacts from treatments in the CTAs, along with those from Alternative 2 and SBEADMR, could be considerable.

This failure to disclose impacts is a violation of NEPA. See Section I above.

D. The Analysis Does Not Account for the Possible Impacts of Hazard Tree Removal.

We addressed this issue on p. 7 of our joint January 15, 2020 comments. Under Alternative 2, “Hazard trees within 200 feet of open public roads in the planning area would be removed during the life of the project.”

Cutting 200 feet on each side of open public roads is much more than is needed to eliminate hazard trees, as no tree in the project area is anywhere near 200 feet tall. Under this treatment, long, 400-feet-wide clearcuts could be implemented along every open public road. This would further fragment habitat for lynx and other wildlife species.

“Hazard Tree Removal” for 2,340 acres is listed in EA Table 5. However, the areas proposed for hazard tree treatment are not shown on the map for Alternative 2, nor are they depicted on the map showing the CTAs. We find no indication in the BA that the possible impacts from hazard tree cuts on lynx have been analyzed.

SUGGESTED REMEDIES

1. Show how lynx habitat was determined in the project area. Justify the determination that any mid- to late-seral forests are not lynx habitat.

2. Delineate the portion of the project area not in existing LAUs to a new LAU or add it to existing LAUs, or justify why this area does not need to be in an LAU.

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74 See 36 CFR 219.11(b)(4)(iii).
75 HCCA January 15 comments at 8-9.
76 Final EA at 28.
77 Final EA Figures 8 and 9 at 31 and 32, respectively.
3. Include prescribed fire and other treatments listed in subsection B above as treatments that will convert suitable lynx habitat to S1SS, which would be unsuitable habitat.

4. If the decision for the project will approve future treatment in contingency areas, then analyze and disclose the potential impacts to lynx habitat for this treatment. This must include analysis and disclosure of effects from hazard tree removal, if that treatment could occur.

5. Prepare a new biological assessment showing all of the above and a new determination of the project’s likeliness to affect lynx.

**CONCLUSION.**

High Country Conservation Advocates, Center for Biological Diversity, and Rocky Smith hereby request a meeting to discuss potential resolution of issues raised in this objection, pursuant to 36 C.F.R. § 218.11(a).

We hope that the Forest Service will use the objection process and such a meeting as opportunities to engage with stakeholders, including us, to develop a project that is legally and ecologically sound.

Sincerely,

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