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

<p>FRIENDS OF THE BITTERROOT,  Plaintiff,  vs.  LEANNE MARTEN, Regional Forester of Region One of the U.S. Forest Service, UNITED STATES FOREST SERVICE, an agency of the U.S. Department of Agriculture,  Defendants.</p>	<p>CV-  <b>COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF</b></p>
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1. This is a civil action for judicial review under the citizen suit provision of the Administrative Procedure Act (APA) which stems from the U.S. Forest Service's (Forest Service) authorizations, analyses, and lack thereof on the Bitterroot National Forest (Forest) related to and regarding the Environmental Assessment and Decision Notice and Finding of No Significant Impact for the Darby Lumber Lands Phase II Project (Project).
2. Plaintiff Friends of the Bitterroot attest that the decisions approving the challenged authorizations, analyses, and lack thereof are arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with law.
3. Defendants' actions or omissions violate the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4331 *et seq.*, the National Forest Management Act (NFMA), 16 U.S.C. § 1600 *et seq.*, and the APA, 5 U.S.C. §§ 701 *et seq.*
4. Plaintiff request that the Court set aside the Project pursuant to 5 U.S.C. § 706(2)(A) and enjoin implementation of the Project.
5. Plaintiff seek a declaratory judgment, injunctive relief, the award of costs and expenses of suit, including attorney and expert witness

fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and such other relief this Court deems just and proper.

### **I. JURISDICTION**

6. This action arises under the laws of the United States and involves the United States as a Defendant. Therefore, this Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 28 U.S.C. §§ 1331, 1346.
7. An actual controversy exists between Plaintiff and Defendants. Plaintiff's members use and enjoy the Bitterroot National Forest for hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, spiritual, and recreational activities. Plaintiff's members intend to continue to use and enjoy the area frequently and on an ongoing basis in the future.
8. The aesthetic, recreational, scientific, spiritual, and educational interests of Plaintiff's members have been and will be adversely affected and irreparably injured if Defendants implement the Project. These are actual, concrete injuries caused by Defendants' failure to comply with mandatory duties under NEPA, NFMA and the APA. The requested relief would redress these injuries and this Court has

the authority to grant Plaintiff's requested relief under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.

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

## **II. VENUE**

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

## **III. PARTIES**

11. Plaintiff FRIENDS OF THE BITTERROOT (Friends) is a tax-exempt, non-profit public interest organization dedicated to preserving and protecting the wildlands, wildlife, forests and watersheds of the Bitterroot National Forest and surrounding national forests. Its registered office is located in Hamilton, Montana. Friends currently has 397 individual members, many of

whom are located in Montana. Members of Friends observe, enjoy, and appreciate the Bitterroot National Forest's and specifically the Project Area's native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future. Friend's members' professional and recreational activities are directly affected by Defendants' failure to perform their lawful duty to protect and conserve these ecosystems as set forth below. The Friends of the Bitterroot bring this action on its own behalf and on behalf of its adversely affected members

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

#### IV. FACTUAL ALLEGATIONS

14. The Forest Service signed the Darby Lumber Lands Phase II Decision Notice and Finding of No Significant Impact authorizing the Project in July 2019.
15. The Project is located on the Darby Ranger District of the Bitterroot National Forest.
16. The Project area encompasses approximately 27,453 acres in Rye Creek, Little Sleeping Child Creek, Harlan Creek, Roan Gulch, Burke Gulch, North Fork Rye Creek, and Robbins Gulch drainages in the Sapphire Mountain Range, east of Darby, Montana.
17. The Project area lies entirely within the Bitterroot National Forest.
18. The Forest Service States that the Project “is a continuation of the watershed improvement and transportation management work . . . completed in the first phase of the Darby Lumber Lands Watershed Improvement and Travel Management Project.”
19. “The Project was developed to design and implement a suitable transportation system for long-term management of the land that is responsive to public interests and reduces adverse environmental effects, improves forest health and stand resilience, restores historic structure in dry pine stands and reduces potential fire severity, and

provides timber products and related jobs.”

20. The Forest Service did not include a need to identify a minimum road system for the Project area in its statement of purpose and need for the Project.
21. The Forest Service similarly did not include a need to increase big-game forage production or winter range habitat in its statement of propose and need for the Project.
22. Several sections of the Project area have been recently acquired through land exchange or direct acquisition.
23. The Project area is within Management Areas 1, 2, 3a and 8b as defined in the Bitterroot National Forest Plan.
24. The Project includes 959 acres of timber harvest, construction of 4.3 miles of new permanent roads and construction of 8 miles of temporary roads.
25. The Project authorizes 347 acres of timber harvest within Management Area 8b.
26. The Project also authorizes the addition of 10.86 miles of “undetermined” roads to the road system.
27. Except for the areas the Project authorizes for harvest, the majority of the project area has little merchantable timber left from past fire

and intensive timber management.

## ROADS

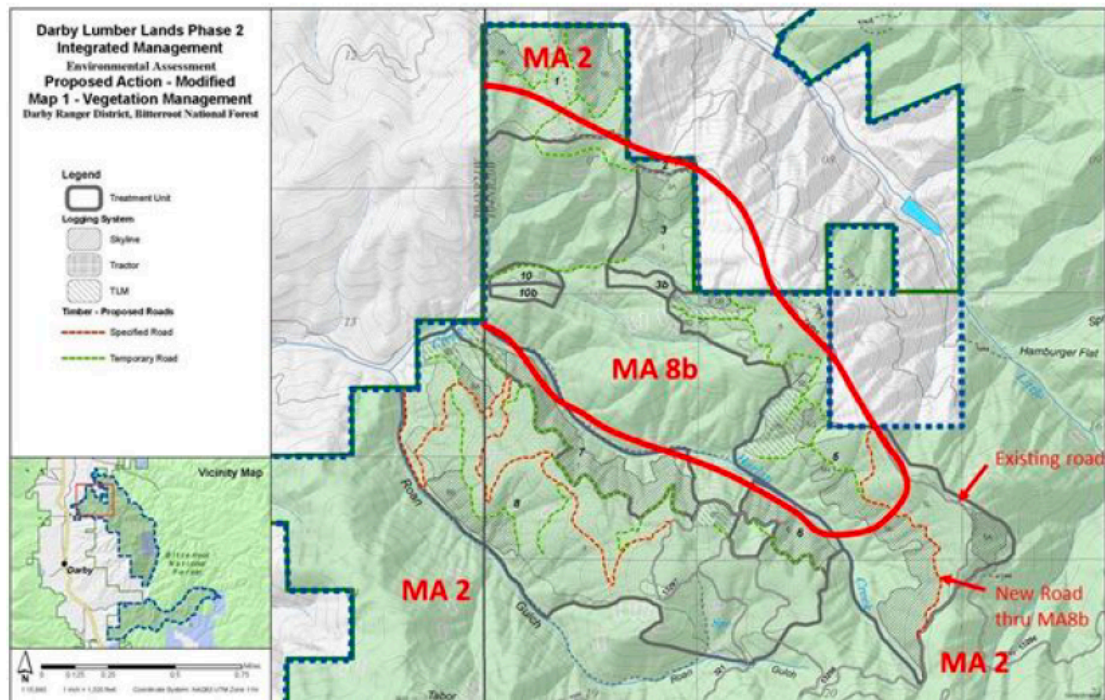
28. An extensive road system exists within the Project area with many failing and poorly maintained roads.
29. A total of 484.1 miles of roads exist within the 27,453 acre Project area.
30. Of the 484.1 miles of roads, approximately 143 miles of road are within 300 feet of streams which is generally considered the worst-case sediment travel distance.
31. Over the entire Project area, the total road density is 5.8 miles/square mile and the open road density is 3.1 miles/square mile.
32. There are approximately 350 perennial, intermittent and ephemeral stream crossings on the entire road system within the analysis area.
33. The road system in the analysis area is old and was developed during an era when aquatic health received little to no emphasis.
34. The Darby Lumber Land sections, in particular, had road systems developed with only timber extraction economics in mind and many roads are in poor condition, produce chronic sediment and do not currently meet modern Best Management Practice standards for



road location, drainage, crossing design or culvert capacity.

35. The road density and road/stream crossing density are high when compared to the rest of the Bitterroot National Forest.
36. Roads are implicated by the Montana Department of Environmental Quality reports as a primary source of chronic sediment in the watersheds, and sediment is the primary negative impact to aquatic health in the analysis area.
37. Many roads within the former Darby Lumber Lands sections have failing or plugged culverts and are contributing sediment at stream and ephemeral draw crossings.
38. Sediment plumes related to poorly located and maintained roads are visible in many places within Section 1 of the former Darby Lumber lands, and along Robbins Gulch Road and North Fork Rye Creek Road in the Project analysis area.
39. Current road density in most of the analysis area exceeds the 1987 Forest Plan standards for Elk Habitat Effectiveness which requires no more than two miles of open road per square mile during the season when elk utilize an area.
40. The Project will use a substantial number of the currently open roads in the project area for hauling and access.

41. The Forest Service will reconstruct or maintain a number of currently open roads to accommodate mechanical logging equipment for hauling and access.
42. The Project Environmental Assessment does not disclose how many miles of roads the Forest Service will be reconstructing or maintaining for use of hauling and timber access.
43. The Project authorizes permanent and temporary road construction in Management Area 8b of the Bitterroot Forest Plan.
44. The map below shows the Management Areas within the Project area and the authorized proposed and temporary roads.



45. The Project authorizes temporary road construction into Units 10,

3, and parts of Unit 5 located within Management Area 8b. These temporary roads do not access an adjacent Management Area.

46. The Project also authorizes construction of a permanent road in Management area 8b. This road is not required to access adjacent Management Areas.
47. The existing permanent road in Management Area 2 provides access to adjacent Management Areas.
48. The Project Environmental Assessment and Decision Notice do not discuss why the roads authorized to be built in Management Area 8b are necessary or required to access adjacent Management Areas.

#### BITTERROOT FOREST PLAN

49. The Bitterroot Forest Plan (Forest Plan) states that the Goal for Management Area 8b is to “[o]ptimize big-game forage production utilizing habitat improvement practices” and “manage to ensure adequate forage for wintering big-game.”
50. The Forest Plan Standard e for Management Area 8b states, (1) “No timber harvest is permitted except to improve winter range forage production; (2) There area is not suitable for timber production and any timber harvest volume will be nonchargeable.”
51. The Forest Plan provides Standard i(1) related to the road system

within Management Area 8b: “Roads will not be built to access any of this area, but roads may cross the area if required: to access adjacent management areas; or for mineral activities where construction is justified on the basis of mineral showings or data, and where it is the next logical step in the development of the mineral resource.”

52. The Forest Plan provides a forest wide standard for Elk Habitat Objectives which states, “Big-game cover/forage relationships, as described in Guides for Elk Habitat Objectives (USDA, 1978), will be a consideration in planning timber management activities.”
53. In regards to the above Forest Plan Standard, the Project Decision Notices states, “This proposed site-specific suspension of this standard is intended to update the project’s thermal and hiding cover design and adapt to changes that have occurred on the landscape in support of Forest Plan and project goals and objectives.”
54. The Forest Plan provides a forest wide standard for Elk Habitat Effectiveness that states, “Manage roads through the Travel Plan process to attain or maintain 50% or higher elk habitat effectiveness (Lyon, 1983) in currently roaded third order drainages. Drainages

where more than 25% of roads are in place are considered roaded.

Maintain 60% or higher elk habitat effectiveness in drainages

where less than 25% of the roads have been built.”

55. The Forest Service wildlife biologist stated that the EHE standard is used to manage species other than elk, including grizzly bears and lynx.
56. The Forest Service wildlife biologist stated, “The EHE standard results in areas of secure habitat for a range of species including grizzly bears. The EHE standard requires a maximum open road density of 2 miles/mile<sup>2</sup> in “roaded” drainages, and 1 mile/mile<sup>2</sup> in “unroaded” drainages. There are 13 third order drainages wholly or partially within the DLL II grizzly bear action area. EHE standards are met in 2 of these 13 drainages.”
57. The Forest Service wildlife biologist has also stated that “the Forest Plan manages wildlife security based on elk habitat effectiveness.”
58. In regards to the above Forest Plan Standard, the Project Decision Notices states, “This project specific variance from this standard is intended to allow three third order drainages in the analysis area to not meet EHE standards. The small size of the 3rd order watersheds in this project area limits the amount of roads that can be present on

the ground. In order to meet the standards, the mileage of roads needed to be closed would limit forest management access and conflict with other Forest Plan management objectives to provide roaded, dispersed recreation.”

59. The Forest Plan provides a Management Area 2 standard for Guides for Elk Habitat Objectives which states, “Timber harvest on land unsuitable for timber production is appropriate for meeting cover/forage objectives if other resource objectives including soil and water can be met.”
60. In regards to the above standard, the Project Decision Notice states, “This proposed site-specific suspension of this standard is intended to update the project’s thermal and hiding cover design and adapt to changes that have occurred on the landscape in support of Forest Plan and project goals and objectives.”
61. The Forest Service states, “During scoping, the Forest is required to identify which components of the 2012 Planning Rule apply to a project amendment. Scoping notifications acknowledged that a project-specific amendment for elk habitat effectiveness standards are likely related to the Forest Planning consideration of habitat conditions for wildlife commonly used and enjoyed by the public at

36 C.F.R. § 219.10(a)(5).”

62. The Forest Service discloses that, “There have been 10 project-specific amendments (one more anticipated with reasonably foreseeable projects (Gold Butterfly)) related to EHE since the Forest Plan was approved in 1987. There have been 7 project-specific amendments related to thermal and hiding cover.”
63. The Forest Service has used project specific amendments to the elk habitat effectiveness on 226,119 acres of the total 389,820 acres of suitable timberlands on the Bitterroot National Forest in the last 12 years.
64. The Forest Service is currently conducting scoping for a programmatic amendment for the elk habitat objectives under the 1987 Bitterroot Forest Plan.
65. The Project Environmental Assessment states, “We have added an elk security analysis (Hillis et al. 1991) to our environmental analysis protocol that has proven to be a better tool than EHE analysis for achieving the Forest Plan objective to maintain elk populations and hunting season opportunities in cooperation with the Montana Department of Fish, Wildlife and Parks.”
66. The Project Environmental Assessment does not disclose what the

“elk security analysis” is or what Hillis et al. 1991 supports.

67. The Forest Service does not analyze or disclose whether the Project meets the Hillis et al. 1991 requirements.
68. The Project Environmental Assessment does not disclose or discuss the best available science in regards to elk habitat effectiveness, thermal cover and hiding cover.
69. The Forest Service does not analyze the direct, indirect or cumulative impacts of repeated amendments related to elk habitat effectiveness.
70. The Project Environmental Assessment does not discuss or disclose the Project areas need for an increase in big game winter forage.
71. The Project Environmental Assessment does not disclose or discuss the Project area’s need for an increase in winter range forage production.
72. The Forest Service did not provide an explanation or justification as to how logging in Management Area 8b will optimize big-game forage production or winter range habitat.

#### AQUATICS AND WILDLIFE

73. Bull trout, a federally listed Threatened species, is present in the



Sleeping Child Creek portion of the analysis area.

74. Roads influence the competitive interaction between native westslope cutthroat trout and non-native brook trout by contributing to degraded habitat conditions (e.g., increased sedimentation; reduced shade; reduced woody debris recruitment; reduced habitat complexity; reduced pool frequency and quality; barriers) that favor the spread and dominance of brook trout and also limit the availability of prime habitat.
75. Most of the analysis area's perennial streams support native westslope cutthroat trout. Eastern brook, rainbow and brown trout, all introduced species, exist in some the larger analysis area streams, such as Rye Creek and Sleeping Child Creek.
76. The Project authorizes treatments of suitable habitat for several big game species including elk winter and summer range.
77. The Bitterroot National Forest Plan directs projects effects be analyzed with an emphasis on elk habitat needs.
78. The Project analysis area is encompassed by Montana Fish Wildlife and Parks elk hunting district 270.
79. Elk generally move off the Forest to safer zones with less motorized use during hunting season.

80. The Forest Service concedes that the timber treatment and road construction would increase human access and wolf hunting efficacy thereby negatively impacting big game species.
81. The Forest Service further concedes that “Timber treatments would potentially increase grazing pressure on the 1,294 acres of units within grazing allotments. Increased grazing pressure may negatively influence the forage abundance and occupancy by elk and other big game.”
82. The Forest Service previously stated in the Darby Lumber Land Phase I Environmental Assessment that, “Elk avoid hunting pressure by finding habitats that minimize encounters with hunters. This ‘security cover’ is most often thought of as dense forest cover with low open-road densities, but elk are increasingly using private lands that allow no or limited hunting as alternative form of security area. A combination of increased motorized access to elk summer range and changes in land use practices on private lands that have increased the availability of de facto elk refuges have resulted in elk leaving summer ranges during archery season and migrating to winter ranges on private lands where hunting is not allowed or is limited.”

## MINIMUM ROAD SYSTEM

83. The Forest Service produced a Travel Analysis Process Report called Darby Lumber Lands-Travel Analysis for Phase I and II Project Areas (Darby Lumber Lands Travel Analysis).
84. The Forest Service states that the travel analysis process is “a science-based process that will inform the future travel management decision and services as the basis for developing proposed action but does not result in decisions.”
85. The Forest Service states that the Darby Lumber Lands Travel Analysis is not a decision document.
86. The Darby Lumber Lands Travel Analysis outcomes are a set of proposals for change to the forest transportation system.
87. The Darby Lumber Lands Travel Analysis sets forth recommendations regarding the 484.1 miles of roads in the Darby Lumber Lands II analysis area.
88. Many road segments are recommended for decommissioning or storage in the Darby Lumber Lands Travel Analysis.
89. The Darby Lumber Lands Phase II Environmental Assessment does not disclose or discuss a minimum road system.

90. The Darby Lumber Lands Phase II Environmental Assessment does not discuss the resource and management objectives adopted in the Bitterroot National Forest Plan in relation to roads.
91. Particularly, the Darby Lumber Lands Phase II Environmental Assessment does not discuss forest-wide goals, objectives, and standards for roads under the Bitterroot National Forest Plan including protecting resources and minimizing adverse environmental impacts associated with road.
92. The Darby Lumber Lands Phase II Environmental Assessment does not disclose or discuss the best available science in regards to roads.
93. The Darby Lumber Lands Phase II Decision Notice and FONSI states that Appendix B describes all access changes and identifies which roads will receive a physical treatment.
94. The roads identified in the Darby Lumber Lands Phase II Decision Notice and FONSI Appendix B and the Darby Lumber Lands Phase II Environmental Assessment only accounts for 104.54 miles of roads within the analysis area and decommission only 39 miles of roads within the analysis area.
95. The road system identified in the Darby Lumber Lands Phase II

Decision Notice and FONSI does not account for all the 484.1 roads within the Project Area.

96. The Darby Lumber Lands Phase II Decision Notice and FONSI does not discuss the resource and management objectives adopted in the Bitterroot National Forest Plan in relation to roads and does not discuss forest-wide goals, objectives, and standards for roads under the Bitterroot National Forest Plan including protecting resources and minimizing adverse environmental impacts associated with road.
97. The Darby Lumber Lands Phase II Decision Notice and FONSI does not disclose or discuss a minimum road system.

## **V. CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

The Forest Service fails to adequately and lawfully designate a minimum road system.

98. All previous paragraphs are incorporated by reference.
99. The Forest Service is required to identify a minimum road system needed for safe and efficient travel and for administration, utilization, and projection of the National Forest System lands. 36

C.F.R. § 212.5(b)(1).

100. “In determining the minimum road system, the responsible official must incorporate a science-based roads analysis at the appropriate scale and, to the degree practicable, involve a broad spectrum of interested and affected citizens, other state and federal agencies, and tribal governments. The minimum system is the road system determined to be needed to meet resource and other management objectives adopted in the relevant land and resource management plan (36 CFR part 219), to meet applicable statutory and regulatory requirements, to reflect long-term funding expectations, to ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.” *Id.*
101. Responsible officials must review the road system on each National Forest and Grassland and identify the roads on lands under Forest Service jurisdiction that are no longer needed to meet forest resource management objectives and that, therefore, should be decommissioned or considered for other uses, such as for trails. *Id.*
102. The designation of the minimum road system and roads for decommissioning must be accomplished by completing a “science-

based roads analysis at that appropriate scale,” and incorporating, to the degree practicable, the interest of affected citizens and state, local and tribal governments. *Id.*

103. The analysis and recommendation provided in a “travel analysis report” will inform the agency’s analysis during the subsequent NEPA process for a particular site-specific project in which the agency adopts a minimum road system.
104. The Forest Service failed to identify a minimum road system and road decommissioning for the Darby Lumber Lands II Project.
105. In the alternative, if the Forest Service did identify a minimum road system and identify roads for decommissioning, it violated NEPA because it failed to explain its decision in selecting the resulting road system, failed to explain the changes made between the project-level travel analysis and the chosen action, and did not address the factors required to select a minimum road system.
106. The Agency’s decision is therefore arbitrary and capricious and a violation of 36 C.F.R. § 212.5(b) and NEPA.

## SECOND CLAIM FOR RELIEF

### The Forest Service fails to comply with the Bitterroot Forest Plan.

107. All previous paragraphs are incorporated by reference.
108. The National Forest Management Act requires the Forest Service to “develop, maintain, and, as appropriate, revise [forest plans] for units of the National Forest System.” 16 U.S.C. § 1604(a).
109. At the project level, NFMA requires each individual project be consistent with the governing Forest Plan. 16 U.S.C. § 1604(i).
110. The Bitterroot National Forest operates under a 1987 Forest Plan, which guides all natural resource management activities and establishes management standards for the forest.
111. The Forest Plan provides a standard related to the road system within Management Area 8b that the Forest Service must strictly comply to.
112. The Forest Services is in violation of Forest Plan Standard i(1) for Management Area 8b because the Project authorizes the construction of roads that are not necessary and/or required to access adjacent Management Areas.
113. The Forest Service is in violation of Forest Plan Standard 3(1) for



Management Area 8b because the Project authorizes timber harvest in Management Area 8b.

114. The Forest Service's failure to comply the Forest Plan Standard i(1) and Standard 3(1) for Management Area 8b violates NFMA.
115. The Forest Service's failure to articulate a rational explanation for deviating from the Forest Plan Standard i(1) for Management Area 8b is arbitrary and capricious. The Forest Service's failure to adequately address this issue in the Project Environmental Assessment and demonstrate compliance with the Forest Plan Standard i(1) for Management Area 8b also violates NEPA.
116. The Forest Service's decision to authorize timber harvest in Management Area 8b is arbitrary and capricious because it fails to discuss and disclose how the authorized timber harvest in Management Area 8b will improve winter range forage production in violation of NEPA and the APA.

### THIRD CLAIM FOR RELIEF

The Project-Specific Forest Plan Amendments are unlawful.

117. All previous paragraphs are incorporated by reference.
118. The Forest Service states that its project-specific Forest Plan Amendments are pursuant to the 2012 Planning Rules.

119. Under NFMA, the Forest Service promulgated regulations for all Forest Plans (2012 Planning Rule). *See* Nat'l Forest Sys. Land Mgmt. Planning, 77 Fed. Reg. 21162 (April 9, 2012).
120. Under the Planning Rule, when amending a plan, the Forest Service is required to comply with NEPA procedures. 36 C.F.R § 219.13(b)(3).
121. Under the Planning Rule, the Forest Service “shall ... [d]etermine which specific substantive requirement(s) within §§ 219.8 through 219.11 are directly related to the plan direction being added, modified, or removed by the amendment,” and then “apply such requirement(s) within the scope and scale of the amendment.” 36 C.F.R § 219.13(b)(5).
122. The Forest Service’s determination must be based on the purpose of the amendment and the effects (beneficial or adverse) of the amendment, and informed by the best available scientific information, scoping, effects analysis, monitoring data or other rational. *Id.*
123. The Forest Service determined that the substantive requirements of 36 C.F.R. § 219.10(a) are directly related to the plan direction being amended.

124. Under 36 C.F.R. § 219.10(a) requires plan amendments to “include plan components, including standards or guidelines, for integrated resource management to provide for ecosystem services and multiple uses in the plan area.”
125. When developing plan components for integrated resource management, to the extent relevant to the plan area and the public participation process and the requirements of §§ 219.7, 219.8, 219.9, and 219.11, the responsible official shall consider: Habitat conditions, subject to the requirements of § 219.9, for wildlife, fish, and plants commonly enjoyed and used by the public; for hunting, fishing, trapping, gathering, observing, subsistence, and other activities (in collaboration with federally recognized Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments).” 36 C.F.R. § 219.10(a)(5).
126. The Forest Service must articulate a “rational connection between the facts found and the choice made” to enact a geographically-limited, site-specific amendment rather than a general amendment to the Forest Plan as a whole.” *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 2014 WL 6977611, \*27 (D. Or. 2014).

127. The Forest Service is required to discuss and disclose some characteristics unique to a site to support a site-specific amendment in order to satisfy their obligation to articulate a rational connection between the facts found and the choice made. *Id.* at \*30.
128. The Forest Service's decision to enact the site-specific amendments for the Darby Lumber Lands II Project was arbitrary and capricious because to fail to explain the unique or unusual aspects of the Darby Lumber Lands II Project area as compared to the forest generally.
129. The Forest Service's failure to disclose the best available science in regards to elk habitat effectiveness, thermal cover and hiding cover violates the 2012 Planning Rule.
130. In amending the Forest Plan, the Forest Service is required to provide modified standards or guidelines pursuant to the 2012 Planning Rule.
131. The Forest Service suspension of the Forest-wide standard for Elk Habitat Objectives, Elk Habitat Effectiveness and Management Area 2 standard for Guides for Elk Habitat Objectives violates the 2012 Planning Rules, is arbitrary and capricious and in violation of NEPA.

#### FOURTH CLAIM FOR RELIEF

The Project-Specific Forest Plan Amendments are unlawful.

132. All previous paragraphs are incorporated by reference.
133. NEPA requires the Project Environmental Assessment “include brief discussions of the need for the proposal.” 40 C.F.R. § 1508.9(b).
134. Under Subpart A of the Travel Management Rule, the Forest Service is required to address its over-size road system and identify the minimum road system in the Darby Lumber Lands Phase II Project area. 36 C.F.R. § 212.5.
135. The Forest Service failure to include its duty to identify the minimum road system in the Project’s statement of purpose and need improperly limits the scope of the Project and violates NEPA.
136. The Forest Service’s failure to provide support for timber harvest in Management Area 8b violates NEPA because the increasing big-game forage production or winter range habitat was not identified as a need in the Project Area.

#### VIII. RELIEF REQUESTED

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

- A. Declare that the Project, as approved, violates the law;

B. Vacate the Project decision and remand the matter to the agency until such time as the agency demonstrates to this Court that it has adequately complied with the law;

C. Set aside the Project Decision Notice and Finding of No Significant Impact;

D. Enjoin implementation of the Project;

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

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

Respectfully submitted this 19th day of February, 2020.

/s/ Kristine M. Akland

Kristine Akland

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