percentage of the Red Mountain and Arrasta bear subunits as per the Flathead National Forest Amendment 19 guidelines, or the 19-19-68 rule (no more than 19% of a subunit containing more than one mile of open road per section, no more than 19% of a subunit containing over 2 miles per section of total road, and at least 68% core habitat. During the 2006 BiOp, the Arrasta subunit met all three criteria (BiOp Table 4 at page 22). The open road density was 15%, the total road density was 17%, and security habitat was 75%. Currently, the open road density is 17%, the total road density is 21%, and core habitat is 73%. So this subunit is out of compliance for total road densities, and is not meeting the incidental take statement of 2006.

The Red Mountain subunit had 25% open road densities in 2006, 19% total road densities in 2006, and 67% security in 2006. Currently, the open road density is 25%, the total road density is 24%, and security is 56%. In 2006, the USFWS determined that the open road density level of 25% was included in the incidental take statement. And security levels were close to the recommendations. However, security has currently declined considerably below 68%, while the total road density has declined considerably below the recommended level (24% versus 19%). Thus the Forest is currently out of compliance with the 2006 incidental take statement, and thus in violation of the Endangered Species Act.

B-Incidental Take

The agency has no current BiOp for grizzly bear habitat in the distribution zone outside the Recovery Zone. The evaluated distribution zone in the previous BiOp was based on bear distribution in 2002, or 11 years ago. An updated BiOp is clearly required for management of grizzly bears outside the 2002 distribution zone. The planned impacts to this landscape outside the Recovery Zone include at least 197 acres of logging and 399 acres of burning, which are displacement activities. Also, the open road density during these activities will be an adverse impact.

C-update Biological Opinion

The agency will also create adverse impacts to grizzly bears by burning in core habitat. This will include at least 1821 acres (DEIS 398). This includes burning of 1218 acres of core habitat in the Arrasta subunit, and at least 603 acres of core habitat in the Red Mountain subunit. These activities will occur when grizzly bears would be using this habitat, and will displace bears from core habitat. This displacement defeats the purpose of core habitat, especially when other land management activities will be occurring in the surrounding landscape. This failure to adhere to the recommendations for core habitat is a violation of the ESA, and adverse impacts to grizzly bears

D-burning

will result. This burning includes the destruction of 116 acres of denning habitat in the Arrasta subunit, and 114 acres of denning habitat in the Red Mountain subunit.

E-Maps

The agency failed to provide any maps of the current core habitat in the two subunits that lie within the Project Area. The agency also failed to define the seasonal security areas for grizzly bears in the Project Area, as required in the management protocol (NCDE Access Management Rule Set Proposed Direction 1998).

F-Seasonal Security Areas

G-Best Science

The agency failed to use the current best science in defining Project impacts on grizzly bears. New science indicates that open road densities outside of core habitat is just as important as core habitat, as bears have to travel through non-core habitat to reach other core areas. Thus open road densities need to be managed separately from core habitat. This better explains the environment that grizzly bears are living in. The agency needs to define open road densities outside the core areas for the Project, and define how these densities affect habitat suitability and mortality risk for grizzly bears.

11. Canada Lynx (Lynx)

A-ESA Violation

The Project Area is located in Unit 3 of lynx critical habitat. The agency claims at DEIS 393 and xv that the Project may affect, but will not adversely affect the threatened lynx. This is a violation of the ESA, since lynx will be adversely impacted by the Project. The agency is required to do formal consultation for the Project to obtain a BiOp and incidental take statement from the USFWS. The Forest Service does not currently have a programmatic or site-specific BiOp for critical lynx habitat.

B-Precommercial Thinning

Examples of detrimental impacts to lynx from the Project include at least 822 acres of precommercial thinning. This destroys hare summer habitat, and thus adversely impacts lynx. This precommercial thinning will occur in old harvest units as well as mature forest stands that will be logged. These include younger forest stands that have not yet developed relatively dense understories, or suitable lynx winter habitat. Thus the precommercial thinning in these stands will eliminate future lynx winter habitat, a habitat that is key to lynx persistence. The prescribed burning, as well as logging, is also intended to remove the understory of treated stands, especially spruce and alpine fir. These smaller understory trees will either be slashed prior to burning, or slashed during logging operations. These are the key tree species

in lynx winter habitat, and thus this understory removal will eliminate lynx winter habitat in burning and harvest units. The objective of most (or all) of the treatments is actually to eliminate existing and developing lynx winter habitat (e.g., DEIS viii, 15, 57, 69, 99, Table 29 at pages 157). The complete stand will be removed in regeneration harvest units, which will also remove existing and developing lynx winter habitat. A good example of lynx winter habitat is provided in Figure 41 at DEIS 183, and this is identified as a problem because of ladder fuels. The current best science indicates that winter lynx habitat should not only be preserved, but recruited to promote conservation of the lynx in Montana. In addition, both thinned forests, as well as regeneration units, will create winter travel barriers to lynx, making habitat use in the winter much more difficult. Logging will eliminate developing old growth, which is key to lynx winter survival.

C-Winter Travel Barriers

D-Habitat Fragmentation

There was no analysis in the DEIS regarding fragmentation impacts to lynx from the Project, including logging and burning. Since lynx do not cross openings in the winter, and also avoid thinned forests, fragmentation will be greatly increased with the Project. Also the past impacts of logging, burning and fragmentation were not addressed. The DEIS at 260 notes that fragmentation reduces patch size and increases the distances between suitable habitats for wildlife, and at 262 notes that lynx must be able to move freely between hunting patches of suitable habitat. This will not be possible when the habitat is fragmented with travel barriers in the winter. The DEIS at 378 acknowledges that regeneration units will reduce connectivity for lynx, but did not identify that thinned forests have similar effects as per the current best science. It is not correct, also, as claimed in the EIS at 378, that the pine beetle infestation has reduced connectivity for lynx. DWD and remaining understories will still provide some level of cover for lynx, and remaining smaller trees will quickly fill in since they will not be logged. The current best science indicates that at a given level of fragmentation, habitat is too diluted to allow persistence of a species. The agency needs to define what level of fragmentation and availability of winter lynx habitat is needed in this landscape to promote conservation of the lynx.

E-Connectivity

F-Lynx Winter Habitat

The DEIS does not ever address lynx winter habitat. There are endless references to hare winter habitat, but this is not the same and winter lynx habitat. Only older multistoried forest stands are winter lynx habitat, while young clearcuts are winter hare habitat, but not winter lynx habitat. Because the agency did not indicate this critical difference between winter hare and winter lynx habitat was addressed in the analysis, the entire analysis is

flawed. The agency needs to specifically address the management of winter lynx habitat. This is the most key factor in lynx persistence.

The NRLMD does not address lynx winter habitat. So adherence to the general principles of the NRLMD does not ensure persistence of lynx. The NRLMD also does not address habitat fragmentation, or recruitment of lynx winter habitat from mid-seral forests. The NRLMD therefore cannot be used as a measure of impact from proposed management of forests where lynx are present. And of course, the NRLMD has not had consultation for critical habitat, a factor that also makes it unusable as a measure of impacts to lynx.

G-Lynx Habitat Vegetation

The DEIS notes at 99 that 69% of the Project Area is an alpine fir habitat type. This means that at least 69% of the Project Area could provide lynx winter habitat is left to develop naturally. This landscape obviously has the potential to provide important habitat to lynx, which is likely why it has been designated as Unit 3 critical habitat. Management activities that promote seral forests rather than climax spruce and Engelmann spruce will not promote conservation of the lynx.

H-NRLMD

The DEIS notes that the 6% exemption as per the NRLMD will be applied to the Project (DEIS xv). Tkhe 6% exemption in the NRLMD applies to occupied lynx habitat, not critical lynx habitat. This exemption even for occupied lynx habitat is arbitrary, as it was never based on any habitat minimums that lynx need, including winter habitat and habitat fragmentation. The reduction of winter lynx habitat is critical to lynx persistence, as the DEIS at 262 notes that 29% of identified lynx mortalities in the winter were due to starvation.

I-Seeley Lake Population

Lynx in Montana appear to be declining in the Seeley Lake area, which contains the best lynx population in the state. Any management actions that further reduce lynx habitat in a declining population will potentially jeopardize the continued existence of lynx in the Northern Rockies.

The DEIS at 262 notes that a lynx was known to den in the Canyon Fire 24 years after the fire. It was also noted that DWD provide both logs and overhead cover as security for lynx kittens when they are old enough to travel. This brings up a key point in forest management in lynx habitat. Forest thinning and regeneration harvest do not have the same effects as fire, as fire leaves the DWD for both current use by hares and by lynx as travel

cover, and as future denning habitat for lynx. This is a significant issue that was never addressed in the NRLMD.

J-Summer Hare Habitat

The DEIS does not address, or even identify the adverse impact to lynx from precommercial thinning of young clearcuts that are currently unsuitable for lynx because they do reach above the winter snow levels (DEIS 262, 375). This treatment is not included in Tables 91-92 of the DEIS at 375. This will entail the destruction of summer hare habitat, and be an adverse impact on lynx, and the acres involved need to be identified to the public.

G-continued

The DEIS does not address the high value of mid-seral forest stands that will eventually develop into lynx winter habitat, the habitat most critical to lynx persistence. The DEIS does note, however, that old growth is best for lynx at 265. Yet the development of this older forest habitat is completely ignored, as are the impacts of the proposed logging and burning on preventing this development of winter lynx habitat.

F-continued

The suitability of winter lynx habitat in each of the 2 LAUs affected was never addressed in the DEIS. BL-7 has 32% winter habitat, while BL-8 has only 13%. Is either level adequate, and if not, recruitment should be considered, not prevention of recruitment as is planned in the Project. Table 91-92 does not include any information on lynx winter habitat, so apparently it was not even considered in the analysis, even though it is key to lynx conservation.

K-IRA

The destruction of lynx habitat in the IRA does not promote ecosystem function. This destruction is a violation of the Roadless Area Conservation Rule, as IRAs are especially important to promote persistence of threatened and endangered species, or areas that are free from agency management activities. Burning forests, including key winter habitat, as well as creating movement barriers in burned areas up to 75 acres, is directly counter to lynx preservation.

L-Treatments

The DEIS, for example at 375, claims that logging will promote multistory lynx habitat. This is both a NEPA and an APA violation, as the rationale and science, plus monitoring, upon which this claim was not provided. This is clearly a misrepresentation of the impacts of the project being presented to the public. Also, the DEIS at 378 claims that burning will promote hare habitat over nontreatment. The basis and science for this claim also were not provided. This information is quite important, especially as from all