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File Code: 1570-1
#07-04-00-0064 A215
Date: August 17, 2007

Philip E. Bender
Vice President
Hills Angels 4x4 Club
4593 Village Green Parkway
Reno, NV 89519

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear Mr. Bender:

We received the appeal you filed on behalf of Hills Angels 4x4 Club. You appealed the decision by District Ranger Gary Schiff approving the Decision Notice and Finding of No Significant Impact for the Martis Travel Management Plan.

By letter dated July 31, 2007, District Ranger Schiff advised me that he has withdrawn the decision and will be issuing a new decision. Since the decision has been withdrawn, your appeal is dismissed without further review (36 CFR 215.16(a)(7)). District Ranger Schiff will notify you when the new decision is issued.

This constitutes the final administrative determination of the U.S. Department of Agriculture under 36 CFR 215.18(c).

Sincerely,

/s/ Jeremiah C. Ingersoll for
EDWARD C. MONNIG
Forest Supervisor

cc: Gary Schiff

Randolph Mountain Hazardous Fuels Reduction
Appeal Issue Response #07-04-00-0061-A215
Appellants: Merlin Hare, George Leys and Debra Patla

APPEAL ISSUE 1: Scientific investigation indicates that the key zone of fuel reduction to protect homes is within 40 meters of structures. To provide defensible space, conducting fuel hazard removal up to 400 meters from structures is recommended. However, in this project, the unit boundaries are almost everywhere much more than 500 yards from structures.

RESPONSE: The references cited by the appellant (Cohen 2000, Nowicki 2002) are in-line with most research, emphasizing that the highest priority to protect structures is aggressive treatment within the "home ignition zone" as well as a "community protection zone." However, use of this research alone without considering all the available research, provides an incomplete picture. Cohen (2000) and Nowicki (2002) focus only on home ignitability (i.e. the probability a house will catch fire); and not on other values such as resource protection, aesthetics, fire fighter safety, municipal watersheds, protection of ingress and egress (evacuation) routes, etc.

The purpose of the project is to modify composition, structure, and density of vegetation to reduce potential fire behavior for providing better opportunities to manage and suppress wild fires within the analysis area (Decision Memo (DM), p. 1). It is not limited in scope only to reducing the number of houses that may catch fire under wildfire conditions.

The Nowicki (2002) article is not published in a peer-reviewed journal, does not employ the scientific method, and its use as "scientific investigation" is debatable.

APPEAL ISSUE 2: The risk of escaped prescribed fires and wildfires to homes and the safety of residents will increase due to: 1) the huge size of the prescribed burns, 2) location of burns on south aspects in roadless areas, 3) slash pile and broadcast burning poses risks of escaped fires, and 4) because the roads and skid trails created by mechanical removal will increase human activity thereby increasing the risk of human caused fire starts.

RESPONSE: In response to scoping comments from the appellants, the Responsible Official acknowledged there is some risk to homes and residents' safety due to an escape when prescribed burning is used as a management tool. However, the risk of doing nothing is greater than the risk associated with the planned actions. There are also additional risks of fire to residents due to juxtaposition of the treatments areas and private property with Wild Fire Use areas. (Letter, Aug. 3, 2006, pp. 3-5 5).

The decision clearly states that there is a current wildfire threat and a need to reduce this threat (DM, p. 1). A Prescribed Fire Burn Plan (burn plan) will be developed, including details about actions to be taken to protect structures during implementation of the prescribed burning (DM, p. 6). It is standard protocol to complete burn plans after a DM is signed. The burn plan contains information about the on-sight and contingency resources and the weather conditions necessary to safely carry out the burn. These determinations are based on fire behavior modeling software, professional judgment of experienced fire managers, fire size, fire complexity, and past local

experiences. As the complexity or size of a fire grows, so do the resources needed to carry out the burn. A burn will not be initiated if these resources are not available or weather conditions are not met.

Southern aspects are often the simplest areas to contain in large prescribed burns. These burns can take place under moist conditions when only fuels on the southerly aspects are dry enough to support combustion. The fuels on other aspects can be too moist to sustain combustion limiting fire spread off the southerly aspects.

Burn plans also contain details about mop-up standards, when and how often the prescribed burn needs to be patrolled, and under what conditions a prescribed burn can be left unattended. Although pile burns can and occasionally do escape, the reference used by the appellant regarding slash pile fires escaping "months later" was in reference to an article about burning piles in an area in Alaska with deep organic peat soil "Logging Dead Trees May Actually Boost Fire Risk," (Juneau Empire, June 1996).

Regarding increased risk of human caused fire starts, there are no new permanent roads planned for this project. Any temporary roads will be obliterated following use (DM p. 3). The DM and Project Description do not specifically mention rehabbing skid trails. However, notes from a public meeting on 11/17/2007 in which the appellant was present, indicate this issue was discussed and Forest officials agreed skid trails would be rehabilitated. These notes also state additional user created roads within the analysis area will be obliterated which will decrease human presence. Obliteration of these roads is discussed in the DM (p. 2). An increase risk of a fire start due to increased human use of the area as a direct result of the treatment is not substantiated.

APPEAL ISSUE 3: In addition to the risk of escaped prescribed fire from the treatment areas, the project could increase fire hazard because:

- Treatments will cause an increase in fine fuels and slash on the ground.
- One-time thinning projects can facilitate dense tree establishment and prescribed fires can contribute to fuel loads by killing understory trees, thus increasing wildfire risk within a decade (Romme, W.H., J. Clement, J. Hicke, D. Kulakowski, L.H. MacDonald, T.L. Schoennagel, and T.T. Veblem. 2006, "Recent forest insect outbreaks and fire risk in Colorado forests: a brief synthesis of relevant research", p. 18).
- Fires in thinned forests may be encouraged by the drier, less shady conditions. Fire moves rapidly in grass that will increase in coverage through reductions in sagebrush. These factors will cause fire rate of spread to increase, giving residents less time to react.

RESPONSE: Temporary increases in fire hazard may occur after thinning operations are completed and before slash can be treated (e.g., if red needle slash is allowed to remain in the units). However, activity generated fuels will be treated through biomass utilization, pile burning, or broadcast burning (DM, pp. 2-4). Whole tree yarding techniques will be used for the majority of the treated area (DM, pp. 2-4). This method removes nearly all of the branchwood and tops along with the merchantable stem leaving only a small percentage of slash due to some breakage of limbs. Non-merchantable material is generally removed from the stem at the

landing and piled. These piles are then made available for biomass utilization when feasible, or burned in place.

The Bridger-Teton Land and Resource Management Plan (LRMP) states that activity generated fuels in this area must be reduced such that the fireline intensity is less than 400 BTU/second/foot under 90th percentile weather conditions (LRMP, p. 246). A fireline intensity of 400 or less is generally considered the range where a wildfire can be directly attacked with mechanized equipment under 90th percentile conditions (Rothermel 1983). The decision is consistent with the LRMP (DM, p. 7).

In some forest types, certain thinning methods can encourage dense understory development. A Silvicultural Prescription must be written before thinning (Forest Service Manual (FSM) 2478.03). The Silviculturist carefully considers the potential for regeneration when designing the prescription. There are common techniques available to discourage regeneration when that is the objective. It is not possible for any treatment to produce and retain these objectives indefinitely. At some point, additional treatments will be necessary to maintain the benefits (Vegetation Specialist Report, p. 4). The timing or extent of these future projects cannot be predicted and are outside the scope of this analysis.

An objective of this decision is to reduce small diameter understory trees or "ladder fuels" (DM, pp. 2-4). When prepared, the Prescribed Fire Burn Plan (Burn Plan) contains weather and fire behavior parameters that are carefully designed to accomplish the objectives detailed in the Decision Memo and Project Description. The objectives here are to reduce ladder fuels in general and to reduce surface fuels to five to seven tons per acre (DM, pp. 2-4). The Burn Plan will specify that if, at any point, the weather or fire behavior parameters are not within prescription and/or the desired objectives are not being achieved, the burn will cease until more favorable conditions exist.

Scientific literature documents that thinning can increase mid-flame wind speeds, an important factor in calculating fire rate of spread. The article cited by the appellants is often improperly used to suggest that thinning will unavoidably increase, rather than decrease, fire behavior. The overwhelming majority of scientific literature that pertains to this forest type support a combination of managing tree density, size class distribution, and species composition in combination with surface fuel treatments (i.e., *Graham et al*. 2004) It is also common knowledge that grass fires are among the fuel models with the most rapid rate of spread. Sagebrush interspersed with grass can also support very rapid rates of spread and result in longer flame lengths, increased spotting potential, and higher fireline intensities than grass alone.

APPEAL ISSUE 4: The Decision Memo was in error because it did not identify all existing subdivisions within or adjacent to the project area.

RESPONSE: There is no requirement to identify by name the individual private parcels within blocks of private property or adjacent to a proposed project (DM, p.1). The relationship between project areas and private property in the vicinity is clearly identified on maps that are included as part of the Decision Memo.

The Responsible Official clearly identified the project area and the blocks of private property that are within or adjacent to the project. The omission of some subdivision names in the Decision memo does not constitute an error in analysis.

APPEAL ISSUE 5: Weed control is called for by the DM and then denied. Several places in DM state: "Noxious weed control measures will be enforced." However, under findings the project "shall not include the use of herbicides or pesticides," as a reason why the action is categorically excluded (DM, p. 5)." The Bridger-Teton National Forest (BTNF) has not considered the potential scope of the weed problem created and exacerbated by the project, covering thousands of acres.

RESPONSE: Noxious weed control, for most treatments was included as part of the project design (DM pp. 2-5). Invasive species mitigations are built into the project design and will be adhered to during project implementation (DM p. 7). The concern for noxious weeds, species of interest, and their potential to spread is addressed (Vegetation Specialist Report, p. 6). Noxious weed control is also listed as a KV (Knutson-Vanderberg) and sale area improvement need activity (Forested Vegetation Report, p. 6).

Noxious weeds are presently being treated in the project area and are expected to continue to be treated in the future. In the Box Creek trail head area exotic plants have been reduced (Vegetation Specialist Report, p. 5). Effective noxious weed management is a Forest goal (LRMP, p. 144). Integrated noxious weed management is evaluated in the Bridge-Teton Environmental Assessment (EA) for Noxious Weed Control (Jan. 1999). It is under the noxious weed assessment that treatment of exotic plants in the project area will be conducted.

Herbicides will not be used to treat any of the conifer, aspen or sagebrush as part of the project (DM, p. 5). Therefore, the project meets category 10 in Forest Service Handbook (FSH) 1909.15, 31.2. This does not exclude use of herbicides as part of on going integrated noxious weed control as specified in Bridge-Teton Environmental Assessment (Jan. 1999) for noxious weed control.

APPEAL ISSUE 6: The amount of road construction and reconstruction needed for the project, have not been adequately disclosed, information in the DM is confusing or wrong, and the impacts of new roads are not considered. The DM states "Temporary roads of approximately one mile may be created to access" Burro Hill Mechanical Treatment Area (DM, pg. 3). The Decision Map shows about 3 miles of road in this unit.

RESPONSE: According to the DM, this project meets the criteria of a Category 10 Categorical Exclusion (CE) in accordance with the FSH 1909.15, 31.2. Category 10 projects shall not include the construction of new permanent roads (FSH 1909.15, chapter 30, section 10). Temporary roads of approximately one mile may be created within this area to access the treatment unit (DM, p.3).

The DM does not mention any road reconstruction needs, however, the Hydrologist Specialist Report states "a portion of the existing road that accesses Burro Hill would be reconstructed and would remain open to future use (Hydrologist Specialist Report, p. 1). Neither temporary road construction nor reconstruction of existing roads is forbidden for a Category 10 project (FSH 1909.15, chapter 30, section 10).

The map containing the Burro Hill unit shows approximately three miles of what the map key calls "temporary roads/ haul routes" (DM, Burro Hills map) . The map does not differentiate existing haul routes from new temporary road construction. The other maps in this packet that have a coverage that overlaps this unit (i.e., DM, Heart 6 unit map), as well as the official forest map, indicate that approximately two miles of "temporary roads/ haul routes" consist of existing roads. Therefore, the DM and map are consistent and accurate in estimating one mile of new temporary road construction.

The report titled "Hydro Input to Randolph Mountain Fuels Project" (hereafter Hydrology Specialist Report) does consider the impacts of new road construction and subsequent obliteration on hydrology, but assumes that 2.2 miles of temporary road construction will be needed (Hydrology Specialist Report, p. 1). The Hydrology Specialist Report discloses additional information about the proposed temporary road construction including terrain position and distance to nearest streams (Hydrology Specialist Report, p. 16). This report clearly describes no adverse effects to water quality are expected from this construction and obliteration. It also includes mitigations related to road construction and Forest Plan direction. The DM states that specialist reports are available in the project record and the project is compliant with the LRMP (DM. pp. 6,7).

APPEAL ISSUE 7: Flood plains, wetlands, and watersheds may not be protected. The Hydro Input to Randolph Mountain Fuels Project by R. Simon, 11/22/2006, lists mitigation measures and actions that are not mentioned or referred to in the DM.

RESPONSE: Mitigation listed in specialist reports are part of the decision (DM p. 4, 6). Project activities will not take place in flood plains, wetlands or municipal watersheds (DM p. 6). Wetlands have been inventoried but ground verification will be necessary prior to project implementation (Hydrology Specialist Report, p. 2). No timber harvest will take place in wet areas, no ignition will take place within 100 feet of streams and outer edges of riparian vegetation, and wetlands and a larger buffer of 200 feet will be established along the Buffalo River (DM, p. 6). Should the fire slowly back into a riparian area a low intensity burn would be acceptable but high intensity fires in wetlands would be suppressed (Hydrology Specialist Report, p. 2)

APPEAL ISSUE 8: The decision violates National Environmental Policy Act (NEPA) by not sufficiently addressing public comments.

RESPONSE: The FSH generally describes the content requirements for Decision Memos (DM) (FSH 1909-15_32.3). This section includes a description of the public involvement process used

during preparation of the CE. The DM describes the public involvement for the project listing meeting dates, periods of formal and subsequent information gathering opportunities, and a list of agencies the forest consulted with during the planning process (DM, p. 7). A complete list of all agencies, organizations, tribes, and individuals contacted during the scoping process and additional public input sessions is included in the project record.

The Forest Service appeal regulations require consideration of comments. They do not require a response (36 CFR 215.6). However, the Forest did respond by letter to specific scoping comments (Letter from Elizabeth Brann, District Ranger to Debra Patla and Merlin Hare, August 3, 2006; Letter from Elizabeth Brann, District Ranger to Jackson Hole Conservation Alliance/Wyoming Outdoor Council, August 3, 2006).

The Responsible Official provided the required opportunity to comment and sought additional public comments throughout the planning process. There is also evidence that she considered the comments to some degree during the planning process as indicated by the response to comment letters that were prepared and mailed to interested parties.

APPEAL ISSUE 9: The BTNF approved the project without preparing burn, timber, or transportation plans.

RESPONSE: There is no policy or direction requiring that a burn plan be completed before a decision is signed. The burn plan will be prepared and signed before the project is implemented (DM, p. 7).

The District prepared both a Forested Vegetation Report and a Vegetation Specialist Report. The Vegetation Report outlines existing conditions and treatments necessary to demonstrate the decision will achieve the project purpose and need. The final site-specific silvicultural prescription will be prepared in conjunction with the burn plan (DM, p. 7).

This project will not create new permanent roads. Approximately one mile of temporary road will be created to access the Burro hill treatment area, but will be obliterated once the mechanical treatment has been completed. Temporary roads will be obliterated following use (DM, pp. 2-4). The increase in transportation due to this project was considered by the decision maker (DM, p. 6). The small scale and magnitude of this project does not warrant additional transportation plans or analysis.

APPEAL ISSUE 10: There appears to be a substantial potential for extended declines in air quality, considering the combined effects of the prescribed burns and broadcast or slash-pile burning in the harvest units.

RESPONSE: Like other sources of air pollution, prescribed burning emissions are constrained by laws, regulations, and standards. For prescribed burning, these constraints are mainly guided by the Clean Air Act (as amended in 1977 and 1990) including National Ambient Air Quality Standards (NAAQS), regional haze regulations, and under certain circumstances, General

Conformity Provisions. Further guidance comes from a policy statement from the Environmental Protection Agency (EPA) called Interim Air Quality Policy on Wildland and Prescribed Fires (1998). To meet the intent of the Interim Policy, "major burners" must participate in an Airshed Group, in this case, the Wyoming Department of Environmental Quality (DEQ), Air Quality Division (AQD), which offers permits to allow individual burns.

The DM describes actions to be taken to maintain air quality (DM, p. 7). Because this is a CE, meeting all size, treatment methods, and other parameters of a CE 10 (FSH 1909.15), with no extraordinary circumstances (DM, p. 6), full disclosure of all effects in the project record is not required (FSH 1909.15).

A smoke management plan and smoke management elements contained in the site-specific burn plan will maintain air quality (DM, p. 7). In the prescribed fire burn plan, weather conditions, such as wind speed, wind direction, and ventilation index, are used to minimize smoke impacts. The burn plan also requires that the proper permits be received. In a letter to the appellant in response to comments received during the scoping period, the decision maker emphasizes that air quality will be closely monitored and a smoke management plan will be prepared and included with the prescribed fire burn plan. In addition, Wyoming DEQ regulations will be followed (Letter from Elizabeth Brann, Buffalo District Ranger, BTNF, p. 3).

APPEAL ISSUE 11: The project uses a radical definition of "small diameter timber" less than 20 inches diameter at breast height. Conifers ranging up to 20-inch dbh do not merit the description "small" in this ecosystem.

RESPONSE: There is no policy regarding the labeling of certain size classes of trees as small, medium and large. The purpose and need for this project is to reduce existing hazardous fuel loadings interlocking tree crown densities and ladder fuels in the treatment areas. The desired outcome of this project is to produce vegetation that is modified in composition, structure and density thereby reducing fire behavior, including rate of spread, flame length, spotting potential and the likelihood of a surface fire transitioning to a crown fire in the project and surrounding areas (DM, p. 1).

The Forested Vegetation Report is very clear that live conifer trees heavily stock the stands in question. Seedlings range from 300 to 525 per acre, post and pole size trees range from 100 to 400 per acre and over story trees are found at a rate of 60 to 100 per acre.

The Forested Vegetation Report also describes several conditions within the proposed treatment areas that have lead to high mortality levels within the over story layer of the Douglas-fir stands, such as, bark beetle attacks, defoliation, and root rot disease. Seventy to ninety percent of trees 20 inches and greater have died due to the aforementioned insects and pathogens. Trees in the 12 to 20 inch range have experienced about a 30% mortality rate (Forested Vegetation Report, p. 4).

The intent of this project is to reduce the number of ladder fuels that are generally composed of trees less than 20 inches and retain most of the over story trees (20 inches and greater) that have

not previously died as described in the Forested Vegetation Report. Trees retained in the overstory should be the healthiest trees and not necessarily the largest. Over the whole area, a much higher ratio of larger diameter trees would be retained than smaller diameter trees (Forested Vegetation Report, p. 5).

APPEAL ISSUE 12: The Wilderness Ranches treatment area supports a still-maturing Douglas fir stand with many healthy trees, natural openings or small meadows, old fire scars and limited amounts of wood on the ground. The argument that this stand is outside the natural fire regime seems specious, as does the claim that as imposed 20-30 foot spacing of trees will mimic natural conditions. Douglas fir is one of the rarest conifer types in the area. According to the Teton Division Landscape Scale Assessment, there is currently much more aspen than Douglas fir.

RESPONSE: The Forested Vegetation Report details the forest conditions in this treatment area. There are over 300 seedlings per acre and 100 saplings-to post and pole size trees per acre in treatment areas. There are also small openings with grasses, forbs and sagebrush (Forested Vegetation Report, p. 2). The Vegetation Specialist Report indicates that Douglas fir communities dominate the project area (Vegetation Specialist Report, p. 1). Both the Forested Vegetation Report and the Vegetation Specialist Report indicate that aspen are in decline and suffer from heavy conifer encroachment. The Vegetation Specialist Report states that pre-settlement conditions in this area included large scattered Douglas fir within dominant communities of sagebrush and aspen, conditions maintained by frequent low-intensity fires (Vegetation Specialist Report, p. 3).

The information about historic conditions and current stand conditions in the reports discussed above indicate that: 1) there is a great deal of Douglas fir in the project area, 2) these conditions are well outside what could be considered a natural fire regime, and 3) the proposed thinning specs will more closely mimic historical stand conditions compared to current conditions.

Regarding the relative abundance of aspen apparent in the landscape scale assessment, it is not advisable to rely on any landscape scale assessment at the stand or project level. Site-specific data is available for this unit.

APPEAL ISSUE 13: Thinning of forest types other than southwestern ponderosa pine does not represent restoration of more natural conditions, because these kinds of forests are naturally dense and naturally burn at high intensities; fuel management also has less influence on fire behavior in these ecosystems where climate so strongly controls fire occurrence and severity.

RESPONSE: In looking at the publication used as a reference by the appellant (*Romme et al*. 2006), it is clear this quote is taken out of context. This publication does not argue that southwestern ponderosa pine is the only forest type to benefit from thinning. To achieve the objectives stated in the DM, the overwhelming majority of peer reviewed scientific literature on this subject supports a combination of thinning with follow up burning or prescribed burning alone (depending on current forest structure) for these forest types (i.e., *Graham et al*. 2004).

APPEAL ISSUE 14: The Biological Assessment and Management Indicator Species Report (BA/MISR) states "No" for both the occurrence of Peregrine Falcon and its habitat. However, there is an eyrie in or near the project area. The Forest Plan will be violated if human activities occur within 0.5 miles of an active eyrie March through July.

RESPONSE: Bridger-Teton Forest Plan (LRMP, p. 125) states that, "Land use practices or development which eliminate peregrine falcon habitat within 1.0 mile of occupied or suitable-but-unoccupied cliffs within a recovery area will not be allowed. Human activities will be restricted within 0.5 mile of occupied eyries between March 1 and July 31 (or July 1 to Sept 15 for hack sites) depending upon the height of the nesting cliff".

This proposal will not eliminate nesting (cliff) habitat or foraging habitat in general. "There will be no change of consequence in existing vegetation or habitat for any threatened or endangered species" (BA/MISR, p.1). Foraging habitat is present (BA/MISR, p.5) and peregrines, if they are within range (generally 10 miles) will use the project area for foraging and continue to find prey items (i.e. birds) to feed on, but the vegetation changes will be of "no consequence" (BA/MISR, p. 1-2).

The DM provides that "If a nest, den or other important sites for any threatened, endangered or sensitive (TES) species is found within the project area, activities may need to be curtailed or additional restrictions imposed to avoid adverse impacts. Identified nest trees and/or den sites will be protected by establishment of buffer zones in which no treatment will occur. The size of the buffer will be determined on a case-by-case basis as deemed necessary in order to protect the species present (DM, p. 5).

The appellant did not disclose specific location of the eyrie. The direction in the DM will be applied to protect any eyries, as needed. Therefore, the decision complies with the Forest Plan.

APPEAL ISSUE 15: The BA/MISR states "No" for Bald Eagle species and habitat. However, an active nest is located within ¼ mile of a treatment area, and other nests could exist along a river near other treatment units. Eagles forage along the river (south edge of the project area) and up on the slopes and ridges within the project area.

RESPONSE: The Biological Assessment (BA) for this project does indicate in the chart "no habitat or species", but this determination appears to be an unintended error, because it goes on further to say that foraging habitat is available in the project area (BA/MISR, p. 5). The bald eagle is "closely associated with water with nest sites commonly found less than one mile from a lakeshore or riverbank. Large trees necessary to support eagle nests adjacent to lakes or rivers will not be impacted by the project. Foraging habitats are available in the project area" (BA/MISR, p. 5). There will be "No Effect" to bald eagles or habitat due to this project (BA/MISR, p. 5) and "there will be no change of consequence in existing vegetation or habitat for any threatened or endangered species" (BA/MISR, p. 1).

The LRMP states, "Site-specific management plans will be developed for all bald eagle territories on the Bridger-Teton. Incorporated by reference: Habitat Management Program, Threatened and Endangered Plants and Animals, Bridger-Teton National Forest, 1984, and Bald Eagle Working Group Guidelines for Yellowstone Ecosystem (GYEBEG) 1983, will be followed in the interim." GYEBEG direction would always apply to all forest projects (LRMP, p.125).

Without a site-specific nest site management plan, certain distances will be maintained for disturbing activities. Usually the no activity zone is 400 meters or less (GYEBEG 1983 plus updates). The appellant indicates the bald eagle nest is currently located about this distance. There should be no conflict (BA/MISR, p. 5). The majority of planned treatments will occur outside the breeding season for migratory birds (BA/MISR, p. 4), and will mitigate conflict with eagle nesting. In June 2007, the bald eagle is expected to be delisted from "federal threatened status." It will become a FS sensitive species and the US Fish and Wildlife Service Bald Eagle Guidelines 2007 (FWSBEG) will give guidance for eagle management.

The DM indicates, "If a nest, den or other important sites for any threatened, endangered or sensitive (TES) species is found within the project area, activities may need to be curtailed or additional restrictions imposed to avoid adverse impacts. Identified nest trees and/or den sites will be protected by establishment of buffer zones in which no treatment will occur. The size of the buffer will be determined on a case-by-case basis as deemed necessary in order to protect the species present" (DM, p. 5).

This proposal will not eliminate or harm either nesting habitat (large old trees within one mile of a lake/ river); or foraging habitat (streams, upland carrion sources); (BA/MISR, p. 5). There will be no change of consequence in existing vegetation or habitat for any threatened or endangered species (BA/MISR, p. 1). "Large trees necessary to support eagle nests adjacent to lakes or rivers will not be impacted by the project," (BA/MISR, p. 5).

Foraging habitat is present, and bald eagles, if they are nesting near the project will not be harmed. If nest sites are found within the influence of the project, the mitigation in the DM (DM, p. 5) will be applied to protect the nest territory in accordance with current Forest Plan and GYEBEG guidelines.

APPEAL ISSUE 16: The BA/MISR lists "No" for Brewers's sparrow (MIS for sagebrush) and habitat, but then, in contradiction, states in comments that "sagebrush is abundant in the project areas." The project aims to reduce sagebrush density by 50-90 percent over hundreds or even thousands of acres. Brewers sparrows ARE present and very likely have many nests in the treatment units. Will this level of habitat loss wipe out the species in the project area?

RESPONSE: The MIS report effects chart does indicate "no habitat or species" for Brewer's Sparrow, however, this appears to be an unintended error as the comments section indicates that Brewer's Sparrow "prefers sagebrush shrublands" and "sagebrush is abundant in the project areas" (BA/MISR, p. 5). The District acknowledged that the project "may impact Brewer's Sparrow or its habitat, but determined that it will not likely contribute to a trend towards a

federal listing or loss of viability to the population or species" (BA/MISR, p. 5), and the "project will avoid (the) breeding season" (BA/MISR, p. 5). Brewer's are migratory and "the majority of planned treatments will occur outside of the breeding season" for migratory birds (BA/MISR, p. 4).

The decision discloses that sagebrush habitat in prescribed burn units will be impacted and quantified to be about 50-90 percent (DM, p. 2). "Treatment objectives in this area will reduce sagebrush density by 50-90 percent" for the Heart Six and Burro Hill prescribed burn areas. The Heart Six "area of 2514 acres" is not all planned for burning (DM, p. 2) and the Burro Hill prescribed burn "area of 408 acres" also is not all planned for burning (DM, p. 2-3). Overall, there are 385,200 acres of sagebrush on the forest (LRMP, p. 37).

APPEAL ISSUE 17: The BA/MISR lists 'No' for Grizzly Bear presence and habitat, contradicting a reality known to local residents, Wyoming Game and Fish and whoever posted Forest Service "Bear Country" signs in the project area. There is no documentation of whether or not this project conforms to the Forest Plan Amendments for Grizzly Bear Conservation of the Greater Yellowstone Area National Forests." It is questioned that all of the project area falls within MS3.

RESPONSE: The project complies with the Forest (DM, p.7). The Forest Plan was amended in April 2006 to include the Grizzly Bear Conservation of the Greater Yellowstone Area National Forests. This amendment became effective in April 2007 with delisting of grizzly bear in the Yellowstone area. The amendment recognizes the need for vegetation treatments, fuels reduction in the urban interface (up to 1.5 miles from communities and structures), and allows up to 5 miles of temporary road for fuels reduction projects (Forest Plan Amendments for Grizzly Bear Conservation of the Greater Yellowstone Area National Forests, April 2006, p. 22). The project area falls within recovery area MS3 or Situation 3 habitat (with high human use and no secure habitat) and the project area falls within the Buffalo/ Spread Creek Bear Management Unit (BA, p. 6). The determination for this project was "no effect" on grizzly bear (BA, p. 5); The Greater Yellowstone population was delisted from the federal list on April 30, 2007.

APPEAL ISSUE 18: The BA/MISR claim that "secure habitat for elk is limited within the project area. Large numbers of elk are present particularly in the fall and spring; and many portions of the project area are used throughout the winter by elk. The BA/MIS Report states, "Calving areas should be avoided from 5/15 to 6/30," but provides no maps of these areas, nor does it describe which treatment units support elk calving. The DM ignores the BA/MIS Report and does not stipulate any protection for elk.

RESPONSE: Security is provided for by maintaining healthier trees in the stands (Forest Vegetation Report, p. 4) and by closing all temporary roads (Hydrology Specialist Report, p. 2). Further road use restrictions could be initiated during project implementation if necessary to protect wildlife (LRMP, p. 140). The decision includes mitigation to avoid activities during the calving period (DM, p. 4 and 6; Forest Vegetation Report, p. 4). It is not necessary to display actual calving areas.

APPEAL ISSUE 19: While the BA/MISR minimizes concern for deer by claiming 'most winter off forest', we see mule deer all winter long in the project area, and we wonder how the loss of shrub winter forage and sheltering conifers will affect them .

RESPONSE: Most deer winter off the Forest (BA, p. 2). The project is expected to increase available deer forage (BA, p. 2). Without treatment, present conditions are expected to result in an intense fire that could damage soils and change site's ability to retain aspen (Vegetation Specialist Report, p. 3). The need for improvement of wildlife habitat in this area is recognized in the Forest Plan (LRMP, p. 241) with an emphasis on maintaining aspen (LRMP, p. 244). This project is consistent with Forest Plan direction (DM, p. 7).

APPEAL ISSUE 20: How will the loss of thermal cover for Moose, admitted by the BA/MIS report, affect the moose population, already in serious decline?

RESPONSE: It is expected that thermal cover for moose will decline but that forage quality will improve (BA, p. 2). It is recognized that the project "may impact individuals or habitat, but will not contribute towards federal listing or cause a loss of viability for" …. moose… (BA Transmittal letter, Lance Koch, Dec.2006).

APPEAL ISSUE 21: Lynx were reportedly found in or near the project area in 2007. The BA/MISR claims that habitat will not be made unsuitable in part because "a mature overstory will be maintained." Will the proposed thinning to 20-30 foot canopy spacing, the removal of conifers near aspen, and the burns leave a "mature overstory"? Will human use patterns in the area change after the creation of multiple skid trails, roads firelines etc., to the detriment of lynx and other rare carnivores?

RESPONSE: The project is located "in the Buffalo Fork Middle or Buffalo Fork West LAUs (Lynx Analysis Units)" (BA/MISR, p.7-8) as directed by the Canada Lynx Conservation Assessment and Strategy (LCAS 2000) document. The LCAS direction indicates that 10 percent of lynx denning habitat will be maintained in each LAU (LCAS, p. 87; Conservation Measures). The LCAS direction also indicates that aspen regeneration projects are good for lynx prey such as snowshoe hare (LCAS, p. 91) and prescribed burns are to be designed to promote shrubs and trees favorable to lynx prey (LCAS, p. 93). This fuels reduction project will increase aspen regeneration and regenerate other understory shrub species favorable to herbivores such as snowshoe hare. The BA/MISR indicates that "foraging habitat quality … is low due to a paucity of snowshoe hare habitat". It also indicates, "there is no denning habitat in any of the project units" … (but) "project areas contain patches of mapped 'suitable' lynx habitat according to the BTNF GIS database" (BA/MISR, p. 7).

"Presently timbered stands will remain 'suitable' for lynx movement and dispersal… (and) … the project will not affect connectivity within or between LAUs." After the project, lynx will be able to use the area the same as before the project and, "treatments proposed will not convert the

habitat to an unsuitable condition. A mature overstory will be maintained" (BA/MISR, p. 8) even if the canopy spacing is wider (20-30 feet). Conifers remaining will be of larger diameter and prescribed burning will improve the area for foraging lynx.

Most of the project units are situated near areas of high human use and little secure habitat is available in those portions of the Buffalo Valley. The areas are all adjacent to private lands and ranches adjacent to the Buffalo Valley road (BA/MISR, p. 7). Patterns of use are not expected to change significantly. Any "temporary roads will be obliterated upon completion of this project … (and) existing roads … will be obliterated upon completion of mechanical harvesting". Skid trails, old and any new temporary roads will be closed (DM, pp. 2-4). There will be "no effect" on lynx by this project (BA/MISR, p. 8).

APPEAL ISSUE 22: The Design Criteria Letter of 12/8/2006 stipulates that "no mechanical treatments may occur" within the 32.5 acre nest buffer zone around an identified goshawk nest. It also stipulates restriction of treatments during the breeding season (3/1 - 8/30) within the post-fledging family area (549 acres). However, the DM makes the protections conditional on "verification" of "nest territories," thus removing the protection if no goshawks are found (at whatever level of effort is expended looking for them) or even if no further surveys occur.

RESPONSE: After surveys are done, if no active goshawk nest or territory are found there would be no need for protection measures. Verification of nesting goshawk will be done to implement protection measures (DM, p. 4). Surveys have confirmed breeding presence within or nearby project areas (Heart Six nest). Nest buffers and seasonal restrictions are incorporated in the project design (BA/MISR, p. 3). Data collected in the project area is recorded in the Northern Goshawk Survey Summary Report (NGSR 2006, pp.4, 8-9 plus maps, etc). Data to trigger protection measures, establishment of buffers, and mitigations (DM, p.5) can be from other sources than Forest Service funded surveys such as agencies (i.e. Wyo. Game & Fish Dept), other researchers and individuals if reported and verified by the BTNF. The District determined that this project "may impact goshawk or its habitat, but will not likely contribute to a trend towards a federal listing or loss of viability to the population or species" (BA/MISR, p. 3).

APPEAL ISSUE 23: Boreal owls, a sensitive species in Region 4, have been heard calling frequently in the Heart Six prescribed burn area and presumably nest there. The BA/MISR does not mention this species.

RESPONSE: The biological evaluation indicates that boreal owl habitat is present in the project area; and that the availability of snags for nesting will likely be reduced within the project area, but the loss is negligible due to the abundance of snags elsewhere in the Buffalo Valley (BA/MISR, p. 3). The project may impact boreal owl or its habitat, but will not likely contribute to a trend towards a federal listing or loss of viability to the population or species (BA/MISR, p. 3). The decision memo specifies mitigation measures to be applied if a nest territory is found (DM, p. 5).

APPEAL ISSUE 24: No mention is made of the greater sage grouse, a sensitive species in Region 4 and a known inhabitant of areas in Jackson Hole. Do grouse inhabit the extensive sagebrush stands of the project area? Have adequate surveys been conducted?

RESPONSE: The BA/MISR indicates that for sage grouse extensive sagebrush habitat is present in the project area but that the project area does not currently provide winter sage grouse habitat. The species has not been documented on the Buffalo RD (BA/MISR, p. 3). The project will have "No Impact" on sage grouse (BA/MISR, p. 3).

APPEAL ISSUE 25: Three-toed woodpeckers (another R4 sensitive species) exist and nest in the project area (UTM of a nest tree available on request). The species is not mentioned by the BA/MISR.

RESPONSE: The BA/MISR states that habitat for three-toed woodpecker consisting of beetle killed conifers is present in the project area. The availability of snags for nesting will likely be reduced within the project area, but the loss is negligible due to the abundance of snags elsewhere in the Buffalo Valley (BA/MISR, p. 3). The project may impact the three-toed woodpecker or its habitat, but will not likely contribute to a trend towards a federal listing or loss of viability to the population or species (BA/MISR, p. 3). The majority of planned treatments will occur outside of the breeding season (BA/MISR, p. 4).

APPEAL ISSUE 26: Design criteria recommendations for wildlife are few, vague and only apply to TES species. There is no assurance in the DM that adequate wildlife surveys needed to trigger these protections will occur.

RESPONSE: The project design includes criteria for protecting various species, particularly TES species. "A biological evaluation for sensitive species and a biological assessment (were) … prepared for this project as well as identification and evaluation of management indicator species. Mitigations for activities within wildlife areas (were) … listed in the project folder and some of the mitigations (were) listed" in the decision memo (DM, p. 4-5). Those pointed out in the DM were related to species or habitat for goshawk, grizzly bear and many other TES species in general if an important habitat feature (i.e. nest sites) were to be found and buffers would be provided as needed (DM, p. 4-5).

"A biological assessment (as well as biological evaluations and MIS report) was prepared for the project and mitigations are built into the project record to show the project will not adversely affect wildlife within the area. Collaboration with Wyoming Game and Fish was conducted as well as with local university researchers in the area to help determine the effects to wildlife in the area" (DM, p. 6). A timing feature as stated in the BA/ MIS report for migratory birds indicates, "the majority of planned treatments (will) occur outside the breeding season" (BA/MISR, p. 4). This will protect a great variety of species in addition to TES and MIS species.

Other wildlife mitigation and direction applies to all projects on the BTNF (including Randolph Fuels) and is found in the Forest Plan. It is not necessary to repeat all of these in project documents. An example is timing protection for human activity and disturbance in big game winter range, elk calving areas, wildlife snag tree areas and so forth (BTNFP, p.123-127). Elk "calving areas should be avoided (in the Randolph Fuels project) from May 15 to June 30" is a mitigation specifically stated in the BA/MISR, p. 6.

The assurance that mitigations and design features will be carried out is stated that "mitigations for activities within wildlife areas are listed in the project folder and some of the mitigations are listed" in the decision memo (DM, p. 4-5).

Some surveys have been completed already for some MIS species such as reported in the Northern Goshawk Survey Summary Report (NGSR 2006, p. 4, 8-9 plus maps, etc) and others planned as part of the BTNF program to monitor MIS species (BTNF MIS Plan 2007). Data to trigger protection measures, establishment of buffers, and mitigations (DM, p. 5) can be from other sources than Forest Service funded surveys such as agencies (i.e. Wyo. Game & Fish Dept) other researchers and individuals if reported to BTNF.

APPEAL ISSUE 27: There is no consideration of sensitive/threatened plant species.

RESPONSE: No Threatened or Endangered plants occur within the project area (Vegetation Specialist Report. pp. 4, 5). Five sensitive plants may occur within the project area but there are no known occurrences within the area and it is speculated that prescribe burning may improve habitat for sensitive plants.

APPEAL ISSUE 28: The success of aspen regeneration could be strongly and negatively affected by both cattle and horses. However, the DM does not mention livestock management in the mechanical treatment areas, and only refers to "coordination with cattle allotment permitees" in the burn areas. Temporary or extended closure of allotments could be necessary to meet the aspen regeneration goals, and was mentioned during a public scoping meeting, but the DM apparently has rejected this consideration without explanation.

RESPONSE: The Wilderness Ranches mechanical project area is within the Heart Six Allotment. Most of the Burro Hill prescribed burn area and half of the Burro Hill mechanical treatment area is within the Burro Hill Allotment. The other half of the Burro Hill mechanical treatment area is outside any allotment. The Heart Six prescribe burn area is mostly outside any allotment. Approximately 5% of this burn is in the Burro Hill Allotment while approximately 20% is in the Feuz Allotment. The Box Creek mechanical project is not in a grazing allotment.

Livestock prefer to graze in open areas rather than dense timber stands making coordination with the sagebrush prescribed burns very important. However, livestock will graze open timber stands and aspen stands if palatable forage is available and they will readily lounge in timber stands during the heat of the day. Descriptions of the timber stands, where mechanical treatment would occur, indicate a dense understory where cattle may not graze. Douglas fir stands are

described as having lower palatable forage for livestock (Vegetation Specialist Report, p. 1). Dense timber stands are often classed incapable for livestock grazing due to low forage production but this can change depending on the amount of overstory removal. Should mechanical treatment cause livestock to increase use in timber stands it will still be necessary to coordinate livestock grazing in order to meet a Forest Plan standard: "Disturbed areas will be stabilized or regenerated prior to resuming grazing use." (Forest Plan Standard and Guidelines Forage Improvement Standard, p. 128). Resting or deferring grazing in treatment areas are accepted practice(s) to ensure achieving desired conditions following treatment. The length of rest or deferment can vary from site to site and treatment method.

APPEAL ISSUE 29: The project is inconsistent with the goals, objectives, desired conditions, and prescriptions of the management Area described in the BTNF LRMP.

RESPONSE: "Big game habitat for management unit 12 is in less-than- best condition in some areas, but burns and some cut areas provide improved seasonal forage. Some areas will show recent wildfires. Other areas will show stands with many dead trees," (FP Management Unit 12 p. 242). To improve conditions within the management unit, the project is expected to reduce fire intensities in the future leading to better management in the future (Vegetation Specialist Report, p. 4). Forest Plan Consistency for soils is presented (Soils Report, p. 10). The Forest Plan goal to retain water quality (LRMP, p. 114) is expected to be met (Hydrology Specialist Report, p. 17). No impacts or beneficial impacts are expected for wildlife (BA Transmittal Letter Lance Koch Dec. 2006). The project would be expected to move the area toward desired condition while providing a better opportunity to manage and suppress wildfire (DM, p.1).

APPEAL ISSUE 30: There is no evidence that collaboration with Wyoming Game and Fish Department occurred as stated in the DM.

RESPONSE: The FSH 1909-15_32.3 generally describes the content requirements for DM. In this section, it is recommended that the DM list any interested and affected agencies, organizations, and persons contacted. In the Public Involvement section, the District mentions that collaboration with WGFD and several other agencies has occurred throughout the analysis of the project (DM, p. 7). There are no requirements to describe collaboration efforts in detail in the DM. Project notes documenting milestones verify that contacts with WGFD, Grand Teton National Park, others did occur during the analysis period. Specific mention of meetings with WGFD occurred on July 21, 2006, February 15, 2007, March 2, 2007, and March 23, 2007.

The Responsible Official met the requirements of the Forest Service Handbook in addition to working closely with WGFD to address and share information on wildlife species within the project area.

United States Department of Agriculture | **Forest Service** | **Intermountain Region** | **324 25th Street Ogden, UT 84401-2310**

File Code: 1570-1 **Date:** June 26, 2007
Route To:

Subject: Reviewing Officer Recommendation, Randolph Mountain Hazardous Fuels Reduction Project, Appeal #07-04-00-0061-A215

To: Appeal Deciding Officer

This is my review and recommendation on the disposition of the appeal of the Randolph Mountain Hazardous Fuels Reduction Project Decision Memo (DM).

There was one appeal filed on this project, submitted by Lead Appellant Debra Patla on behalf of herself, Merlin Hare, and George Leys.

Project Background

This project is located on the Buffalo Ranger District, Bridger-Teton National Forest in Teton County, Wyoming. The community of Buffalo Valley lies adjacent to the project area. The project area is experiencing epidemic conditions of Douglas-fir bark beetle infestations, creating high rates of mortality in mature stands, and increasing the risk of large wildfires. The Proposed Action is to reduce existing hazardous fuel loading, interlocking tree crown densities, and ladder fuels surrounding the community of Buffalo Valley and the adjacent southern boundary of the Teton Wilderness. This will be accomplished through mechanical thinning (including logging) on 760 acres and prescribed burning on up to 3682 acres.

Appellants' Request for Relief

Appellants have requested the Decision Memo (DM) be remanded and a full analysis be conducted in the form of either an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

Appeal Summary

Appellants assert the project is outside the requirements for a Categorical Exclusion (CE) and violates federal policy for protection of wildland urban interface. They describe several issues related to risks to the public, the Biological Assessment and Management Indicator Species (BA/MIS) report, flaws and contradictions in the DM, inadequate public involvement, and ecological concerns. Specific appeal issues are summarized below:

- Federal policy was violated by encompassing more area than is needed for protection of urban interface and therefore outside the parameters for a CE.
- Use of herbicides for noxious weed control precludes the use of CE.

- Risk to local residents is increased due to potential of escaped fires from prescribed burns and burning slash piles, increase in traffic from temporary roads, and increase in fine fuels and slash after the project is competed.
- Contradictions in the DM and specialist reports include different estimates of road construction and mitigation measures not mentioned in the DM but stated in specialist reports
- Removal of larger trees (greater than 20 inches in diameter) and 20-30 foot spacing does not mimic natural conditions and would increase risks for fire.
- The BA/MIS report is inadequate and contains contradictions or omissions for peregrine falcons, bald eagles, brewers sparrow, grizzly bear, lynx, goshawk, sage grouse, boreal owl, three-toed woodpeckers, elk, moose and deer and any sensitive plant species. There is no assurance the appropriate surveys will be completed.
- The project may contradict goals, objectives, desired conditions, and prescriptions for the Management Area and may be operating out of prescription for Desired Future Condition (DFC) 12.

Findings

As Appeal Reviewing Officer (ARO), my role is to review the substantive quality and correctness, or appropriateness of the project decision with respect to clarity, comprehension, effectiveness of public participation, and requested changes. My findings are based on my review of the decision and project record, in accordance with 36 CFR 215.19.

1. Clarity of the Decision and Rationale

The Responsible Official's decision is generally well described in the DM and clearly reasoned. The objectives, actions and expected outcomes of the Decision are well described. Even though every specific action that will be implemented is unknown, the range of actions that could be used and under what conditions are well described.

The one area of potential confusion was where the DM refers to mitigation measures that occur in the specialist reports. It is recommended, to ensure proper implementation of this project, to list all mitigation measures in one document. This should eliminate the potential to miss one or more mitigation measures.

2. Comprehension of Benefits and Purpose of the Proposal

The purpose of the project and the benefits that will be derived from the project are adequately described in the DM.

3. Consistency of the Decision with Policy, Direction, and Supporting Information

The decision is consistent with agency policy direction and procedures for completing a Categorical Exclusion and Decision Memo. The CE, DM and supporting documentation in the record provide adequate information and support to make a reasoned decision.

4. Effectiveness of Public Participation Activities and Use of Comments

The Forest conducted a thorough scoping and public involvement process. Within the DM and record it is shown that the Forest held public meetings, conducted initial and formal scoping

periods, plus a third informal notification period and opportunity to comment. In addition, Forest personnel individually met with several groups and members of the public and Wyoming Game and Fish. Some of the appellants received written responses to their comments to the formal scoping, prior to the final decision. The record shows that public comments were considered and addressed.

5. Requested Changes and Objections of the Appellant

The appellants request the Decision be remanded due to violations of policy and regulations and inadequate analysis. In my review of the record, the decision, and the appeal, I did not find the information to support appellants' argument. I feel the decision and record adequately address and refute appellants' rationale for remanding the decision.

Recommendation

Based on my review of the DM and the supporting documentation in the project record, I believe the decision was within the legal criteria for a CE, adequately documented, and justified. I recommend that the decision made by District Ranger, Elizabeth Brann be affirmed.

/s/ Diane L. Weaver

Diane L. Weaver
Appeal Reviewing Officer