

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

HEARTWOOD, INCORPORATED and)
WILDERNESS WATCH, INC.,)

Plaintiffs,)

vs.)

Case No. 25-1850

FELIPE CANO, Forest Supervisor of the)
Shawnee National Forest, and)
UNITED STATES FOREST SERVICE,)
An agency of the U.S. Department of)
Agriculture,)

Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Heartwood, Incorporated and Wilderness Watch, Inc., for their Complaint for Declaratory and Injunctive Relief against Defendants Felipe Cano and the U.S. Forest Service, allege as follows:

1. Plaintiffs challenge the U.S. Forest Service’s January 21, 2025 decision—formally called the “Lusk Creek Wilderness Private Inholding Access Project” (hereinafter, the “Project”)—authorizing construction and maintenance of a permanent, 2.5-mile road through the heart of the Lusk Creek Wilderness in the Shawnee National Forest as unlawful under the Wilderness Act, the Alaska National Interest Lands Conservation Act (ANILCA), the National Environmental Policy Act (NEPA), and the National Forest Management Act (NFMA).

2. The Wilderness Act describes Wilderness in part as “an area where the earth and its community of life are untrammelled by man . . . retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to

preserve its natural conditions” 16 U.S.C. § 1131(c). A Wilderness designation is the highest level of protection afforded to public lands by Congress.

3. The Wilderness Act mandates that “each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.” 16 U.S.C. § 1133(b).

4. In order to preserve wilderness character, the Wilderness Act expressly prohibits permanent roads, and “except as necessary to meet minimum requirements for the administration of the area for the purpose of this chapter . . . there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.” 16 U.S.C. § 1133(c).

5. In approving the Project, the Forest Service authorized clearing, grading, construction, maintenance and the installation of drainage features along a newly constructed road through designated wilderness—actions presumptively prohibited under the Wilderness Act.

6. The Forest Service’s decision also violates NEPA by improperly approving the Project under a categorical exclusion (“CE”), thereby avoiding preparation of an Environmental Assessment (“EA”) or Environmental Impact Statement (“EIS”), even though the Project’s location in a Congressionally designated wilderness is certain to result in adverse effects on wilderness character.

7. Further, the Forest Service’s decision violates NFMA and the 2006 Shawnee National Forest Land and Resource Management Plan (“Forest Plan”). The Forest Plan prohibits special uses in wilderness unless they are necessary to preserve wilderness character or are

consistent with valid existing rights but the Forest Service identified neither necessity nor any preexisting easement or property right to justify the Project.

8. Plaintiffs Wilderness Watch, Inc. and Heartwood, Incorporated bring this action on their own behalf and on behalf of their members, who use and enjoy the Lusk Creek Wilderness for hiking, solitude, recreation, scientific study, and spiritual renewal. The Project will irreparably harm their interests by impairing wilderness character and enabling repeated motorized incursions into otherwise undisturbed public lands.

9. Plaintiffs seek declaratory and injunctive relief to vacate the Forest Service's approval and halt further implementation of the Project.

10. The agency's decision violates the Wilderness Act, ANILCA, NEPA, and NFMA, and is arbitrary, capricious, and contrary to law within the meaning of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2).

JURISDICTION AND VENUE

11. This action arises under the Wilderness Act, 16 U.S.C. §§ 1131-1136; ANILCA, 16 U.S.C. §§ 3101, et seq.; NEPA, 42 U.S.C. §§ 4321-4370h; NFMA, 16 U.S.C. §§ 1600-1614, and the APA, 5 U.S.C. §§ 701-706; which waives the federal defendants' sovereign immunity. 5 U.S.C. § 702.

12. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

13. An actual, justiciable controversy exists between Plaintiffs and Defendants, and the requested relief is proper under 28 U.S.C. §§ 2201-2202 (declaratory judgment and further relief) and 5 U.S.C. §§ 705-706 (APA).

14. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1)(B) and (C), because the challenged decision was made by a federal agency operating in this District, the affected public lands are located in this District, and Plaintiffs reside in and conduct organizational activities within this District.

PARTIES

15. Plaintiff Heartwood, Incorporated (“Heartwood”) is a domestic nonprofit corporation incorporated under the laws of the State of Indiana and is comprised of a network of grassroots groups, individuals, and activists dedicated to the protection of public forests across the central hardwood region of North America. Heartwood and its members advocate for sound forest management and the preservation of wild landscapes for their ecological, recreational, aesthetic, and spiritual values.

16. Plaintiff Wilderness Watch, Inc. (“Wilderness Watch”) is a national nonprofit conservation organization incorporated under the laws of the State of Montana with members throughout the United States, including in Illinois. Since 1989, Wilderness Watch has worked to defend the integrity of the National Wilderness Preservation System through policy advocacy, agency oversight, public education, and litigation.

17. Members of Heartwood and Wilderness Watch use, study, and enjoy the Lusk Creek Wilderness for hiking, wildlife observation, photography, solitude, and other recreational, aesthetic, and spiritual purposes. They value the area for its undeveloped, untrammeled character and for the protection it provides to native ecosystems and wildlife, including the proposed Project area. Plaintiffs’ members intend to continue to use and enjoy the area frequently and on an ongoing basis in the future.

18. Defendants' authorization of road construction, mechanized activity, and motor vehicle use in the Lusk Creek Wilderness directly harms these interests by degrading the area's natural conditions, solitude, ecological integrity, and other wilderness characteristics. The challenged decision undermines Plaintiffs' organizational missions and frustrates their members' use and enjoyment of the area.

19. Defendant United States Forest Service is an agency within the U.S. Department of Agriculture charged with administering the National Forest System, including the Shawnee National Forest and the Lusk Creek Wilderness. The Forest Service issued the challenged decision authorizing the Project.

20. Defendant Felipe Cano is the Forest Supervisor for the Shawnee National Forest. Supervisor Cano signed the Decision Memo authorizing the challenged Project. He is sued in his official capacity only.

FACTUAL ALLEGATIONS

The Lusk Creek Wilderness

21. Congress designated Lusk Creek Wilderness under the Illinois Wilderness Act of 1990 and instructed that it "shall be administered by the [Forest Service] in accordance with the provisions of the Wilderness Act." Illinois Wilderness Act of 1990, Pub. L. No. 101-633, § 3(6), § 5, 104 Stat. 4577, 4578 (1990).

22. The Lusk Creek Wilderness encompasses approximately 6,293 acres within the Shawnee National Forest, making it the largest and most remote designated wilderness in Illinois.

23. The Lusk Creek Wilderness is known for its rugged sandstone cliffs, deep canyons, hidden springs, and remote forested hollows, and offers rare opportunities for solitude, primitive recreation, and natural ecological processes to occur with minimal human disturbance.

24. The Forest Service administers the Lusk Creek Wilderness pursuant to the Wilderness Act.

25. The Forest Plan is also applicable to the Lusk Creek Wilderness and imposes binding standards on its management.

The Private Parcels

26. The Project purports to facilitate motorized access to two private parcels, one located within and the other adjacent to the Lusk Creek Wilderness.

27. The parcel located adjacent to the wilderness is approximately 87 acres in size (hereinafter “87-acre parcel”). This 87-acre parcel is a contiguous group of subdivided parcels, and may have been subdivided after Lusk Creek was designated as wilderness.

28. The 87-acre parcel lies entirely outside the designated wilderness boundary and is accessible from other directions across National Forest lands without traveling through wilderness.

29. The second parcel is approximately one acre in size (hereinafter “one-acre inholding”) and is located entirely within Lusk Creek Wilderness. The one-acre inholding, the site of an historic schoolhouse, is located less than one-half mile from the northern wilderness boundary.

The Proposed Project

Minimum Requirements Analysis Framework

30. The Forest Service prepared a Minimum Requirements Analysis Framework (the “MRAF”) for the Project, dated August 15, 2024, to evaluate whether to authorize construction and upkeep of a permanent road and motorized access through the Lusk Creek Wilderness. (MRAF at 1–2, 34–35).

31. The MRAF states that the purpose of the Project is to facilitate access to the one-acre inholding and the 87-acre parcel that is adjacent to the Lusk Creek Wilderness boundary. (MRAF at 14).

32. The MRAF frames the need for action as arising from the 1980 Alaska National Interest Lands Conservation Act (ANILCA) and the landowners’ requests for a long-term special use permit authorizing motorized access through the Lusk Creek Wilderness. (MRAF at 14). Elsewhere, the MRAF asserts in general terms that consideration of activity is necessary to “preserve wilderness character,” but does not tie that assertion to a specific administrative necessity for constructing a road. (MRAF at 19).

33. The Forest Service admits that “[a] 2.5-mile road for motorized vehicles in wilderness is a prohibited use and may be extraordinary,” and that “[t]here are no valid existing rights or special provisions in the Wilderness Act (1964) that specifically allow consideration of any of the 16 U.S.C. § 1133(c) prohibited uses.” (MRAF at 16).

34. The Forest Service cites to 16 U.S.C. § 1134 as a justification for providing access through the Lusk Creek Wilderness to the one-acre inholding, but also admits that Section 1134 does not apply to the 87-acre parcel because the parcel is “not a true wilderness inholding” as it is “bordered on 3 sides only.” (MRAF at 15–16).

35. Although the MRAF recognizes the 87-acre parcel is “not a true wilderness inholding (bordered on 3 sides only),” it repeatedly treats both parcels together as “inholdings,” asserts that “rights for adequate access to the inholdings shall be given,” and frames a single access need—stating there is “no other existing road access to these inholdings except through wilderness.” It then proposes one roughly 2.5-mile route through designated Wilderness (and discusses outside-Wilderness options only in passing—relying on decades-old cost figures without updated analysis. (MRAF at 14-16, 27, 31-33).

36. Instead, the Forest Service justifies its decision to allow the Project to proceed on ANILCA, stating that its provisions “make action necessary in the Wilderness,” (MRAF at 14) and that year-round use of motor vehicles and mechanized equipment is necessary “to fulfill ANILCA obligations.” (MRAF at 33–34).

37. The MRAF recites and appears to rely on the Forest Service’s ANILCA Subpart D access rules, quoting the requirements of 36 C.F.R. §§ 251.112 and 251.114. Yet the MRAF is devoid of the analysis those rules require, neglecting to analyze the applicants’ disclosures, demonstrate exhaustion of access across non-federal lands, or make a case-specific “adequate” access finding. (MRAF at 17-18).

38. The MRAF concludes year-round motorized access is needed and dismisses foot-only, limited-motorized, and outside-Wilderness routes, and does not analyze seasonal restrictions or caps on vehicle number or size as alternatives. (MRAF at 32-34).

39. The MRAF reasons that a Wilderness route is still needed because outside-Wilderness options would not reach the one-acre parcel, but it does not evaluate whether a shorter or less-intensive route limited to that parcel could suffice; instead, it proceeds to a 2.5-mile road with year-round use. (MRAF at 14, 31, 33-34).

40. The MRAF was approved by the Regional Forester and transmitted to the Forest Supervisor for the Shawnee National Forest on September 19, 2024. (Antoine L. Dixon, Regional Forester, U.S. Forest Serv., Letter to Forest Supervisor, Shawnee National Forest re: Lusk Creek Wilderness Access to Private Property (Sept. 19, 2024) (on file with plaintiffs)).

Request for Project Input

41. On October 9, 2024, the Forest Service issued a Request for Project Input (the “Request”).

42. The Request describes the purpose of the Project “to provide access by motorized use year-round needed to fulfill ANILCA obligations for reasonable use and enjoyment of the land by the inholding owners, and to support the historic use requested on the special use permit application by the inholding owners.” (Request at 1).

43. In the Request, the Forest Service claims that a CE for “[a]pproval, modification, or continuation of special uses that requires less than 20 acres of NFS lands” is appropriate because “the proposed road is approximately 3.6 acres and represented under paragraph (v) of 36 C.F.R. 220.6(e)(3) which states the approval of special uses for the installation of a driveway or other facilities incidental to the use of a private residence.” (Request at 3).

44. The Request also asserts that the Project is in conformance with the Forest Plan because an MRAF was completed to assess the minimum impact course of action for the project. (Request at 3).

Scoping Notice

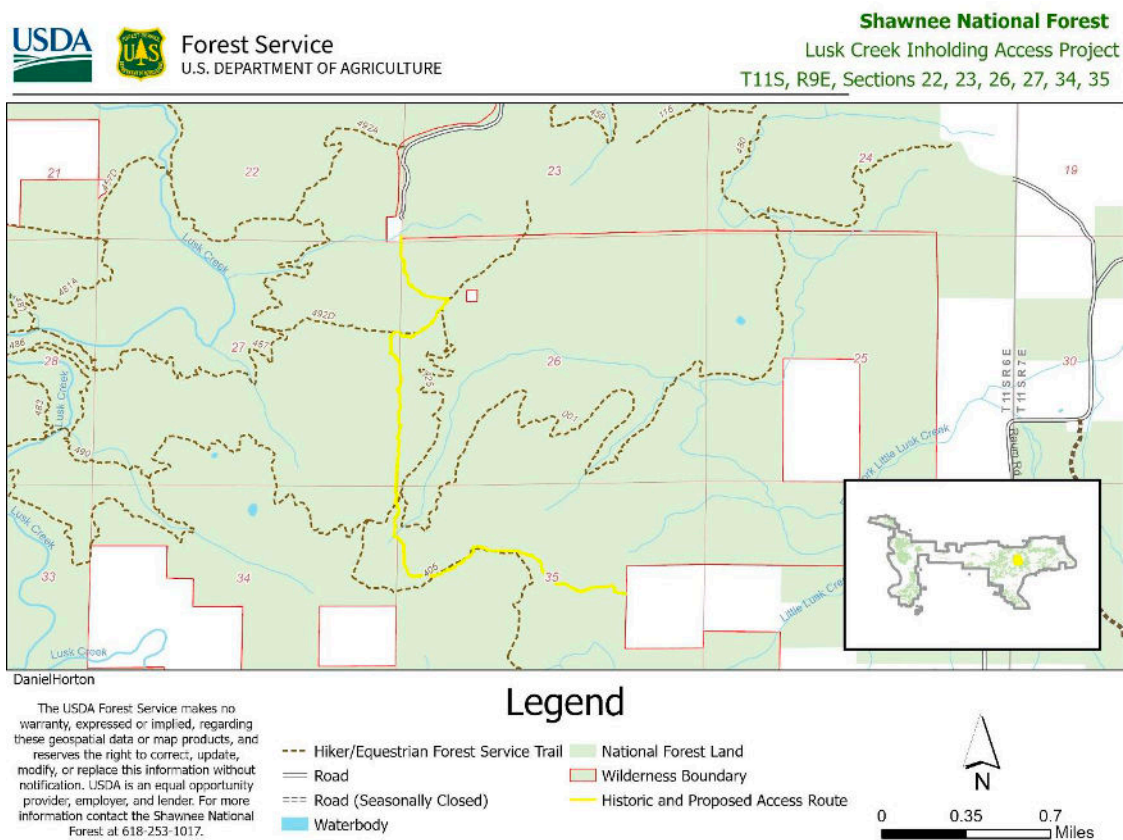
45. On November 1, 2024, the Forest Service issued a Scoping Notice seeking feedback on the Project (the “Scoping Notice”).

46. The Scoping Notice describes the proposed access route as “segments of the historic route and segments of the user-created route . . . approximately 2.5 miles long by 12 feet wide.” (Scoping Notice at 1).

47. The Scoping Notice does not identify any previously authorized user-created route.

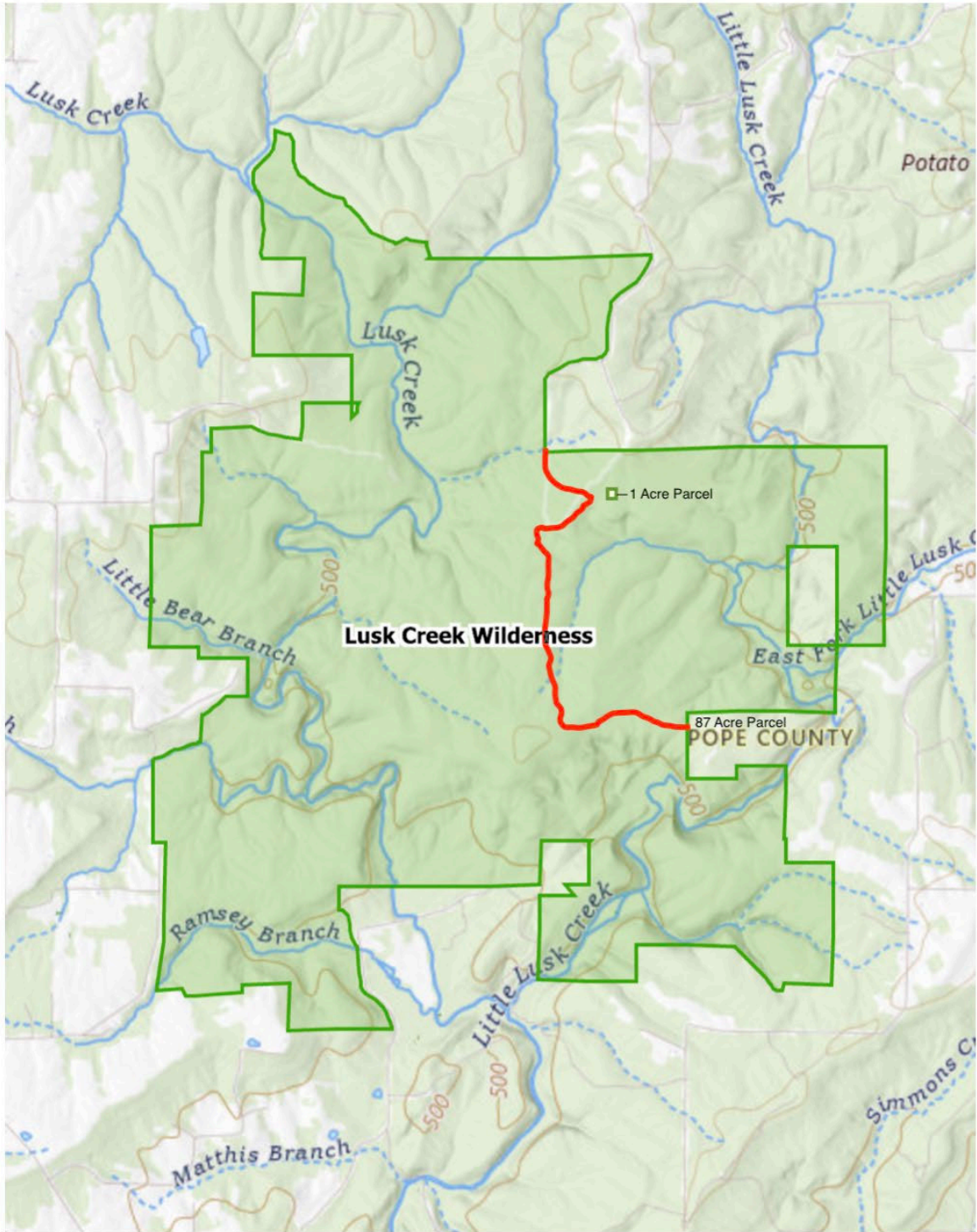
48. The Scoping Notice states the route begins at the wilderness boundary near New Liberty Church and runs approximately 2.5 miles through the Lusk Creek Wilderness. (Scoping Notice at 1).

49. The Scoping Notice includes the agency map depicted below which shows the proposed access route exiting the Wilderness before reaching the 87-acre tract:



(Scoping Notice at 2).

50. Plaintiffs provide a demonstrative map using a Wilderness Connect base layer to show the entire Lusk Creek Wilderness; Plaintiffs added the red line approximating the proposed access route and the labels identifying the one-acre and 87-acre parcels. This figure is offered for orientation only.



Approximate location of proposed road through Lusk Creek Wilderness
Map Source: Wilderness Connect (<https://wilderness.net/visit-wilderness/?ID=333>)

51. The Scoping Notice does not identify the access as an existing Forest Service system road or a state or county-maintained road. (Scoping Notice at 1).

52. In the Scoping Notice the Forest Service proposes to “allow private property owners to use mechanized equipment” including “full-sized vehicles with trailers, and OHVs” to repair and maintain the road and facilitate private access to the parcels. (Scoping Notice at 1.)

53. The Scoping Notice asserts that the “action is categorically excluded from documentation in an environmental impact statement (EIS) or an environmental assessment (EA)” “because it is an approval of minor special uses of NFS lands that require less than 20 contiguous acres of land.” (Scoping Notice at 2).

54. The Notice provided only a three-week scoping comment window and stated that the decision is not subject to appeal or objection. (Scoping Notice at 5).

Decision Memo

55. On January 21, 2025, the Forest Supervisor issued a Decision Memo approving the Project as proposed in the Scoping Notice. (Decision Memo at 2).

56. The Decision Memo authorizes owners to use mechanized and motorized equipment to construct and repair approximately 2.5 miles of road within the Lusk Creek Wilderness, perform periodic maintenance, and travel year-round by full-sized vehicles with trailers on a route approximately 2.5 miles long by 12 feet wide. (Decision Memo at 1). The MRAF’s selected alternative further specifies ground-disturbing work, including establishment/relocation of road segments. (MRAF at 27, 31-33).

57. The Decision Memo authorizes private landowners—not the Forest Service—to undertake the initial construction, grading, and future maintenance of the route pursuant to a special use permit. (Decision Memo at 1).

58. Although the Decision Memo and Scoping Notice frame the action as “repair” and “maintenance,” (Decision Memo at 1; Scoping Notice at 1), the MRAF’s selected alternative expressly calls for “a new road . . . relocated” and “a new road . . . established” with ground-disturbing construction using a tracked excavator and dump truck. (MRAF at 27, 31, 33).

59. The Decision Memo invokes a CE applicable in cases involving “[a]pproval, modification, or continuation of special uses that require less than 20 acres of NFS lands,” to exempt the Project from further analysis in an EIS or EA. See 36 C.F.R. § 220.6(e)(3). (Decision Memo at 2).

60. In the Decision Memo, the Forest Service finds “no extraordinary circumstances that would warrant further analysis and documentation in an EA or EIS” despite the fact that the entirety of the Project occurs within a protected wilderness area. (Decision Memo at 2-3).

61. In addressing “Congressionally designated areas,” the Decision Memo states a Minimum Requirements Analysis was completed “to determine the plan of action that would cause the least amount of negative effect on the Wilderness Area.” (Decision Memo at 3).

62. The Decision Memo does not analyze access to the one-acre parcel under the Wilderness Act, 16 U.S.C. § 1134, or apply an “adequate access” standard to that parcel; instead, it only cites ANILCA’s “right to reasonable access” standard. (Decision Memo at 4.)

63. The Decision Memo does not distinguish the one-acre parcel from the 87-acre parcel for purposes of access eligibility under the Wilderness Act—even though the MRAF notes the 87-acre parcel is “not a true wilderness inholding (bordered on 3 sides only).” (MRAF at 15-16).

64. The MRAF frames the “need for action” under ANILCA and selects year-round motorized use, without conducting a parcel-specific “adequate access” analysis (e.g., non-

motorized or seasonal access) for the one-acre parcel under 16 U.S.C. § 1134. (MRAF at 14, 33-34).

65. The Decision Memo does not explain why the specific 2.5 mile-route is necessary for the one-acre parcel or whether shorter or less intrusive options exist. (Decision Memo at 1-4).

66. The Decision Memo contains no substantive analysis of alternative access to the 87-acre parcel outside Wilderness. (*Id.*).

67. The Decision Memo does not analyze seasonal use restrictions or non-motorized alternatives. (*Id.*).

68. In the Decision Memo and MRAF, the Forest Service cites Forest Plan Standard WD27 as a basis for authorizing the Project. (Decision Memo at 3; MRAF at 31).

69. In neither the Decision Memo nor the MRAF does the agency identify any recorded easement, deeded right-of-way, or other formal legal instrument demonstrating a preexisting right of motorized access to either the 87-acre parcel (or subdivided parcel therein) or the one-acre inholding, as required by the Forest Plan.

70. In neither the Decision Memo nor the MRAF does the Forest Service analyze whether the 2.5-mile motorized route through the Lusk Creek Wilderness proposed by the Project enhances wilderness character, as required by the Wilderness Act and the Forest Plan.

Rejection of Non-Wilderness Alternatives

71. The Forest Service failed to estimate the costs involved in constructing the approved route, and was therefore unable to conduct any meaningful comparison of alternatives to the Project.

72. The Forest Service approved the Project without updating its alternatives-cost analysis, instead relying on 1991 cost estimates to dismiss two non-wilderness routes—\$89,000

for 1.6 miles with a culvert and low-water crossing and \$147,000 for 1.2 miles with two culverts and a 100-foot bridge—concluding that action outside Wilderness was “not feasible” due to cost; the Decision Memo then approved the Project without providing any updated cost analysis. (MRAF at 31–33; Decision Memo at 2).

73. The Forest Service failed to evaluate whether the three-decade-old prediction of the cost of the alternative routes is reasonable now that the 87-acre parcel has been subdivided among numerous owners and the cost of the road would likely be shared among the owners.

74. The MRAF points out that neither alternative route outside of the Lusk Creek Wilderness would provide access to the one-acre inholding located within the wilderness area, but neglects to evaluate whether a separate shorter or less intrusive route—such as seasonal or non-motorized access—could provide access to the one-acre inholding alone. (MRAF at 14).

Public Participation in the Administrative Process

75. The Forest Service approved the Project through a CE; therefore, no formal notice, comment, or administrative objection procedures applied, and there was no formal decision notice for the Project subject to pre-decisional review.

76. Plaintiffs and their members submitted timely scoping comments, objecting to the proposal, raising concerns about the adverse effects on wilderness character, misapplication of statutory access provisions, the failure to consider less intrusive alternatives, and the agency’s reliance on a CE despite the presence of extraordinary circumstances. (See Plaintiffs’ Comments at 24).

77. Plaintiffs received no formal notice of the final decision until it was published.

78. Plaintiffs did not receive the Forest Service’s MRAF until after the comment period had begun.

CLAIMS FOR RELIEF

First Claim for Relief

Violation of the Wilderness Act

(16 U.S.C. §§ 1131–1136; reviewable under the APA, 5 U.S.C. §§ 701–706)

79. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

80. Congress enacted the Wilderness Act in 1964 to:

[A]ssure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.

16 U.S.C. § 1131.

81. Congress designated the Lusk Creek Wilderness in 1990 “in furtherance of the purposes of the Wilderness Act” to preserve it “as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain,” and which “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable.” Illinois Wilderness Act of 1990, Pub. L. No. 101-633, § 3(6), 104 Stat. 4577, 4578 (1990); 16 U.S.C. § 1131(c).

82. Section 1133(c) of the Wilderness Act imposes two distinct prohibitions in designated Wilderness: (i) an absolute bar on permanent roads (subject to existing private rights and to exceptions “specifically provided” elsewhere in the Act); and (ii) a prohibition on temporary roads, motor vehicles, motorized equipment, and mechanical transport, subject only to the narrow “minimum requirements” proviso for administration of the area as Wilderness. That proviso does not authorize permanent roads and does not create private access rights. 16 U.S.C. § 1133(c).

83. Section 1134 addresses true inholdings “completely surrounded” by National Forest lands within designated Wilderness and requires the agency to provide only such rights as are necessary to assure adequate access (or an exchange of lands). “Adequate” may be non-motorized or seasonal, and § 1133(c)’s prohibition on permanent roads still applies on Wilderness lands. 16 U.S.C. §§ 1134(a)–(c), 1133(c).

84. The authorization in section 1134 serves private landowner access, not administration of the area as Wilderness. It therefore falls outside the “minimum requirements” proviso of 16 U.S.C. § 1133(c), which cannot authorize otherwise-prohibited motorized or mechanical uses and, in any event, cannot justify a permanent road.

85. The 87-acre parcel lies outside designated Wilderness, therefore 16 U.S.C. § 1134 (inholdings) does not apply. Any segment of an access route that would cross designated Wilderness remains subject to 16 U.S.C. § 1133(c), which absolutely bars permanent roads and otherwise prohibits motorized/mechanized uses.

86. The Forest Service’s authorization of a 2.5-mile, year-round motorized route within Lusk Creek Wilderness for private access violates 16 U.S.C. § 1133(c) because it amounts to an authorization for year-round use and ongoing maintenance for private access—a permanent road corridor, not a short-term administrative project to be later decommissioned. (MRAF at 33–35).

87. On information and belief, Project implementation will require construction and upkeep of an all-weather vehicle corridor across Wilderness, including clearing limits extending roughly nine feet from the centerline on each side (approximately 18 feet total), vertical clearance sufficient for full-sized vehicles, ditch and culvert installation, aggregate surfacing, and periodic blading and reshaping, with annual maintenance performed by the private owners. At

approximately 18 feet of cleared area over 2.5 miles, the disturbed footprint would be approximately 5.4 acres—materially greater than the 3.6 acres analyzed for a 12-foot corridor—confirming that the authorization is for a constructed, permanent road, not temporary administrative work, and that it falls outside 16 U.S.C. § 1133(c)’s narrow “minimum requirements” proviso.

88. On information and belief, the authorization also provides for year-round motorized use by permit holders and their contractors—including full-size vehicles with trailers, tractors, and off-highway vehicles—for access and upkeep. Authorizing private motor vehicles, motorized equipment, and mechanical transport for non-administrative purposes within designated Wilderness contravenes 16 U.S.C. § 1133(c).

89. Accordingly, the Project violates 16 U.S.C. § 1133(c) because it authorizes motor vehicles, motorized equipment, and mechanical transport for private purposes within designated Wilderness.

90. The Forest Service may not rely on 16 U.S.C. § 1133(c)’s minimum-requirements proviso to justify this authorization: the proviso is limited to actions necessary for administration of the area as Wilderness and, in any event, does not extend to permanent roads. The record contains no finding that this private access route is administratively necessary.

91. The Forest Service did not identify any valid existing private right of access predating the Wilderness designation that would waive the Wilderness Act’s prohibition on permanent roads.

92. The Forest Service did not analyze whether the specific route or motorized mode is “necessary to assure adequate access” to the one-acre inholding; adequate access may be non-motorized or seasonal and does not entail a new permanent road. 16 U.S.C. § 1134(a).

93. The 87-acre parcel is outside the Lusk Creek Wilderness; 16 U.S.C. § 1134 does not apply to that parcel and cannot be used to justify a road through Wilderness to reach non-Wilderness lands.

94. By approving road work and motorized use through designated Wilderness without (i) identifying a valid existing private right; (ii) demonstrating administrative necessity under § 1133(c)'s minimum-requirements proviso (which in any event cannot justify a permanent road); or (iii) showing that adequate access to a true inholding necessitates the route (and then only to the least-impactful extent), the Forest Service violated the Wilderness Act. 16 U.S.C. §§ 1133(c), 1134(a).

95. The Forest Service also failed to demonstrate that any otherwise-prohibited tools—motor vehicles, motorized equipment, or mechanical transport—are administratively necessary to meet minimum requirements for managing the Lusk Creek Wilderness *as Wilderness*. 16 U.S.C. § 1133(c).

96. As alleged in the Second Claim for Relief, even if 16 U.S.C. § 3210(a) applied, it authorizes only access the Secretary deems adequate and does not create a right to a permanent or year-round motorized road through designated Wilderness. 16 U.S.C. § 3210(a); 36 C.F.R. §§ 251.110–251.114.

97. Defendants' actions are arbitrary, capricious, an abuse of discretion, and not in accordance with the Wilderness Act, and are therefore unlawful under the APA, 5 U.S.C. § 706(2).

Second Claim for Relief

Violation of ANILCA and Forest Service Access Regulations

(16 U.S.C. § 3210(a); 36 C.F.R. pt. 251, subpt. D; reviewable under APA, 5 U.S.C. §§ 701–706)

98. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

99. Plaintiffs’ primary position is that ANILCA does not govern access decisions on National Forest System lands outside Alaska. By statute, ANILCA does not enlarge or diminish the Secretary’s authority outside Alaska absent a specific congressional directive. 16 U.S.C. § 3170(b). Defendants point to none, so their reliance on ANILCA is contrary to law and the decision must be vacated under 5 U.S.C. § 706(2)(C).

100. In the alternative only, § 3210(a)—if it applied—confers no right to a permanent or year-round motorized road through Wilderness; it permits only such access as the Secretary deems adequate, with discretion over location, mode, timing, and protective conditions and must be administered consistently with 16 U.S.C. § 1133(c).

101. Defendants misapplied § 3210(a) by treating it as a right to year-round motorized road access, rather than making parcel-specific “adequate access” determinations and selecting the least disturbing location and mode. See Decision Memo at 4 (invoking a “right to reasonable access” under § 3210(a)); MRAF at 31 (“Access by motorized use year-round is needed to fulfill ANILCA obligations.”), 33-34 (selected alternative).

102. Defendants did not reasonably consider non-motorized or seasonal access, shorter corridors, or vehicle/seasonal limits—even though § 3210(a)/Subpart D expressly allow conditioning access to minimize disturbance. See MRAF at 31-34 (rejecting foot-only/limited-motorized options and selecting year-round motorized use).

103. Despite record evidence of available outside-Wilderness routes, Defendants approved a Wilderness route and relied on 1991 cost figures to dismiss non-Wilderness alternatives. (MRAF at 31–33).

104. Defendants also violated the Forest Service’s access regulations, 36 C.F.R. pt. 251 Subpt. D (“Subpart D”), by failing to: (a) obtain and analyze the required applicant disclosures and information about existing non-Federal access (36 C.F.R. § 251.112(a)-(b)); (b) determine and document “adequate access” and then select the location and mode that minimize impacts (§ 251.114(a); see also § 251.111 (defining “adequate access”)); and (c) impose terms and conditions necessary to protect National Forest resources, including limiting seasons or motorized use where adequate. (§ 251.114(d)).

105. ANILCA does not displace the Wilderness Act: any access across designated Wilderness remains subject to 16 U.S.C. §§ 1133(c), 1134(a). Selecting a permanent or year-round motorized route through Wilderness is not a lawful exercise of ANILCA § 3210(a) where less-impacting means would assure reasonable use and enjoyment.

106. Because Defendants relied on an erroneous legal standard, failed to make the required adequate access findings, and failed to comply with Subpart D, the Decision Memo is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and must be set aside under 5 U.S.C. § 706(2)(A), (C).

Third Claim for Relief
Violation of the National Environmental Policy Act
(42 U.S.C. §§ 4321 et seq.; reviewable under the APA, 5 U.S.C. §§ 701–706)

107. Plaintiffs incorporate by reference the preceding paragraphs as if fully set forth herein.

108. NEPA requires federal agencies to prepare an EIS before undertaking “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).

109. An agency may invoke a categorical exclusion (“CE”) for specifically enumerated categories of projects “which have been determined not to have a significant individual or cumulative effect on the human environment” and when there are no extraordinary circumstances related to the proposed action. 7 C.F.R. § 1b.3(a); 36 C.F.R. § 220.6(a).

110. The Forest Service’s regulations provide that extraordinary circumstances warranting “further analysis and documentation in an EA or an EIS” disfavor reliance on a CE in the case of an action involving “Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas.” 36 C.F.R. § 220.6(b)(1)(iii).

111. NEPA also requires agencies to rigorously explore and objectively evaluate reasonable alternatives to a proposed action. 40 C.F.R. § 1502.14.

112. In approving the Project, the Forest Service did not assess whether it will cause significant environmental impacts, nor did it prepare an EA or EIS to evaluate such risks or explore less harmful alternatives. Instead, the Forest Service improperly relied on a CE for special use authorizations involving less than 20 acres, even though the Project location is exclusively within a designated Wilderness. 36 C.F.R. § 220.6(b)(1)(iii). A CE cannot be used to sidestep a substantive conflict with the Wilderness Act’s prohibition on permanent roads.

113. On information and belief, implementation of the project will expand ground disturbance for drainage features and clear zones extending well beyond the 12-foot travel-way represented in pre-decisional documents—including lateral clearing on both sides, ditching, and culverts—substantially increasing the corridor’s disturbed acreage well beyond the 3.6 acres

disclosed. These expanded, undisclosed effects in designated Wilderness constitute extraordinary circumstances and require analysis in an EIS, not a CE.

114. The Forest Service failed to evaluate whether extraordinary circumstances were present or to explain why it need not follow its own departmental regulations disfavoring reliance on CEs for projects impacting designated wilderness areas, despite the Project's obvious impacts on the character, untrammeled conditions, wildlife, solitude, and ecological integrity of the Lusk Creek Wilderness.

115. Reliance on a CE is especially inappropriate where the action would contravene 16 U.S.C. § 1133(c)'s ban on permanent roads or authorize year-round motorized use in Wilderness. 36 C.F.R. § 220.6(b)(1)(iii) (extraordinary circumstances include Congressionally designated areas such as wilderness).

116. The actions proposed by the Project—road construction, excavation, grading, vegetation clearing, and year-round motor vehicle use—are neither minor nor routine; they involve extensive physical alterations in a congressionally designated Wilderness and therefore implicate resource conditions that qualify as “extraordinary circumstances.” See 36 C.F.R. § 220.6(b)(1)(i)–(iii).

117. The Forest Service also failed to consider alternatives, such as seasonal restrictions, shorter corridors, non-motorized access, or alternatives outside of wilderness lands, including non-motorized or seasonal access to the one-acre inholding and non-Wilderness routes to the 87-acre parcel, despite information in the record indicating their feasibility. 40 C.F.R. § 1502.14.

118. The Forest Service did not issue a draft EA or EIS, did not conduct further public scoping beyond the initial notice, and provided no reasoned explanation for finding that the Project would not significantly affect the environment.

119. By approving road construction and motorized access through designated wilderness in reliance on a CE, and by failing to adequately evaluate extraordinary circumstances, potential impacts, or less harmful alternatives, the Forest Service violated NEPA and its implementing regulations.

120. Defendants' actions are arbitrary, capricious, an abuse of discretion, and contrary to law in violation of the APA, 5 U.S.C. § 706(2).

Fourth Claim for Relief

Violation of the National Forest Management Act

(16 U.S.C. § 1604(i); 36 C.F.R. § 219.15; reviewable under the APA, 5 U.S.C. §§ 701–706)

121. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

122. The National Forest Management Act (“NFMA”) requires that all site-specific projects and activities authorized by the Forest Service on National Forest System lands be consistent with the governing Forest Plan for the relevant national forest. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15.

123. The Forest Plan includes binding management standards governing the use of the Lusk Creek Wilderness. (U.S. Forest Serv., Shawnee National Forest Land and Resource Management Plan ch. V at 31 (defining a standard as “a course of action that must be followed.”), 86–89 (WD standards, incl. WD 27)).

124. Standard WD27 of the Forest Plan provides: “[s]pecial land-uses in wilderness are not permitted except when in accordance with private rights or to enhance or promote wilderness character.” (Forest Plan at 88, Standard WD27).

125. Forest Plan standards, including WD27, must be construed and applied in harmony with the Wilderness Act and cannot be read to permit what 16 U.S.C. § 1133(c) forbids—namely, a permanent road in Wilderness or an entitlement to private motorized access. See *Morton v. Mancari*, 417 U.S. 535, 549–51 (1974) (“repeals by implication are not favored” and newer statutes are read to coexist with existing statutes, not impliedly amend them); 36 C.F.R. § 219.1(f).

126. The Project authorizes (1) owners’ use of motor vehicles and mechanized equipment—full-sized vehicles with trailers and OHVs—for road work; (2) work on an approximately 2.5-mile-long by 12-foot-wide road through designated Wilderness, with ground-disturbing construction (placement of fill and culverts using a tracked excavator and dump truck) as described in the MRAF; and (3) year-round vehicular use by private landowners and their agents for access and upkeep. (Decision Memo at 1; Scoping Notice at 1; MRAF at 27, 31, 33).

127. These activities constitute road construction and mechanized use and authorize ongoing non-administrative motorized access for private purposes in direct violation of Standard WD27.

128. The Forest Service failed to demonstrate that any of the three exceptions to Standard WD27 apply. Specifically, the agency did not:

- (a) identify a valid recorded easement, reserved right, or deeded interest establishing an existing legal right of motorized access to either parcel;

- (b) demonstrate that the route or its use was necessary to meet minimum administrative needs of managing the Lusk Creek Wilderness Area; or
- (c) show that the proposed activities promote or enhance the character of the Lusk Creek Wilderness.

129. The Forest Service did not consider whether less intrusive alternatives—such as seasonal or non-motorized access, rerouted corridors, or access to only one of the parcels—could achieve the stated objectives while remaining consistent with the Forest Plan.

130. By authorizing a motorized route through the Lusk Creek Wilderness without satisfying any of the governing Forest Plan exceptions or demonstrating consistency with Standard WD27, the Forest Service violated NFMA and its implementing regulations.

131. Project authorization is also inconsistent with 36 C.F.R. pt. 251, subpt. D (Access to Non-Federal Lands), which limits inholder access to what is adequate and least-impacting and does not compel permanent or motorized routes through Wilderness.

132. These violations are subject to judicial review under the APA because the Forest Service's approval of the Project is arbitrary, capricious, an abuse of discretion, and not in accordance with law. 5 U.S.C. § 706(2).

REQUEST FOR RELIEF

Plaintiffs respectfully request that this Court:

1. Declare that Defendants' authorization of the Project violates the Wilderness Act, 16 U.S.C. §§ 1131–1136;
2. Declare that Defendants' reliance on the Alaska National Interest Lands and Conservation Act (ANILCA) to authorize access in Illinois is contrary to law because ANILCA does not apply outside Alaska or, in the alternative, declare that, if 16 U.S.C. § 3210(a) applies,

the Decision violates § 3210(a) and the Forest Service's implementing regulations, 36 C.F.R. pt. 251, subpt. D.

3. Declare that Defendants' approval of the Project violates the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 – 4370h;
4. Declare that Defendants' approval of the Project is inconsistent with the governing Forest Plan and therefore violates the National Forest Management Act (NFMA), 16 U.S.C. § 1604(i);
5. Vacate and set aside the Decision Memo and any associated approvals, permits, or authorizations for the Project;
6. Enter appropriate injunctive relief prohibiting Defendants from authorizing, funding, or permitting road construction, motorized access, or mechanized activity in the Lusk Creek Wilderness pursuant to the challenged decision;
7. Award Plaintiffs their reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
8. Grant such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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Application for Admission Pro Hac Vice Pending

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