

APPEAL TO THE REGIONAL FORESTER, USDA FOREST SERVICE REGION SIX FROM  
A  
DECISION OF THE MT. HOOD NATIONAL FOREST SUPERVISOR

NORTHWEST ENVIRONMENTAL DEFENSE )  
CENTER, OREGON NATURAL RESOURCES ) In re: Appeal of the  
Decision  
COUNCIL ACTION AND FUND, OREGON ) Notice and Finding of No  
WILDLIFE FEDERATION, AMERICAN ) Significant Impact  
for the  
LANDS ALLIANCE, ) Upper Project on the  
GREG DYSON, JOHN RANCHER ) Clackamas River  
Ranger  
) District  
v. )  
)  
ROBERTA MOLTZEN )  
FOREST SUPERVISOR, )  
MT. HOOD NATIONAL FOREST )  
\_\_\_\_\_)

APPELLANTS' NOTICE OF APPEAL, STATEMENT OF REASONS AND REQUEST FOR  
RELIEF

DATED THIS 5TH DAY OF NOVEMBER, 1998

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## NOTICE OF APPEAL

To:

Appeal Deciding Officer  
Regional Forester  
Region 6  
ATTN: 1570 APPEALS  
P.O. Box 3623  
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## APPELLANTS' INTEREST

The Northwest Environmental Defense Center, Oregon Natural Resources Council Action and Fund, American Lands Alliance, Oregon Wildlife Federation, Gregory Dyson and John Rancher have a specific interest in this sale. Appellants include local, state, and regional conservation organizations with thousands of members between them in the state of Oregon. Appellants have previously indicated their interest in this sale by commenting throughout the planning process. Appellants' continued interest and involvement in this sale creates standing to appeal this decision pursuant to 36 C.F.R. § 215.11(a)(2). Appellants' interests will be adversely affected by this timber sale. Appellants and/or their individual members regularly use the Mt. Hood National Forest, including the Upper Project area, for recreation, research, work, wildlife observation and other forest-related activities.

## REQUEST FOR STAY

Appellants formally request a stay of all action on the Upper Project, or any other activities proposed within the Upper Project area, including: timber sale preparation, layout, or road planning; advertising, offering for bids, or auctioning of this timber sale; logging road construction or reconstruction; or other site preparation by a purchaser or any other activities, all pending the final resolution of this appeal. Such a stay is required under 36 C.F.R. § 215.10(b). A full stay is necessary to prevent the unnecessary expenditure of federal money and to prevent irreversible environmental damage. Without a stay, the federal government may waste taxpayer

money preparing for a timber sale that may be canceled. Additionally, without a stay, the interests and rights of the Appellants and the public may be violated, and this appeal mooted, before the merits may be considered.

## REQUEST FOR RELIEF

1. That the Decision Notice for the Upper project be withdrawn.
2. That this timber sale be modified to meet the objections presented in Appellants' Statement of Reasons.
3. That the Finding of No Significant Impact be withdrawn and an Environmental Impact Statement be prepared meeting the requirements of 40 C.F.R. §1502.
4. That the project be revised to ensure consistency with the Administrative Procedures Act, Clean Water Act, Endangered Species Act, National Environmental Policy Act, National Forest Management Act, these statutes' implementing regulations, and the Mt. Hood National Forest Land and Resource Management Plan as amended by the Northwest Forest Plan.

## STATEMENT OF REASONS

In this project, the Forest Service proposes to commercially thin 194 acres in Matrix lands and an additional 35 acres within Riparian Reserves. Ground-based harvest methods including tractor and skyline-based yarding systems are proposed. In order to access the harvest units, 11,900 feet of road will be constructed including one section of road to be built through a Riparian Reserve. The decision to utilize ground based harvest systems was based solely on economic concerns and is in direct conflict with the weight of scientific evidence in the North Fork Clackamas River Watershed Analysis. Narrow 30-foot no-cut buffers are proposed for non-fish bearing streams despite the presence of sensitive riparian dependent species.

The Clackamas River was also historically one of the most prolific salmonid-spawning river systems in the Pacific Northwest. The North Fork of the Clackamas flows through the project area and contains the last significant run of wild late-winter coho in the Columbia Basin. Habitat exists immediately downstream from the project area for Coho and Steelhead, two species that are at risk of extinction. The Forest Service has failed to demonstrate that this project will not contribute to sedimentation or temperature standard water-quality violations, concerns prevalent throughout the Clackamas basin, which may negatively impact these species.

The Clackamas basin also serves as the municipal drinking water source for several metropolitan municipalities. The City Councils of both Lake Oswego and West Linn have expressed concern over the impacts of forest management activities on this essential water source. This project is yet another example of the Forest Service's non-responsiveness towards these concerns.

### I. Inherent Bias in the Decision Making Process

Section 101 of NEPA declares a broad national commitment to protecting and promoting environmental quality. *Robertson v. Methow Valley Citizens*, 490 U.S. 332, 348 (1989). NEPA was enacted to ensure that important environmental effects "will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise

cast." Id.

The decision-making process followed by a federal agency must proceed without undue bias. "Bias in the impact statement, of course, renders impossible the fair and careful evaluation of a project's environmental effects demanded by NEPA." *NRDC v. Callaway*, 389 F.Supp. 1263, 1273 (D.Conn. 1974), citing *Calvert Cliffs' Coordinating Comm. Inc. v. U.S. Atomic Energy Comm.*, 449 F.2d 1109, 1115 (D.C. Cir. 1971). Bias towards timber harvest both historically within the Forest Service, and locally in regard to the Mt. Hood National Forest, served to corrupt the NEPA decision making process and rendered it devoid of substantive and neutral analysis.

#### A. The Historic Bias of the Forest Service Towards Extensive Timber Production

History and case law have both amply demonstrated the Forest Service bias towards timber production, often at the expense of mandatory environmental protection legislation. As stated by the Sixth Circuit Court of Appeals:

Created in part, to ensure a reliable timber supply, the Forest Service has a history of preferring timber production to other uses. Rather than being a neutral process which determines how the national forests can best meet the needs of the American people, forest planning, as practiced by the Forest Service, is a political process replete with opportunities for the intrusion of bias and abuse.

*Sierra Club v. Thomas*, 105 F.3d 248, 251 (6th Cir. 1997).

Forest Service Chief, Michael Dombeck, has addressed this bias, and in a statement before the Senate Committee on Energy and Natural Resources in February, 1997 remarked:

The unfortunate reality is that many people presently do not trust us to do the right thing. Until we rebuild that trust and strengthen those relationships, it is simply common sense that we avoid riparian, old growth, and roadless areas.

#### B. Bias of the Decision Maker Against Preservation and Conservation in the Matrix

All programmed timber harvest in the Upper project area is on C1 Timber Emphasis land. The goal for these lands is to: Provide lumber, wood fiber, and other forest products on a fully regulated basis, based on the capability and suitability of the land. A secondary goal is to enhance other resource uses and values that are compatible with timber production. (Mt. Hood Nat. Forest LRMP at Four-289).

However, The Northwest Forest Plan, by definition, amends existing land and resource management plans. (ROD at 11). The lands within the Upper Project area are defined under the Northwest Forest Plan as being within the matrix. "Stands in the matrix can be managed for timber and other commodity production, and to perform an important role in maintaining biodiversity." (emphasis added) (S&G at B-6). The Northwest Forest Plan does not say that stands in the matrix must be managed for timber production, only that they can.

The equal, not secondary, goal in this definition is maintaining biodiversity. Thus, it would be as equally correct to describe matrix as having a "Biodiversity Emphasis", as it would be to describe matrix as having a "Timber Emphasis". Matrix is not by definition "Timber Emphasis". Matrix allows timber production, it does not emphasize it. In fact, the matrix "includes nonforested areas, and forested areas that are technically unsuitable for timber production, and therefore do not contribute to PSQ." (S&G at C-39).

The decision maker for this project, in direct conflict with NFMA regulations, exercised this bias towards timber production in the choice of Alternative C. The selection of Alternative C was solely based on economics and failed to treat biodiversity coequal with timber production. "Management prescriptions that involve vegetative manipulation of tree cover for any purpose shall not be chosen primarily because they will have the greatest dollar return or the greatest output of timber." 36 C.F.R. § 219.27(b)(3). The NEPA documentation demonstrates that the sole reason Alt. C was chosen over the Proposed Alternative (Alt. B) was for economic reasons. Further, no consideration was given to the potential for pre-commercial thinning in Riparian Reserves and any potential ecological benefits that may occur from leaving felled trees on the forest floor, or in riparian areas. Such inherent bias toward timber output and economics is in direct conflict with NFMA, NEPA and the Northwest Forest Plan.

## II. Failure to Develop the Project in Accordance with Forest-wide Standards Pertaining to Eligible Wild, Scenic and Recreational Rivers

The LRMP sets out clear management directives for the purpose of protecting the free-flowing nature, outstandingly remarkable values, and identified potential classification of eligible river segments until the river is designated or released from consideration. (p. Four-100, referencing FSM 2354.21). The North Fork of the Clackamas River is one of the ten listed waterways listed as eligible for Wild and Scenic River status, and is on the list for its outstandingly remarkable scenic qualities. Planning for the Upper Project failed to address the specific standards delineated below.

### A. Nondiscretionary Protection of Water Quality During the Project Implementation

The LRMP states, "water quality shall be maintained or enhanced during any management activities" within eligible river corridors. (FW-513). The value of water quality throughout the full length of the North Fork as it travels across Forest Service land must be of paramount consideration in the planning for any project that may potentially have an adverse effect on it.

Water quality was clearly an issue as this project developed. Significant Issue #1, in fact, is water quality and fisheries habitat. Water quality is also a significant issue of concern expressed by the cities of West Linn and Lake Oswego that draw from the Clackamas River for their municipal drinking water. The EA, at numerous points however, demonstrates that consideration of potential water quality was not a primary concern for the decision maker in this project. In fact, each and every time all four alternatives are considered in the EA with their respective potential impacts on water quality, the chosen alternative (Alt. C) was determined to have the greatest risk of adversely affecting water quality. (see for example p. 15 finding that there would

be an increased risk of sedimentation due to the additional road construction in this alternative). The EA makes conclusory allegations that "thinning would provide long term benefits to aquatic habitat", but only assures that sediment delivery would be "substantially reduced by the use of BMPs, seasonal restriction, and mitigation measures". (EA p. 18). Such findings do not address the state of water quality "during" the project as required by FW-513, and provide no support for a finding that water quality will be maintained or enhanced during any management activities.

## B. Visual Quality Objectives Will Not Be Met

The LRMP defines the VQOs of Retention in the foreground (up to 1/2 mile from the river), and Partial Retention in the middleground (1/2-5 miles from the river). (FW-497). It further specifies that these objectives apply to the area within the river corridor, and the "seen area" from the river. The "seen area" is delineated in the Designated Viewshed map supplemental to Alt. Q and encompasses the Upper project area.

The Visual Resource Management Standards provide specific guidance pertaining to what percentage of the seen area can be in a visually disturbed condition at any given time. Under Timber Management, the VQOs for Retention prescribe that the maximum percent of the seen area visually disturbed should not exceed 8 percent at any one time or 4 percent per decade (FW-564). Similarly, the VQOs for Partial Retention prescribe that the maximum percent of the seen area visually disturbed should not exceed 16 percent at any one time or 8 percent per decade.

At no point in the EA, or the attendant Analysis File, is there any quantification of visual disturbance per these management standards. Not only is this section of the LRMP ignored entirely, but all cursory findings within the EA and analysis file demonstrate that the standards can not possibly be met, particularly with relation to the chosen alternative (Alt. C).

The single sentence in the EA addressing this essential component of project planning demonstrates that, despite including scenery as a significant issue, the decision-maker failed to fully consider it. Discussing the chosen alternative, the EA states, "This alternative would utilize skyline thinning systems instead of helicopter harvest, and is expected to create the most change to the scenic resource". (EA p. 24).

Skyline cable corridors introduce straight lines perpendicular to the contours of the landform which do not "borrow from naturally established form and line" of the surrounding landscape (FSM 2382.2). Corridors from the Boyer Sale earlier this decade are directly adjacent to the project area and remain clearly visible both from the ground and in aerial photos of the project area. These corridors, in concert with the new corridors planned with this project, clearly conflict with the form, line, and texture of the natural landscape in the project area.

Significant clear-cutting on private lands directly adjacent to the project area also mars the visual landscape. Openings are to be considered as no longer "visually disturbed" only when the vegetation within them reaches an average of 20 feet in height. (LRMP p. Four-113). Past harvest activities within the private land adjacent to the Upper Project were not discussed at any point in the analysis of Visual Resource Management objectives. They are visible from the river and its banks, and had they been considered and taken into account, it would have been

impossible to meet the Visual Quality Objectives in the Upper project area.

The VQOs also state that any landings within 1/2 mile of the river shall be hidden from view, and should not dominate over natural landscape character where Partial Retention VQOs are prescribed. (FW-569). The considerations are not addressed in the EA or anywhere within the Analysis File.

### III. Riparian Reserve Related Activity Proposed in the Project Area is Not in Accordance with the Northwest Forest Plan.

The Mt. Hood LRMP states that, "all timber harvest in riparian areas will be subordinate to the needs of riparian-dependent species". (LRMP at Four-18). The ROD for the Northwest Forest Plan states that silvicultural practices may be applied when "needed to attain Aquatic Conservation Strategy objectives". (ROD at C-32). The NEPA documentation for this project fails to establish that commercial thinning is essential to meeting ACS objectives. The ROD also states that ACS objectives must be met for every planned road in Riparian Reserves, and that the influence of each road on the ACS objectives must be determined through watershed analysis. *Id.* Further, a primary directive of the ACS is that Forest Service lands will be managed to maintain and restore the sediment regime. (ROD at B-11).

#### A. The Decision to Implement Commercial Thinning in Riparian Reserves in the Project Area is Unsupported by Evidence in the Record

The EA makes no attempt to determine that commercial thinning within Riparian Reserves is essential to meeting ACS objectives. It merely makes the claim that thinning would accelerate development of mature forest characteristics. (EA p. 3). The logic behind this methodology is apparently that promoting late seral structures in Riparian Reserves will speed up a process that presently can be characterized as "a delay in the development of structural diversity". *Id.* Claims that desired future conditions are merely "delayed" fail to comport with ACS objectives.

Even assuming that the Aquatic Conservation Strategy mandated that desired future conditions be achieved "as soon as possible", "without delay", or "faster than natural processes dictate", the decision to implement thinning in Riparian Reserves is still unsupported in the record. In response to public comment, the decision-maker responded that despite initial "silvicultural modeling" that indicated stands would be delayed by 25 years from reaching late seral conditions in the absence of thinning, "further analysis indicates that without thinning, these stands would be delayed by 50 years". (DN App-5). It further alleges that this analysis is included in the Silvicultural section of the Analysis File. This analysis, however, is absent from the file.

The only analysis present in the Silvicultural section of the file references past studies that, in each case, describe the additive effects of a combination of both thinning and fertilization on growth response. (see AF-44). None of these studies was conducted in relation to the Upper project and were therefore improperly characterized as "further analysis".

The studies also each address the effects of a combination of thinning and fertilization on growth enhancement. As such, they are clearly irrelevant to the portion of the project that includes

thinning in Riparian Reserves, but specifically excludes application of fertilizer. The analysis file contains no support for the decision-maker's finding that commercial thinning in Riparian Reserves is needed to meet ACS objectives.

#### B. Riparian Reserve Widths Along the North Fork of the Clackamas River Are Not Clearly Defined

The Wildlife Biological Evaluation and Reports section of the analysis file relates that the Riparian Reserves along the North Fork of the Clackamas River are "at least two site potential tree heights", and that units do not enter Riparian Reserves along the North Fork. (AF-89). It further states that two site potential tree heights are equal to 390 feet. Id. However, Project Leader Mike Malone stated in a conversation in June, 1998 that there would be a 200-foot no-cut buffer in the units that enter riparian reserves bordering the North Fork, indicating that the area between 200 and 390 feet from the river remains part of the project. We expect that if this project is implemented, the analysis in the Wildlife and Biological Evaluation and Reports section of the analysis file will be respected and followed. Any reduction in these figures requires presentation "through the appropriate NEPA decision-making process". (ROD B-13).

#### C. Road-building in Riparian Reserves Provides Unique Problems in the North Fork Clackamas River Watershed

The Recommendations Summary for the North Fork Clackamas River Watershed Analysis leads off with the strong recommendation, "Avoid new roads". (p. 5-1). This recommendation is reiterated on the following page with a bullet point emphasizing, "Allow no new roads through Riparian Reserves". (p. 5-2). The Watershed Analysis is replete with monitoring information, management recommendations and sediment modelling information that argues strongly against proceeding with any further road-building activity in Riparian Reserves in the watershed. The Oregon Department of Fish and Wildlife shares a similarly critical view pertaining to road-building proposed in this project. In a letter dated Oct. 16, 1997, the District Fish Biologist recommended the building of no additional temporary spur roads, and no roads in Riparian Reserves. (AF-12). The finding by the decision-maker supporting road building in a Riparian Reserve is in direct conflict with the weight of evidence in the Watershed Analysis, and with the expert opinion of the ODFW District Fish Biologist.

The cursory and unsupported finding in the Analysis File at AF-89 that road-building in a Riparian Reserve "when completed" will meet ACS objectives skirts the issue of whether those objectives will be met during construction as mandated by the Mt. Hood LRMP (FW-513).

#### D. The Decision to Implement Alt. C is in Direct Conflict with ACS Guidance Related to Sediment Generation

A primary directive under the ACS is that Forest Service lands be managed to maintain and restore the sediment regime under which aquatic ecosystems evolved. (ROD B-11). Alt. C fails to acknowledge how the addition of 2.3 acres of impervious road surface (in addition to the 1.83 acres with the extension of road 4610151) will be integrated into the landscape in a manner that will maintain or restore the sediment regime.



The existing road off of which the new road will be built already has significant sediment-generating capacity. The Watershed Analysis at p. 2-10 demonstrates the extremely high sediment delivery of this road (road 4610135). The modeled sediment delivery of 4610135 is tied in part to the road itself, but more directly to high or medium harvest sediment delivery throughout the majority of its length.

#### E. Significant Private Inholdings Have Dramatically Altered the Watershed

The northern half of the Section that contains units 1 and 2 in the project area is privately owned. This area has been extensively clear-cut and is recognized as a significant source of sediment generation at numerous points in the Watershed Analysis. (see for example p. 5-10 relating the increasing importance of the Riparian Reserves on federal lands since a "large portion of the Riparian Reserve network in the watershed is in private ownership). Nonetheless, it is not mentioned even in passing anywhere in the EA or attendant Analysis File.

The failure of the Forest Service to make this information available to the public and to include it as part of the decision making process is in direct conflict with FW-066 which states, "Cumulative effects analyses of management activities on water-quality and/or stream channel stability shall include lands in all ownerships within the watershed". (LRMP p. Four-55).

#### F. Incomplete On The Ground Assessment of Riparian Reserve Location

On the ground review in October, 1998 indicated a significant water course running down the Eastern slope of Units 3 and 4. The NEPA documentation fails entirely to recognize the existence of this riparian area. Failure to disclose the location of all riparian areas in the NEPA documentation is inexcusable.

### IV. The Clean Water Act and Oregon's Water Quality Standards

Section 313(a) of the Clean Water Act (CWA) requires federal agencies to comply with all federal, state, and local requirements established for water quality protection. 33 U.S.C. § 1323(a). The Ninth Circuit has held that judicial review of this mandatory requirement is available under the

Administrative Procedures Act (APA) when a plaintiff organization is challenging nonpoint source violations of state water quality standards. *Oregon Natural Resources Council v. USFS*, 834 F.2d 842, 851 (9th Cir. 1987). Under the APA, the reviewing court is to hold unlawful and set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). The failure of a federal agency to comply with state water quality standards is in violation of Section 313 of the CWA, and therefore is arbitrary, capricious, an abuse of discretion, and not in accordance with the law.

The CWA requires states to adopt water quality standards to protect and enhance the quality of the water within a state. 33 U.S.C. § 1313. The Oregon DEQ has mandated that no activities shall be conducted which cause violation of the water quality standards, including those for

temperature and turbidity, in the project area. OAR 340-041-0445(2).

#### A. Temperature

Major portions of the entire Clackamas River watershed are in exceedance of Oregon's temperature standard, and are listed on the state's 303(d) list of water-quality limited bodies. The analysis file states that stream temperature readings down river of the project site place the North Fork in the category of "at risk" pertaining to temperature. (AF-100). DEQ's standards indicate that in the present of native salmonid spawning habitat (eight miles down river below the barrier falls), no measurable surface water temperature increase resulting from anthropogenic activities is allowed in waters that already exceed 55 degrees. OAR 340-041-0445(2)(b)(A)(iv). This standard has been exceeded, so the burden of demonstrating that management activities will not further affect temperature falls on the agency. Without analyzing additional and known impacts such as the removal of shade and increased air temperatures resulting from logging trees outside the no-cut buffers, as well as the impacts of sediment delivery and sedimentation, the Forest Service is unable to ensure no measurable increase in water temperature.

#### B. Turbidity

The criteria related to turbidity in the project area established by DEQ is that no more than a ten percent cumulative increase in natural stream turbidities shall be allowed, as measured relative to a control point immediately upstream of the turbidity causing activity. OAR 340-041-0445(2)(c).

Under the sediment heading of the analysis file, the section on sediment begins with the lead-in that "no data on turbidity is available". (AF-100). The Forest Service has no sediment monitoring data on the North Fork of the Clackamas River, and has no intention of obtaining such data. There is absolutely no foundational support in the analysis file for the finding that although there is considerable risk that sediment will reach the North Fork, "no measurable amount is expected". (EA p. 18). According to the NEPA documentation, it is impossible for the Forest Service to ensure that the state turbidity standard will not be violated. Such refusal to ensure compliance with state water quality standards is a direct violation of the CWA.

#### V. Effects of Additional Road-building Are Not Sufficiently Considered

##### A. The Watershed Analysis Details Numerous Adverse Impacts to the Area Resulting From Roads.

The volume of traffic along Forest Road 4610 is "as high or higher than any in the district". (Watershed Analysis p. 2-28). Dumping of household garbage, indiscriminate shooting and vandalism and high levels of anti-social and illegal activity occur throughout the watershed "wherever roaded access is available". (WA p. 1-16). The area also sees a higher than normal level of poaching for the Clackamas Ranger District (WA p. 2-60).

These uncomfortable facts have been entirely ignored by the decision-maker in this project with the simple response that the road system will be gated, and therefore closed to the public. Forest

Road 4610135, however, provides the only access to private land north of the project area. The gate across Road 4610135 at Road 4610 can be opened at any time by the owner of this private inholding. There are also numerous roads in the project vicinity that were planned to remain closed, but are presently open (either due to damaged gates, or lapse of time). The history of management in this area demonstrates that a road that is closed today may be open in the near future. There are no stated guarantees or timeframes in the EA addressing the future closure of this road system.

#### B. Significant OHV Use In The Area Is Unrecognized in the Analysis File

One of the consequences of the corridors created by spur roads from timber sales in the North Fork of the Clackamas River watershed has been an increase in unmanaged OHV use. (Watershed Analysis p. 2-60). Every road in the project area provides access to OHVs, and new roads will provide further access into regions presently inaccessible. Excessive OHV use has led to an emergency closure of an area immediately downstream on the North Fork of the Clackamas from the project area. (Closure Order No. MH-256-03-98).

Even though Forest Road 4610135 has been gated since summer 1998, the road system behind the gate has continued to see significant OHV access. We expect, if this project is implemented, that a sign be posted at Forest Road 4610 in accordance with FW-483 clearly stating that this road network is closed to the public.

#### C. The Analysis File Presents Significant Unaddressed Concerns Related To Streambanks and the Drainage Network

Streambanks, according to the 1996 stream survey showed "frequent undercut banks with roots exposed" and attributes this condition to affects from flooding (Analysis File p. AF-102). It describes streambank condition as at risk, yet streambank conditions are not referred to at any point in the EA, and it is not clear whether the decision maker took them into account at all.

The analysis file also classifies the drainage network as "at risk" (AF-103). It bases the recommendation of "maintain" this at risk status on the faulty assumption that "all roads would be built outside Riparian Reserves and would not cross any drainages." Id. This assumption is clearly contradicted by the EA.

#### VI. Surveys for Category Two Survey and Manage Species Must Precede the Design of Projects to be Implemented in FY 1999.

The Regional Ecosystem Office memorandum No. OR7-007 which redefines "implementation" as the date of the NEPA decision, as opposed to the commonly understood definition of date of groundbreaking is arbitrary and capricious. We object to this new definition, and request that all Category 2 Survey and manage species surveys be conducted and incorporated into the design decision.

The North Fork Watershed Analysis states that information on the occurrence of survey and manage species in the watershed is lacking. (p. 2-51). The finding that only two of these species

(Red Tree Vole, and Larch Mountain Salamander) are "of concern to the Clackamas River Ranger District" is arbitrary. (EA, pg. 29). Because the distribution of survey and manage species was not included in the EA, the public did not have an opportunity to comment on the potential impacts to these species in a meaningful way. Therefore, the guidelines set forth in the Northwest Forest Plan for surveying survey and manage species were not followed.

## VII. The Risks to Fisheries and other Aquatic Species are not sufficiently considered

The Clackamas River was one of the most prolific salmonid-spawning river systems in the Pacific Northwest, and the North Fork contains the last significant run of wild late-winter coho in the Columbia Basin. (AF-115). The Coho population has been declining at an alarming rate, and a review conducted earlier this decade determined that the Clackamas late run winter coho faces a "moderate risk of extinction." Nehlsen et al. (1991). The Clackamas River winter steel head was listed in the same study as being a stock "at risk of extinction", and is presently proposed for listing under the Endangered Species Act.

In light of the fact that these species are verging on extinction within the Clackamas River basin, a heightened standard of care should be exercised by the Forest Service to ensure that management activities are not adversely impacting them. No documentation exists in the analysis file as to whether or not formal consultation with the National Marine Fisheries Service (NMFS) took place. If it did, the resulting biological opinion was not placed in the analysis file.

The Forest Service has no data related to sediment monitoring, and is in exceedance of temperature standards throughout much of the Clackamas basin. In addition, the North Fork Watershed Analysis demonstrates that significant data gaps persist with relation to population estimates of coho and steelhead and the role that the North Fork has on juvenile production of these species.

Dearth of project-specific information related to sediment, turbidity, temperature and other water quality data that may potentially impact salmonids violates NEPA's mandate pertaining to analysis. NEPA's implementing regulations require that agency decisions be based on high quality, accurate scientific analysis and expert agency comments, in order to provide for full public participation and informed decision making. 40 C.F. R. § 1500.1.

## VIII. Management Indicator Species

NFMA requires the Forest Service to provide for animal and plant diversity in the national forests. 16 U.S.C. § 1604(g)(3)(B). USFS regulations implementing this requirement direct the Forest Service to manage forests for viable populations of native vertebrate and desired non-native species. 36 C.F.R. § 219.19. The regulations define viable populations as a population which has "the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area". *Id.*

To ensure that viable populations are maintained, the Forest Service is required to identify management indicator species (MIS) and that "population trends of the management indicator species will be monitored and relationships to habitat change determined". 36 C.F.R. §

219.19(a)(6). This monitoring is essential to verify and, if necessary, modify the forest plan's assumptions about the effects of timber harvesting and other management activities on wildlife.

The Ninth Circuit has stated that the duty to ensure viable or self-sustaining populations "applies with special force to "sensitive" species." *Inland Empire Public Lands Council v. USFS*, 88 F.3d 754 (9th Cir. 1996) citing *ONRC v. Lowe*, 836 F.Supp 727, 733 (D.Or. 1993). The decision of the Forest Service to rely on general information pertaining solely to Deer and Elk over a 5,657 acre range fails to comport with NFMA requirements. The finding that although 11,900 feet of new road (9,000 of which are permanent) will be constructed for this project, road densities for these species will remain the same after the project as they were before is clearly unsupported. The Forest Service has disregarded implementing regulations for this project, and has failed to meet population monitoring and surveying requirements under NFMA.

#### IX. Insufficient Analysis Pertaining to Noxious Weeds and Soil Concerns.

Nonnative seed can be carried to areas of ground disturbance attributable to road-building, timber planning and harvest, and associated vehicle use. There are several noxious species of concern in the project area. Invasions of these species can reduce biodiversity through the displacement of plant species necessary for wildlife and aquatic habitat diversity. (EA p.43).

The EA treats all action alternatives equally, even though Alt. C will include a significantly greater amount of road construction, ground based timber harvest, and vehicular travel than would Alt. B. The failure to sufficiently address these differences fails to provide the public and the decision maker with information necessary to make an informed decision.

NFMA regulations require the "conservation of soil and water." 36 C.F.R. § 219.27. Section 219.27(a)(1) provides that "all management prescriptions shall conserve soil and water resources and not allow significant or permanent impairment of the productivity of the land." Further, "conservation of soil and water resources involves the analysis, protection, enhancement, treatment, and evaluation of soil and water resources and their responses under management and shall be guided by instructions in official technical handbooks." 36 C.F.R. § 219.27(f).

The finding was made that Alt. D would have less impact on soils since it would not utilize ground-based yarding activity in the 35 acres of Riparian Reserves proposed for harvest in the other action alternatives. This implies that this activity will have an effect on soils, and there is no attempt to quantify this effect anywhere in the analysis file. The increased amount of road-building and ground based timber harvest associated with the chosen alternative was also not considered in contrast to the more limited effects associated with helicopter logging in Alt. B. The Forest Service can not make a fully informed and well-considered decision pertaining to the potential effects of additional road-building and reliance on ground-based harvest methods, if it has failed to assess them.

#### X. Mitigation Measures Are Inadequate

The standard and project-specific mitigation measures for this project will not insure that ACS objectives will be met. Riparian and soil-related seasonal restrictions can be waived at the

discretion of the project manager. There are no criteria whatsoever for these waivers, and the waivers are frequently issued indiscriminately. This Spring, for example, was the wettest in recorded history in Oregon, yet a waiver for dry conditions was granted to Vanport Logging to begin logging early on the Eagle Sales north of the Upper Project area.

30-foot no-cut buffers are also included along non-fish bearing streams. The NEPA documentation fails to provide any scientific evidence that 30 foot buffers are sufficient. How do 30 foot buffers differ from 20, 40 or 100 foot buffers? The decision to implement no-cut buffers demonstrates implicit recognition of the harmful effects of silvicultural activity in riparian areas, but fails to substantiate the choice of 30 feet as a credible buffer distance.

The in-stream habitat work portion of this project is funded exclusively from speculative KV funds. There is no assurance that this funding will ever be secured and that this portion of the project will ever be completed. Similarly, there is no assurance that a contractor who purchases the sale will fund the decommissioning and obliteration of temporary roads. The EA makes the claim that all mitigation measures would "likely" be funded, failing to provide any substantive assurance that they will in fact occur. (EA p. 27).

The Forest Service's perfunctory description of mitigating measures listed in the EA is inconsistent with the "hard look" it is required to render under NEPA. *Neighbors of Cuddy Mountain v. USFS*, 137 F.3d 1372, 1380 (9th Cir. 1998). Mitigation must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated. *Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1154 (9th Cir. 1997). When assessing a list of mitigation measures much like that presented in the Upper Project EA, the Ninth Circuit has held that without analytical data to support proposed mitigation measures, "we are not persuaded that they amount to anything more than a mere listing of good management practices." *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998).

## XI. Failure to Consider Roadless Area Characteristics of the Project Area

The NEPA documentation failed to describe the roadless characteristics of units 1 and 2 in the project area. Both units are in the midst of a parcel of land that directly abuts a RARE II roadless area which is contiguous with the Salmon-Huckleberry Wilderness. Unit 1 is within 600 feet of the RARE II area. The only thing separating this portion of the project area from the formally designated RARE II boundary is a section line. Roadless areas provide unique opportunities for recreation, production of clean and stable water flows, and precious interior forest habitat for wildlife and plant species.

Appellants request that characteristics of uninventoried roadless areas be considered in the planning stage of any proposed project on the Mt. Hood National Forest. The failure to address this issue, including the potential of this roadless area to be included in future roadless inventories or possible wilderness designation, fails to involve the public in an informed decision-making process.

## XII. An EIS is Required Due to Cumulative Impacts

NEPA requires the preparation of an EIS whenever an agency is contemplating an action that could have significant impacts on the human environment. 42 U.S.C. § 4332(C). A determination that significant effects on the human environment will occur is not essential. If substantial questions are raised as to whether a project may have a significant effect upon the human environment, an EIS must be prepared. *Foundation for North American Wild Sheep v. U.S. Dept. of Agriculture*, 681 F.2d 1172, 1178 (9th Cir. 1982). Significant clear-cutting on adjacent private lands were not considered at any point in the NEPA documentation for this project. The project-specific effects from timber harvest in Matrix and Riparian Reserves, and road-building that impacts a Riparian Reserve, when viewed cumulatively in relation to past management activity on adjacent public and private lands, demands the preparation of a more detailed and comprehensive analysis in the form of an EIS.

### XIII. Absence of Restoration Alternative

The Watershed Analysis finds that throughout the North Fork Watershed, "the effects of roads on aquatic resources will be reduced as restoration activities occur such as road obliteration, erosion control, and stabilization of road drainages to lower sediment delivery to streams" (WA at 2-28). The absence of a restoration or rehabilitation alternative emphasizes the agency's inherent bias towards timber production, and fails to comport with NEPA-related obligations to provide a full range of alternatives. The Forest Service is obligated to consider every reasonable alternative within the range of alternatives bounded by the need, purpose, and underlying environmental concerns of the proposed action. *California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982). We respectfully request that all future proposed projects on the Mt. Hood National Forest contain a restoration or rehabilitation alternative.

### CONCLUSION

The Upper Project violates portions of the National Environmental Policy Act, National Forest Management Act, Clean Water Act, and Administrative Procedures Act, and Northwest Forest Plan. The EA for this project lacks sufficient analysis and fails to consider a reasonable range of alternatives. The Finding of No Significant Impact is arbitrary, capricious, and unsupported by the record. An Environmental Impact Statement should be prepared disclosing past failures, uncertainties, and the weight of scientific opinion against this proposal. The EIS should include an impartial discussion and analysis of a reasonable range of alternatives, including a scientifically and biologically based restoration alternative.

Dated this 5th day of November, 1998.

Respectfully submitted,

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