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Submitted electronically to: [comments-pacificnorthwest-mthood-clackamasriver@usda.gov](mailto:comments-pacificnorthwest-mthood-clackamasriver@usda.gov)

RE: Clackamas Fires Roadside Tree Abatement Project

Dear Jim,

As you are aware, Bark's mission is to bring about a transformation of public lands on and around Mt. Hood into a place where natural processes prevail, where wildlife thrives and where local communities have a social, cultural, and economic investment in its restoration and preservation. Bark has over 31,000 supporters<sup>1</sup> who use and/or rely on the public land forests surrounding Mt. Hood, including the areas within the Clackamas Fires Roadside Tree Abatement Project area, for a wide range of uses including, but not limited to: drinking water, hiking, nature study, non-timber forest product collection, spiritual renewal, and recreation. We submit these comments on behalf of our supporters. We request that you actively engage with the substance of these comments and use the information herein to create a better project for the Clackamas River Ranger District.

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<sup>1</sup> Supporters in this case is defined as significant donors and petition-signees which Bark has identified as being active users of Mount Hood National Forest.

## **PUBLIC PROCESS AND TIMELINE**

Bark understands the challenges and tradeoffs the agency faces while considering the immediate future of its road system. On one hand, reopening the Clackamas River Ranger District will provide recreational and other opportunities for the public, and economic opportunities for many private entities which depend on forest access. On the other hand, reopening roads hastily necessarily requires removing more trees than would likely be the case if the project timeline was extended, in order for tree mortality and danger to become more apparent. Right now, the public scrutiny over post-fire logging is high, but direct oversight and participation is low, as evidenced by a recent [OPB article on roadside danger tree removal](#) within the 2020 fire perimeters. For areas where the retention of aesthetics and local ecology are highly valued and expected by the public over the long-term (even severely burned forest has aesthetics which differ from logged forests), we encourage the agency to approach abatement activities with a lot of patience.

If the Clackamas Fires Roadside Tree Abatement Project is slowly implemented over several years instead of over the next year or two, more careful assessment of trees to allow for accurate retention may be possible. Benefits of this approach may include accurate delineation of existing culturally significant sites. And because the work would be spread out over a longer period, this approach may provide more reliable, seasonal project work for local contractors whose companies may have been impacted by the 2020 wildfires or COVID-19 but may only be realistically able to bid on smaller projects on longer timelines.

For ecological and social reasons, tree abatement within the Clackamas River Ranger District should be as low impact as is reasonably possible. The best way to accomplish this is to make sure only truly appropriate trees are removed. During the 2017 Eagle Creek Fire, the fire burned right up to the guardrail in some areas along I-84, and Bark's understanding is that ODOT and other agencies involved (including the Columbia River Gorge National Scenic Area) developed guidelines that allowed live trees to be left standing. And in fact, one can still see those groups of trees growing next to the highway. In many areas where agencies involved were particularly concerned about losing aesthetic quality, i.e., near trails, time was allowed to pass before making a decision on the amount of tree removal required, likely resulting in more trees being left in the forest than if the work was done hastily. Bark believes this should be a key element of the Forest Service's approach to tree abatement on the Clackamas River Ranger District.

A wildfire does not generally leave trees in an immediately hazardous condition. Over time however, it will be possible to perform a reasonably accurate assessment of post-fire tree condition related to its probability of mortality, leading to a better understanding of current and future potential hazards. Bark believes that a best practice is, unless mortality is obvious, to wait and observe tree response. This can be done if the tree does not currently pose a safety hazard.

To Bark's understanding, the mortality projection modeling currently being used by ODOT for the Riverside and Lionshead fires does not provide for accurate hazard assessment at the single tree level. Waiting for at least one year, where possible, will allow actual fire-caused tree mortality to be visually apparent. This time frame will allow for more accurate visual assessments to be made, while individual immediate danger trees in this interim can be felled, for hazard management as needed, so surveys can continue before the rest of the project is implemented.

A slower and more reasoned approach will allow concerns of stakeholders and the public to be addressed effectively, rather than ignored in the interest of moving the project forward. We acknowledge that a two-week comment period for an activity which will have such an impact to the public's access and long-term experience of the forest is, to be blunt, inadequate from a socially inclusive process perspective. As this project is being developed, we encourage the FS to keep the public informed by posting the tree hazard criteria and assessment methodology being used to the Forest's website. With this, the hazard criteria and methodology should be adequately defined for both future project and stakeholder purposes.

### **CATEGORICAL EXCLUSION AUTHORITY**

The agency cannot avoid the requirement that commercial salvage timber sales may only be categorically excluded from review in an Environmental Assessment (EA) or Environmental Impact Statement (EIS) if 250 acres or less, by relying on a Categorical Exclusion (CE) intended for truly minor road maintenance that does not apply to commercial timber sales.

In the Scoping Letter, the Forest Service (FS) determined this project will likely fall within categories of actions that are excluded from documentation in an environmental assessment or environmental impact statement. Specifically, this project may be included in categorical exclusion (36 CFR 220.6(d)(4)), "repair and maintenance of roads, trails, and landline boundaries". Indeed, CEs should be

used for “only routine actions that have no extraordinary circumstances.” 57 *Fed. Reg.* 43,180 (Sept. 18, 1992).

Bark reminds the agency that even if an action fits within a CE category, the Forest Service “must determine that there are no extraordinary circumstances in which a normally excluded action may have a significant environmental effect” before the agency can forego an EA or EIS. 73 *Fed. Reg.* at 43,091; see also 36 C.F.R. § 220.6(a). Federal agencies are required to “provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.” 40 C.F.R. § 1508.4. The road maintenance CE is in the category of the agency’s rules for truly minor actions that do not even require a project file or Decision Memo, such as clearing culverts and grading roads, whereas the 250-acre timber sale CE is in a category of more substantial actions that *do* require a Decision Memo.

FS rules limit the use of categorical exclusions for commercial salvage timber sales to those that are 250 acres or less. However, the agency claims it may categorically exclude the Clackamas Fires Roadside Tree Abatement project because it removes danger trees, and because the road maintenance CE may be used to cut trees that are a hazard to roads. This does not approve commercial salvage timber sales cutting hundreds or even thousands of acres via a CE rather than conducting an EA or EIS. This would not be permitted under NEPA – however it does appear that the agency is planning to offer these projects in a timber sale-like arrangement.

A scenario similar to this played out on the Mendocino National Forest, where the FS authorized six timber sales as part of the Ranch Fire Project, categorically-excluding them from NEPA using 36 C.F.R. § 220.6(d)(4) in four decisions (grouping two timber sales together in two of the decisions). The size of each of these commercial salvage sales (ranging from 262 to 1,023 acres) exceeded the 250 acres limit for timber salvage sales in 36 C.F.R. § 220.6(e)(13), and together totaled 3,691 acres. This resulted in litigation by the Environmental Protection Information Center (EPIC) in 2019. In 2020, the United States Court Of Appeals For The Ninth Circuit panel held that EPIC was likely to succeed on the merits of its claim that the Forest Service erred in relying on the CE for road repair and maintenance. The panel noted that the rationale for a CE was that a project that will only have a minimal impact on the environment should be allowed to proceed without an environmental impact statement or an environmental assessment. The CE upon which the Forest Service relied authorized projects for such activities as grading and resurfacing of existing roads, cleaning existing culverts, and clearing roadside brush. The panel concluded that under no reasonable

interpretation of the language of 36 C.F.R. § 220.6(d)(4) did the Project come within the CE for “repair and maintenance” of roads.<sup>2</sup>

Please discuss the rule that commercial salvage timber sales may only be categorically excluded from review in an EA or EIS if 250 acres or less (**36 C.F.R. § 220.6(e)(13)**), and how this relates to a CE intended for truly minor road maintenance (**36 C.F.R. § 220.6(d)(4)**) that does not apply to commercial timber sales.

## **TRAVEL ANALYSIS AND MINIMUM ROAD SYSTEM**

Given that the FS is considering steps to reopen and maintain a number of miles of roads within the Riverside Fire perimeter, and given the large geographic scale of this project, the agency should consider its Travel Analysis Report (TAR)<sup>3</sup> for the Clackamas River Ranger District and identify the Minimum Road System (MRS).<sup>4</sup> The roads identified for tree abatement activities should reflect this MRS – meaning roads that are not part of this MRS should ideally not receive treatment other than closure.

We have heard from the agency that the Roadside Tree Abatement project will not approve any road closures. However, all roads within the Riverside fire on the District are now closed, and the Forest must intentionally approve reopening them. There may be opportunities to keep travel on roads with an Objective Maintenance Level (OML) 1 restricted through a temporary closure, until the permanent closure is later approved. This would save the agency resources while moving the forest closer to achieving a minimum road system. From a habitat perspective, it would also result in less disturbance and removal of trees which may unexpectedly survive.

To identify the minimum road system, the FS must consider whether each road segment the agency decides to maintain on the system is needed to meet certain

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<sup>2</sup> <https://law.justia.com/cases/federal/appellate-courts/ca9/19-17479/19-17479-2020-08-03.html>

<sup>3</sup> In 2015, the FS released its TAR, a synthesis of past analyses and recommendations for project-level decisions regarding changes in road maintenance levels. Included in this report was a [list of roads “not likely needed”, with the objective maintenance level being “D-decommission”](#).

<sup>4</sup> 36 C.F.R. § 212.5(b)(1) (“For each national forest . . . the responsible official must identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands.”).

factors outlined in the agency's own regulation.<sup>5</sup> Here, the FS should consider whether each segment of the road system within the project area is needed to:

- Meet resource and other management objectives adopted in the relevant land and resource management plan;
- Meet applicable statutory and regulatory requirements;
- Reflect long-term funding expectations; and
- Ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

In assessing specific road segments, the FS should also consider the risks and benefits of each road as analyzed in the TAR, and whether the proposed road management measures are consistent with the recommendations from the TAR. To the extent that the final decision in this project differs from what is recommended in the travel analysis report, the FS must explain that inconsistency.

If Objective Level 1 roads cannot be immediately closed, they should at least be de-prioritized for abatement activities until a later date, since they are for the most part in areas with low traffic volumes, are not likely needed to access critical infrastructure or recreation sites, and can therefore be treated more slowly<sup>6</sup>. This will then allow for the agency to observe the actual mortality over time vs. the predicted mortality immediately after the fire, and make decisions on the need for tree removal accordingly.

## **PROTECTION OF CULTURALLY SIGNIFICANT AREAS**

Throughout history, riparian corridors, ridgelines, and numerous areas that are now roaded have always been desirable for habitation and livelihood for humans. Intact and/or buried structures, buried artifacts, culturally modified trees, burial sites, and habitation sites are all present within the Clackamas River Ranger District. Some are currently known, and more are yet to be uncovered.

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<sup>5</sup> 36 C.F.R. § 212.5(b)(1). *See also* Attachment A (“analyze the proposed action and alternatives in terms of whether, per 36 CFR 212.5(b)(1), the resulting [road] system is needed”); (“The resulting decision [in a site-specific project] identifies the [minimum road system] and unneeded roads for each subwatershed or larger scale”).

<sup>6</sup> One principle of evaluating & managing “hazard” or “danger” trees is how long and often someone may be exposed to the risk of a tree falling. A tree over a campsite or picnic table presents more of a risk than one along a road where people are passing by and only exposed to the risk for a brief time. Thus, there should be less tree removal done along a low traffic road than one which includes popular pull outs or vistas.

Riparian corridors especially have been highly restricted in the past, regarding logging and development. Impacts need to be carefully assessed before allowing such protective measures from being bypassed. Changing the time scale of tree abatement on the District to a longer and more thoughtful approach would result in limiting soil disturbance to less area, and hence limit the potential disturbance of undiscovered artifacts or other cultural sites.

## **PROTECTION OF WILD AND SCENIC RIVERS**

The planning area hosts congressionally designated Wild and Scenic Rivers. All management activities within these river corridors must protect and or enhance the identified outstandingly remarkable values for those segments. The FS must disclose how the activities included in the proposed action protect and/or enhance these values.

## **LATE SUCCESSIONAL RESERVES AND NORTHERN SPOTTED OWLS**

This project spans Late Successional Reserves and through Activity Centers and Critical Habitat for the Northern spotted owl, which often use significantly burned patches for foraging if they are unlogged. A surprising number of spotted owl sites continue to be occupied and reproductively successful after experiencing fires of all intensities.<sup>7</sup> Further, spotted owls utilize complex early seral forests for foraging, providing evidence that severely burned forests can benefit spotted owls. While the timber sales are subject to seasonal restrictions during the owl's breeding season, that does nothing to mitigate the destruction of the owl's habitat. If any trees that are cut in Late Successional Reserves are to be sold commercially, **an analysis on impacts to northern spotted owls and available dead wood habitat is required by the Northwest Forest Plan and the northern spotted owl's recovery plan.**

## **ADDITIONAL RECOMMENDATIONS**

- Similar to any timber sale, trees would need to be surveyed and marked with paint as dictated by management objectives. However, project implementation and monitoring should be at the sale unit, not single tree

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<sup>7</sup> USFWS 2011. Revised Recovery Plan for the Northern Spotted Owl.  
<https://www.fws.gov/oregonfwo/Species/Data/NorthernSpottedOwl/Recovery/Library/Documents/RevisedNSORecPlan2011.pdf>

level. Tree mortality and danger to the public should be assessed, and trees should be marked separately from any contract involving the cutting of these same trees.

- Focus tree removal on imminent danger or hazard trees located within striking distance of high use areas, such as developed sites, parking lots, and paved roads. Wherever possible, use hazard trees for restoration of streams and placement in nearby stands that lack large wood.
- Prohibit cutting live, green trees, since all surviving trees are helping to rebuild the below-ground ecosystem and serve a valuable role as legacy structure and a recruitment pool for future large trees and snags.
- Where they do not pose an immediate threat to safety, all trees presumed to be dying should be treated as live until they are dead, as to not lose the ecological benefits of those trees that may survive;
- For steep slopes and cliffs present above the Clackamas River, existing live vegetation and dead wood is especially critical for slope stabilization, and in achieving effective regeneration. Any proposed work should be evaluated carefully, and the results of this evaluation should be disclosed to the public before proceeding in these areas;
- Roads which are currently closed should not be considered for danger tree abatement;
- In further planning documents released for this project, include roads which are to be included in tree removal activities. Identify the number of continuous or discontinuous acres treated, and miles of road maintained;
- If trees are felled within 70 feet of streams, springs, or seeps, leave the trees on the ground and fell them away from and parallel to the stream protection buffers;
- Keep ground-based equipment on the existing open (OML) road prism;
- Use residual trees or slash deemed safe to leave on site (i.e. not burned or utilized for biochar) to block and cover any unauthorized OHV trails created by users in the area, or any breached road closures;
- In the final decision for this project, address consultation and seasonal restrictions (i.e. northern spotted owl);



Before the Final Decision, Bark believes the public would benefit from seeing examples of Project Design Criteria (PDCs) for danger tree abatement, specifically criteria used for identifying danger trees. These resources could be posted on the project website and sent out to subscribers to the project through the new GovDelivery system.

Lastly, it is abundantly clear that many plant and animal species depend on severely burned forests for their very existence on planet earth, but it is also abundantly clear that salvage logging has uniformly negative ecological consequences for the very species that are most restricted in their distribution to burned forest conditions.<sup>8,9,10,11,12,13,14,15,16</sup> In a 2006 paper, Dr. Richard Hutto wrote: “I am hard pressed to find any other example in wildlife biology where the effect of a particular land-use activity is as close to 100% negative as the typical postfire salvage-logging operation tends to be.”

The National Forest Management Act and other law, regulation, and policy advise that multiple uses are allowed only if those uses do not compromise the ecological integrity of the system that sustains the other uses. The USFS is

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<sup>8</sup> DellaSala, D. A., M. L. Bond, C. T. Hanson, R. L. Hutto, and D. C. Odion. 2014. Complex early seral forests of the Sierra Nevada: What are they and how can they be managed for ecological integrity? *Natural Areas Journal* 34:310-324.

<sup>9</sup> DellaSala, D. A., M. L. Bond, C. T. Hanson, R. L. Hutto, and D. C. Odion. 2014. Complex early seral forests of the Sierra Nevada: What are they and how can they be managed for ecological integrity? *Natural Areas Journal* 34:310-324.

<sup>10</sup> DellaSala, D. A., D. B. Lindenmayer, C. T. Hanson, and J. Furnish. 2015. In the aftermath of fire: logging and related actions degrade mixed- and high-severity burn areas. Pages 313-347 in D. A. DellaSala and C. T. Hanson, editors. *The ecological importance of mixed-severity fires: nature's phoenix*. Elsevier Inc., Amsterdam, Netherlands.

<sup>11</sup> Hutto, R. L. 2006. Toward meaningful snag-management guidelines for postfire salvage logging in North American conifer forests. *Conservation Biology* 20:984-993.

<sup>12</sup> Hutto, R. L. 1995. Composition of bird communities following stand-replacement fires in northern Rocky Mountain (U.S.A.) conifer forests. *Conservation Biology* 9:1041-1058.

<sup>13</sup> Hutto, R. L. 2008. The ecological importance of severe wildfires: some like it hot. *Ecological Applications* 18:1827-1834.

<sup>14</sup> Hutto, R. L., and S. M. Gallo. 2006. The effects of postfire salvage logging on cavity-nesting birds. *Condor* 108:817-831.

<sup>15</sup> Lindenmayer, D. B., P. J. Burton, and J. F. Franklin. 2008. *Salvage logging and its ecological consequences*. Island Press, Washington, D.C.

<sup>16</sup> Thorn, S., C. Bäessler, R. Brandl, P. J. Burton, R. Cahall, J. L. Campbell, J. Castro, C.-Y. Choi, T. Cobb, D. C. Donato, E. Durska, J. B. Fontaine, S. Gauthier, C. Hebert, T. Hothorn, R. L. Hutto, E.-J. Lee, A. B. Leverkus, D. B. Lindenmayer, M. K. Obrist, J. Rost, S. Seibold, R. Seidl, D. Thom, K. Waldron, B. Wermelinger, M.-B. Winter, M. Zmihorski, and J. Müller. 2017. Impacts of salvage logging on biodiversity - a meta-analysis. *Journal of Applied Ecology*.

legally and morally obligated to maintain the ecological integrity of forest systems in the face of their multiple-use directive. As noted above, the ecological effects of post-fire salvage logging are overwhelmingly negative, and would compromise the Clackamas River Ranger District's ability to retain and sustain adequate amounts of those special attributes that severely burned forests provide. This is why, again, we recommend proceeding with utmost care and patience.

We anticipate a thorough review of these comments and look forward to the learning about any developments or changes made to both the forthcoming decision and the project itself.

Thank you,



Michael Krochta  
Forest Watch Coordinator, Bark