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**APPEAL TO THE REGIONAL FORESTER
OF THE UNITED STATES FOREST SERVICE
REGION 6**

Bark)
)
) 36 CFR § 215 Appeal
) In Re: Appeal of the
APPELLANT vs.) Categorical Exclusion
) and Decision Notice
)
) **Summit Thinning Categorical**
) **Exclusion**
)
)
LINDA GOODMAN, REGIONAL FORESTER,)
DECIDING OFFICER.)
)
_____)

APPELLANT’S: NOTICE OF APPEAL, REQUEST FOR STAY, REQUESTED RELIEF, AND
STATEMENT OF REASONS

Dated this 19th day of January, 2006

NOTICE OF APPEAL

To: Appeal Deciding Officer
Ms. Linda Goodman, Regional Forester
Region 6, U.S. Forest Service
ATTN: 1570 APPEALS
P.O. Box 3623
Portland, Oregon 97208-3623
Email: appeals-pacificnorthwest-regional-office@fs.fed.us

Dear Ms. Goodman

In accordance with 36 CFR 215, I hereby appeal the decision to implement Summit Thinning Categorical Exclusion (“Summit Thinning CE”), signed by the Mt. Hood National Forest (“MHNH”), posted on December 5, 2005.

Decision Document: Summit Thinning Categorical Exclusion and Decision Memo

Decision Date: December 5, 2005.

Responsible Official: Linda Goodman, Regional Forester.

Appeal Period End Date: January 19th, 2006 (see official Notice of Decision).

Description of the Project: 70 acres of logging

Location: Sections 13, 14, 23 and 24 of T. 6 S., R. 8 E., WM, Clackamas County, Oregon.

Appellant’s Interests:

Bark has a specific interest in this sale, and that interest will be adversely affected by this timber sale. Bark has previously expressed interest in this specific sale, and has standing to appeal this decision according to 36 CFR § 215.11 (a)(2). Bark’s members live near the Mt. Hood National Forest and use the Forest extensively for recreation, viewing wildlife and wildflowers, municipal water, hunting, fishing, overall aesthetic enjoyment, and other purposes. Specifically, Bark has used the Summit Thinning project area. The value of the activities Bark members enjoy in the area will be irreparably damaged by this project. Bark has a long-standing interest in the sound management of this area, and the right to request agency compliance with applicable environmental laws.

REQUEST FOR STAY

Although an automatic stay is in effect for this sale as per 36 CFR 215.10(b), I formally request a stay

of **all** action on this project, including sale preparation, layout, road planning, any advertising, offering for bids, auctioning, logging, road construction, or other site preparation by a purchaser pending the final decision on this appeal.

A full stay is essential to prevent unnecessary expenditure of taxpayers' money, an irretrievable commitment of agency resources, and irreversible environmental damage. Without a stay, the federal government may waste taxpayer money preparing a sale that may later be cancelled. Because Bark may pursue a legal challenge to this sale with or without this stay, offering this timber sale may unnecessarily expose the government to liability and the purchaser to financial losses.

REQUESTED RELIEF

1. Declare the Decision Notice invalid.
2. Withdraw the Decision Notice.
3. Modify the sale to meet the objections presented in Appellants' Statement of Reasons and bring into compliance with the National Environmental Policy Act (NEPA), National Forest Management Act, these statutes' implementing regulations, and the Northwest Forest Plan and the Mt. Hood National Forest Land and Resource Management Plan (MHLRMP) as amended by the Northwest Forest Plan (NFP).
4. Comply with the Survey and Manage guidelines of the NFP as amended in 2001.
5. Re-initiate NEPA to allow for public comment and participation.
6. Prepare an Environmental Assessment (EA) that appropriately examines the project plan's extraordinary circumstances.

STATEMENT OF REASONS

INTRODUCTION:

Upon reviewing the project and visiting the planning area, we have serious concerns about this project. We are very concerned about the use of categorical exclusions (CEs) by the Clackamas River Ranger District and do not feel it is the best way to have an informed and participatory public process. CEs should be used for their original intended purpose of conducting "no-brainer" activities such as repairing and replacing infrastructure – not for circumventing public input and avoiding environmental analysis.

There are too many issues that need more careful evaluation with this project. First, one of the purposes of this initiative is to "reduce the risk of mortality from insects;" however, whether or not this result can be achieved by thinning is scientifically controversial. Second, the proposed units are federally designated Critical Habitat for the northern spotted owl. Any habitat alteration of a

federally listed species requires a complete environmental analysis to fully ensure no threats to the species' future viability will ensue. Third, the project fails to consider the recreational value of the land. Finally, the brief project notice does not furnish substantive and quantitative evidence showing this project will not cause serious and irreversible damage to soils, snags, downed woody debris, forest productivity, plant diversity, water quality, wildlife habitat and recreation.

According to the Forest Service, "This action is needed because this natural second-growth stand is experiencing elevated risk due to overcrowding" (Summit scoping letter, p. 1). However, the Summit stands that we observed are already relatively thin. Because of this and the significant controversy over methods to reduce mountain pine beetle infestation, the proposed thinning project would do little to meet two of the three stated goals of the project: to enhance growth intended to be abated by "overcrowding" and to reduce the risk of mortality from insects (Summit scoping letter, p. 1). The following photos provide some illustration of already-existing gaps in the canopy, which allow a significant amount of light to reach the forest floor.



Why does the Forest Service think that further thinning is necessary? Without clear information about how thinning would meet these two goals, it would seem the Forest

Service only has potential of meeting its third goal with this project; "provid[ing] forest products consistent with the Northwest Forest Plan goal of maintaining the stability of local and regional economies now and in the future." This final goal, however, fails to acknowledge the recreational value of this area due to its extreme proximity to the Summit Lake camping and recreational area. Additionally it ignores either the role of the surrounding industrial forest lands (lands that by definition provide wood fiber and employment) or the recreational value of this area due to its proximity to the Portland metropolitan area. There is no supporting documentation of this assertion, an assertion that no longer qualifies as *a priori*. While timber is still an important sector of the economy, the community in Clackamas county is no longer exclusively timber-dependant: that is,

timber production and milling, while still sources of income, are no longer the primary source of income for most of these localities. PACIFIC NORTHWEST RESEARCH STATION, *County Portraits of Oregon and Northern California* (September 1996), 76-87. Fishing, government support, and tourism now provide greater revenue to these counties than the forest products industry. *Id.* Similarly, in assessing the impact of the agency's Roadless Area Conservation policy, the Forest Service also concluded that there are no timber dependent communities located within or affected by activities on Mt Hood National Forests. *See generally* United States Forest Service, *Roadless Area Conservation Specialists Reports* (visited May 4, 2001), http://roadless.fs.fed.us/documents/feis/specprep/socioecon_specialist_entire.pdf>. The ability of thinning mid to late seral stands to enhance growth and/or reduce risk of beetle infestation is highly controversial and not supported by scientific evidence. This, coupled with the fact that the forest may have greater value as a recreational area than as a source of lumber, calls into question the attainability of all three of the Forest Service's project goals. We urge the Forest Service to reevaluate the project's goals and provide a complete environmental analysis before proceeding.

Given the significantly altered situation in the region (i.e., mill closures and a reduced demand for wood fiber from federal forests), some form of documentation is needed.

The Appellants believe the Categorical Exclusion and Decision Notice are in error and not in accordance with the legal requirements of the National Environmental Policy Act (NEPA), 42 U.S.C.4321 *et seq.* and its implementing regulations; The National Forest Management Act (NFMA) 16 U.S.C. 1600 *et seq.* and its implementing regulations; the Administrative Procedures Act, 5 U.S.C. § 706; the Mt. Hood Forest Plan (MHLRMP); the Forest Service Manual, The Northwest Forest Plan, and the Survey and Manage Guidelines as amended in 2001.

Categorical Exclusions

In limited circumstances, the NEPA regulations authorize agencies to use a "Categorical Exclusion" for a "category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations." 40 C.F.R. §§1508.4, 1500.4(p). Neither an EIS nor an EA is required for categorically excluded actions, but the NEPA regulations require Federal agencies to provide for "extraordinary circumstances" in which otherwise categorically excluded actions require an EA or EIS. 40 C.F.R. §§1507.3(b)(2)(ii), 1508.4. The Forest Service provides that a proposed action may be categorically excluded from documentation in an EA or EIS only if: (i) the action is within a category listed in FSH at Sections 31.1b or 31.2 and (ii) there are no extraordinary circumstances that may result in significant individual or cumulative environmental impacts. FSH 1909.15, 30.3(1)(b) (emphasis added).

The Forest Service plans on categorically excluding the Summit Thinning Project from NEPA documentation under Category 12 of Section 31.2, described in Forest Service Handbook 1909.15-2004-3 (July 6, 2004). This category allows the Forest Service to exclude from NEPA documentation the "harvest of live trees not to exceed 70 acres, requiring no more than ½ mile of temporary road construction." By definition, a project that is categorically excluded cannot individually or cumulatively have a significant impact on the environment. 40 C.F.R. §1508.4. Bark believes that significant impacts may result from the Summit Thinning Proposal; thus, a complete environmental analysis must be conducted.

Mountain Pine Beetles

As stated in the Purpose and Need document, “This action [thinning] is needed because this natural second-growth stand is experiencing elevated risk due to overcrowding. The stand contains primarily lodgepole pine with a component of Douglas-fir. Lodgepole pine across the District is being killed by mountain pine beetle. Thinning reduces the potential for insect attack,” (Purpose and Need, p. 1). Contrary to the Forest Service’s assertions, there is no scientific study demonstrating that thinning prevents or reduces the likelihood of beetle infestation. In fact, there is scientific evidence against this claim. With regard to pine beetle outbreaks in British Columbia, logging and sanitation harvest can increase future susceptibility (Hughes and Drever, 2001). In addition, logging after a natural disturbance can further increase environmental disturbance outside the natural range of variability, making stands even more prone to beetle attack. Timber harvesting in the Summit project area, which has already endured a forest fire, is a recipe for increasing, not decreasing, the risk for beetle infestation. Beetle infestation must not be used as an excuse for logging without the supplementation of primary scientific literature supporting the hypothesis that thinning prevents or reduces the likelihood of beetle infestation.

Additionally, mountain pine beetles are part of a natural healthy process for forests. In the same study, the authors noted that bark beetles are native species, and natural and important agents of renewal and succession in forests. Another study also found that mountain pine beetle epidemics in lodgepole pine forests of the inland West are part of a natural “boom and bust” cycle that has occurred for centuries (Amman, 1977). Mountain pine beetle populations typically increase to epidemic levels when large homogenous areas of lodgepole pine mature and provide a sustainable food resource. The insect selectively kills susceptible trees from specific size classes, thereby facilitating development of a forest that is structurally, genetically and compositionally more diverse and less prone to beetle attack, thus starting the cycle over again. The best solution for the forest is to let mountain pine beetle infestation naturally and healthily thin the stands.

In the Summit stands we observed, there was a great diversity among trees in the canopy and understory. Hemlock, western white pine and a variety of other conifer species have taken root in the sunlit openings of the forest floor that occur at a high frequency (seen in picture below). Lodgepole pine is only one species among a diverse forest of Douglas fir, hemlock, pacific silver fir, western white pine and others. The low percentage of lodge pole pine that has suffered from beetle infestation will surely be replaced by a variety of other burgeoning conifer species in the understory.



Significant Impacts May Result

The National Environmental Policy Act (NEPA) directs all federal agencies to assess the environmental impact of proposed actions that significantly affect the quality of the environment. 42 U.S.C. §4332(2)(C). NEPA requires that agencies prepare an Environmental Impact Statement (EIS) when proposing a major federal action that may significantly affect the quality of the environment. 42 U.S.C. §4332(2)(C), 40

C.F.R. §1501.4(a)(1). If an action is not categorically excluded, an agency must prepare an environmental assessment (EA) to determine whether it needs to prepare an EIS. 40 C.F.R. §1501. With respect to the Summit project area, a CE is inappropriate because there are several factors, including Critical Habitat for northern spotted owls, which indicate the project may have a significant effect on the environment.

The agency implementing the project, not the public, has the burden of demonstrating that significant adverse effects will not result from the proposed project. *Id.* §1508.13. To determine whether a proposed action may significantly affect the environment, agencies must consider both the context and the intensity of the action. 40 C.F.R. § 1508.27. The context of the action includes consideration of the affected region and locale. *Id.* § 1508.27(a). In analyzing “intensity,” the agency must consider such factors as the “unique characteristics of the geographic area such as proximity to ... ecologically critical areas,” a high level of controversy surrounding environmental effects, “the degree to which the action may adversely affect an endangered or threatened species” or its critical habitat, and “whether the action is related to other actions with individually insignificant but cumulatively significant impacts.” *Id.* at §1508.27(b)(3), (b)(4), (b)(9), (b)(7). A CE is inappropriate for the Summit project because thinning could pose a serious risk to Critical Habitat for the northern spotted owl.

Northern Spotted Owls

CEs are not appropriate where extraordinary circumstances, such as adverse effects on threatened and endangered species or their critical habitat, exist. *Id.* at 30.3(1). The Summit Thinning Proposal would thin 70 acres of second-growth trees from an area designated as Critical Habitat for the northern spotted owl (NSO).

The Purpose and Need document states that the Forest Service has considered recently published new information about NSOs, but it fails to state what information in particular has been considered. Given the potential impact of the project, more thorough and specific analysis is warranted. New information on the threatened NSO indicates that there are significant new uncertainties for the owl that have not been fully considered at the regional or local scale. As recognized by the spotted owl status review, all existing suitable habitat could be critical to the survival of the spotted owl. New concerns include but are not limited to the following:

- competition and displacement from the barred owl that is dramatically increasing in numbers within the range of the spotted owl;
- the effects of West Nile Virus which is fatal to the owl;
- the potential loss of habitat from Sudden Oak Death syndrome;
- greater than expected loss of habitat to wildfire;
- the potential effect of climate change on regional vegetation patterns; and
- misapplication of the Healthy Forest Initiative.

Per above, the 2004 status review identified “Inappropriate Application of ‘Healthy Forest Initiative’” to be a newly inadequate regulatory mechanism.

<http://www.sei.org/owl/meetings/Presentations/June/Gutierrez-Threats.pdf> Thinning in fire suppressed eastside owl habitat can be beneficial if it reduces surface and ladder fuels to reduce the risk of canopy replacing fire, while at the same time retaining enough forest canopy and structure to still provide habitat. Inappropriate use of the Healthy Forests Initiative would include an overzealous

thinning regime that removed too much canopy so as to eliminate the owl habitat value and/or increase fire hazard by moving fuels from the canopy to the ground where they are more available to combust, by causing fuels to dry out and wind speeds to increase, and/or by stimulating the growth of ladder fuels.

Bark members recently visited the Summit Thinning Proposal site and found that the forest canopy is already relatively thin and allows a good deal of sunlight to reach the forest floor, as indicated by the following photo.



Further thinning would likely remove too much of an already minimal canopy causing both degradation of owl habitat and increased fire hazard by drying out the understory and moving fuels from the canopy to the ground where they are more available to support the spread of a ground fire.

The Forest Service provides justification for the temporary degradation of NSO dispersal habitat with the qualification that “long term benefits will outweigh short term effects” (Scoping letter, p. 2). According to the 2004 status review, this may be an inaccurate justification. Because competition and displacement with the barred owl is “dramatically increasing,” any degradation of dispersal habitat can further increase competition over thinned resources, leading to the possible spotted owl displacement. If this scenario unfolds, the NSO will not only reap no long-term benefits, but also lose valuable dispersal habitat. This possibility is unacceptable and needs to be examined in a complete environmental assessment.

The Oak Grove Watershed Analysis (OGWA) asserts that “for management purposes, the highest risk to these species [NSO, pine marten, fisher, pileated woodpecker, northern goshawk, barred owl, and possibly wolverine] would occur by fragmenting or removing habitat within the blocks assigned values of 1, 2, 3, or 4” (OGWA, p. 51). According to Map 4-4, the project area is comprised of a value 4 block, “Not Suit, Contributing.” Thinning would further fragment this habitat and, according to the OGWA, pose “the highest risk” to the NSO. Instead, management activities should be directed toward cultivating key late-seral habitat components in mid-seral stands, such as down logs, large snags, large remnant trees in patches supporting wind-dispersed lichens (51). These are the qualities

toward which the project should be striving – thinning already relatively thin stands is not necessary and will only degrade snag and down log densities. Additionally, the Summit project area comprises last remaining “interior forest” conditions with no edge effects (OGWA, Map 4-5). This is of paramount importance to many species, especially the NSO. The OGWA acknowledges this by recommending an “increase amount of interior forest habitat” (OGWA, p. 54). The alteration of this last “interior forest” area and its effect on NSO populations must be fully analyzed in an environmental assessment.

The National Forest Management Act (NFMA) 16 U.S.C. 1600 *et seq.* and its implementing regulations clearly require the Forest Service to comply with the Mt. Hood National Forest LRMP as amended by the Northwest Forest Plan. Yet the proposed action directly opposes the recommendations of the Watershed Analysis.

Cumulative Impacts

The regulations implementing NEPA state that cumulative effects result “from the incremental impact of the action when added to other past, present, and reasonably foreseeable future [federal and non-federal] actions.” 40 C.F.R. § 1508.7. “Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.” *Id.* § 1508.27(b)(7). The Summit Thinning Purpose and Need document fails to address the possibility of cumulative impacts caused by the thinning proposal, with respect to critical habitat on the watersheds, soils, vegetation and wildlife in concert with recent past logging projects in the area. Please fully disclose the cumulative watershed effects analysis for this proposed project, including all past, present and reasonably foreseeable future actions or both public and private land impacting this watershed. Please document the current watershed condition, Threshold of Concerns (TOC) and specific soil conditions related to the sensitivity index for this watershed.

Recreational Value

The Summit CE scoping letter insists that this project is consistent with Forest Plan – Forest Management Goal #19, “maintaining the stability of local and regional economies” (Summit scoping letter, p. 6). The Forest Service incorrectly assumes that maintenance of local and regional economies can only be achieved through production. Contrary to the scoping letter, the OGWA asserts that the best way to help local and regional economies in the Oak Grove Watershed, of which the Summit CE area is a part, is through recreation. According to the OGWA, “The Oak Grove watershed is one of the most important watersheds for recreation use in the Mt. Hood National Forest and attracts an estimated one half million visitors yearly. Not just for Timothy Lake, but also back country lakes, historic geologic and interpretive features, meadows, deer and elk herds, sport fisheries, scenic drives, an extensive trail network, and groomed snow mobile trails” (OGWA, p. 5). The Summit project area is less than a mile down the road from the fully developed recreation area and campsite comprising Summit Lake. The OGWA indicates that “according to the SCORP results, all recreation uses currently in the watershed are projected to increase in demand... Other uses which can be transferred, such as camping at a back country lake [i.e., campground next to lake adjacent to Summit project], could mean a relocation of use to an undeveloped site or overcrowding” (30). Timothy lake recreationists are projected to increase and displace into other areas of the watershed – such as Summit. In light of this information, OGWA recommends “expand[ing] developed recreation facilities around Timothy Lake” (31). The proposed project is less than a mile from the Summit Lake recreation area on Road 32. It lies between the recreation area and the main road,

Highway 42. During logging activities, will the road be closed and access to the lake blocked? If the Forest Service wishes to abide by Forest Management Goal #19, they would do so best by encouraging recreation in Summit Lake, not discouraging it through a highly disruptive logging project.

Survey and Manage/Aquatic Conservation Strategy Requirements

The Forest Service has failed to prove that this project is consistent with the 2001 FSEIS to Amend the Survey and Manage Mitigation Measure Standard and Guidelines and/or the 2004 FSEIS to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guideline. With respect to Survey and Manage requirements, the Forest Service must conduct surveys consistent with the 2001 FSEIS Guidelines. There is no information in the Summit Thinning documents indicating whether the surveys were completed and what the survey results were. Thus, the Forest Service has not demonstrated that it has met its requirements under the Northwest Forest Plan.

In the recent relief ruling in the case of *Northwest Ecosystem Alliance et. al. v. Mark E. Rey*, U.S. District Court Judge Pechman ruled:

- (1) The Record of Decision dated March 22, 2004, entitled “To Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines in Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl” (the “2004 ROD”) is hereby set aside, and Defendants shall not rely on it or implement it.
- (2) The Record of Decision dated January 2001, entitled “Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measure Standards and Guidelines” (the “2001 ROD”) is hereby reinstated, including any amendments or modifications to the 2001 ROD that were in effect as of March 21, 2004.
- (3) Defendants shall not authorize, allow, or permit to continue any logging or other ground-disturbing activities on projects to which the 2001 ROD applied unless such activities are in compliance with the provisions of the 2001 ROD (as the 2001 ROD was amended or modified as of March 21, 2004).
- (4) No project or activity enjoined under this Order may occur unless and until this Court modifies or vacates this Order.

The Forest Service provides no documentation to show that this has occurred. In light of Judge Pechman’s ruling, appellants request compliance with the 2001 ROD and for the process to be disclosed to the public through the NEPA process.

With respect to the Aquatic Conservation Strategy, the Forest Service stated that the project is not in riparian reserves so it is therefore consistent with the Forest Plan as amended by the 2004 Record of Decision to Clarify Provisions Relating to the Aquatic Conservation Strategy (Summit proposal, p. 3). The Forest Service has not complied with the requirements of the 2001 Record of Decision.

Conclusion

A Categorical Exclusion is inappropriate for the Summit Thinning project for numerous reasons. First, logging in the Summit project area for the alleged Purpose and Need is not supported by science. Scientific studies, in fact, show that logging can increase susceptibility to mountain pine beetles. The mountain pine beetle is a native species that plays an important ecological role in improving a forest's structural and compositional diversity. The Summit area should be left alone so that, should infestation occur, the stands can be thinned naturally. Second, the project area is Critical Habitat for the northern spotted owl, such that further analysis needs to be done regarding the effects of thinning on owl habitat and competition with the barred owl. Third, and perhaps most important, the Forest Service has failed to consider the already-existing average density of the stand and failed to clearly articulate how further thinning will benefit the project area. Fourth, the Forest Service failed to consider the potentially highly disruptive impact of the project on recreation in the Summit Lake area, which is located within one of the most important watersheds for recreation. Finally, the Forest Service has failed to demonstrate whether it meets the Survey and Manage Requirements of the Northwest Forest Plan. The Forest Service must complete a thorough environmental analysis of the Summit Thinning project with a newly developed, scientifically and economically sound proposal that will actually meet established goals.

Sincerely,

/s/ Alex P. Brown
Executive Director