

North Fork Mill Creek Revised Project Environmental Assessment (EA)
Objection Statements and Responses
Hood River and Barlow Ranger Districts
Mt. Hood National Forest
December 2014

Objectors

Bark and Oregon Wild

Objection Number

15-06-00-0002-218(B)

Timber Sale Contract/Purpose and Need/Range of Alternatives

Overview and Suggest Remedies/Resolution: This objection issue is focused on how the Forest framed the purpose and need and range of alternatives. Suggested remedy is to cancel the existing timber sale contracts.

Objector Statement #1: Objector states that it is illegal to use pre-existing contracts as the basis for the National Environmental Policy Act (NEPA) analysis. Bark at 3. By doing this, the objector believes that the Forest created a purpose and need in which only the proposed action could be selected, which they state is illegal because NEPA prohibits the agency from justifying decisions already made. Bark at 3.

Response: I find that the Responsible Official complied with the NEPA by briefly stating the need for action and proposed action. I also find that due to the changed condition caused by the fire, the Responsible Official appropriately documented how that changed condition affected contracts that were in place and active at the time of the fire.

In their objection, Bark cited case law which prohibits an agency from entering into a contract prior to preparing NEPA analysis. In this case, the Forest prepared an EA in 2008 titled the North Fork Mill Creek Restoration Opportunities Project EA, which was then implemented through a series of stewardship contracts including the Roan and Eques contracts. These contracts were based on a completed NEPA decision and were being implemented in 2013 when the Government Flats Complex Fire burned over the areas under contract, thus necessitating the need to revise the 2008 EA.

The Forest Service Handbook (FSH) states that “If new information or changed circumstances relating to the environmental impacts of a proposed action come to the attention of the responsible official after a decision has been made and prior to completion of the approved program or project, the responsible official should review the information carefully to determine its importance. Consideration should be given to whether or not the new information or changed circumstances are within the scope and range of effects considered in the original analysis.” FSH 1909.15, 18.1. For “Reconsideration of Decisions Based on Environmental Assessment and Finding of No Significant Impact”, FSH 1909.15, 18.4 directs the agency to “Supplement or revise an EA if the interdisciplinary review of new information or changed circumstances indicates that changes in the EA are needed to address environmental concerns that have a bearing on the action or its impacts.” The 2014 North Fork Mill Creek Revised EA is a result of a changed condition caused by the 2013 Government Flats Complex Fire.

The existing Roan and Eques contracts were awarded in order to fulfill the purpose of the 2008 North Fork Mill Creek Restoration Opportunities Project, which was “to conduct restoration activities within the North Fork Mill Creek planning area to effectively reduce fuel loadings, improve the health and vigor of forested stands, restore wildlife habitat, improve conditions for aquatic resources, and to integrate

the public's need for access to the area with the needs of aquatic and wildlife resources." 2008 North Fork Mill Creek Restoration Opportunities Project EA at 1-3.

The 2008 North Fork Mill Creek Restoration Opportunities DN/FONSI authorized fuels reduction activities on 2,720 acres, including 1,896 acres of commercial thinning to open dense stands and reduce fuel ladders, 153 acres of sapling thinning, 61 acres of aspen cottonwood enhancement, and 610 acres of underburning. The decision also included other restoration activities, including: 7.6 miles of seasonal road closures, year-round closures on approximately 7.8 miles of road, decommissioning approximately 8.8 miles of road, and improving and/or constructing 6.0 miles of horse/hiking trails and 7.5 miles of horse/hiking/biking trails. To implement this 2008 decision, the project area was broken into six stewardship sales (Appy, Buckskin, Clyde, Roan, Eques, and Lokai Stewardship Sales). Three sales (Appy, Buckskin and Clyde Stewardship Sales) have been completed. Two sales (Roan and Eques Sales) are partially completed. In 2013, during implementation of the Roan and Eques Sales, the Government Flats Complex Fire burned over a large portion of the North Fork Mill Creek planning area, including portions of the Roan and Eques sale areas on which work had not been completed, as well as several planned, but unsold units. EA at 1-2.

Thus, the revision of the 2008 EA was based on the fire that burned over a project that was being implemented and that was under contract. The revised EA not only addresses the units under contract, but addresses other portions of the 2008 EA that had not yet been implemented. The IDT used a flow chart (2014 North Fork Mill Creek Revised EA at 1-12, Figure 1-5) based on the Adaptive Management Model from Forest Service Handbook (FSH) 1909.12, Chapter 20 to address the question as to what should be considered in a changed condition analysis and what specific changes are needed to the original proposed action. The flow chart considers the desired future condition, status of work completed under the original NEPA, and consistency with Forest Plan standards and guidelines. The review determined that all actions outside the fire perimeter, including all restoration and sapling thinning activities could proceed under the 2008 DN/FONSI. The seasonal and year-round road closures as well as the trail construction and improvements had all already been completed. Although the culvert replacements and road decommissioning had not been fully implemented, these did not have a changed condition since the overall road infrastructure was not impacted by the fire, and as such would be implemented under the 2008 DN/FONSI. It was determined that a changed condition analysis was needed for all other treatments within the fire perimeter, including restoration thinning, sapling thinning, cottonwood aspen enhancement, underburning, and road maintenance; not all of these activities were under the Eques or Roan contracts, but they all required review based on the changes affected by the fire. EA at 1-10.

Based on the review, the IDT determined that the 2013 Government Flats Complex Fire caused the following new information/changed circumstances (EA at 1-10 through 1-14):

- The overstory tree and shrub mortality was often greater than 50 percent. It is possible that many of the stands that experienced moderate to high severity burns would not have an adequate natural seed source to regenerate the forest to the desired future conditions.
- The fire burned along approximately 6 miles of roads. Many of the trees along these roads pose a safety hazard along these routes.
- As time progresses fire-killed trees lose economic value. The Roan and Eques Stewardship Sales were determined to have catastrophic damage as defined by the stewardship contract. The contract defines catastrophic damage as: "major change or damage has affected the value of trees or products within the Contract Area and is estimated to total either: More than half of the estimated timber volume or more than 2,000 CCF or equivalent (1,000 MBF)." Therefore, there

is a contractual obligation to analyze the changed conditions resulting from the Government Flats Complex Fire. The EA forms the basis for any potential contract modifications that may be proposed.

- A need to revise the environmental analysis due to changes in law, regulation or policy within the analysis area (fire perimeter). Some of these changes include: compliance with the 2001 Survey and Manage Record of Decision; updated critical habitat for northern spotted owls; updated critical habitat for steelhead; updated sensitive species list; updated analysis on management indicator species; and updated best management practices. EA at 1-14.

The Code of Federal Regulations (CFR) at 36 CFR 220.7 require that the “EA must briefly describe the need for the project.” The 2014 North Fork Mill Creek Revised EA’s overall purposes “are to meet the existing contractual and economic obligations within the existing Roan and Eques stewardship sales, to conduct a changed condition analysis to determine if changes to the original decision are required, and to improve safety on National Forest System roads within the burned area of the Government Flats Complex Fire.” The North Fork Mill Creek Revised Project included the following needs:

- Modify the existing stewardship contracts, including salvaging dead and dying trees;
- Improve the health and vigor of forested stands, including within Riparian Reserves;
- Reforest the desired tree species (where natural, on-site, seed sources are lacking) to aid in the accelerated development of forest conditions consistent with Forest Plan management objectives; and,
- Improve public, administrative and operational safety along Forest Service roads.

The 2014 North Fork Mill Creek Revised EA also states that the “desired future condition as stated in North Fork Mill Creek Restoration Opportunities (2008) is to develop an uneven-aged stand with canopy closure that would allow fire behavior to change from crown fire to surface fire, and to have stand species composition reflecting Condition Class 1 (ponderosa pine, western larch, white oak, and dry-climate Douglas-fir). Achieving this desired future condition would enable meeting the overall goals of the primary land use allocations within the project area.” EA at 1-6.

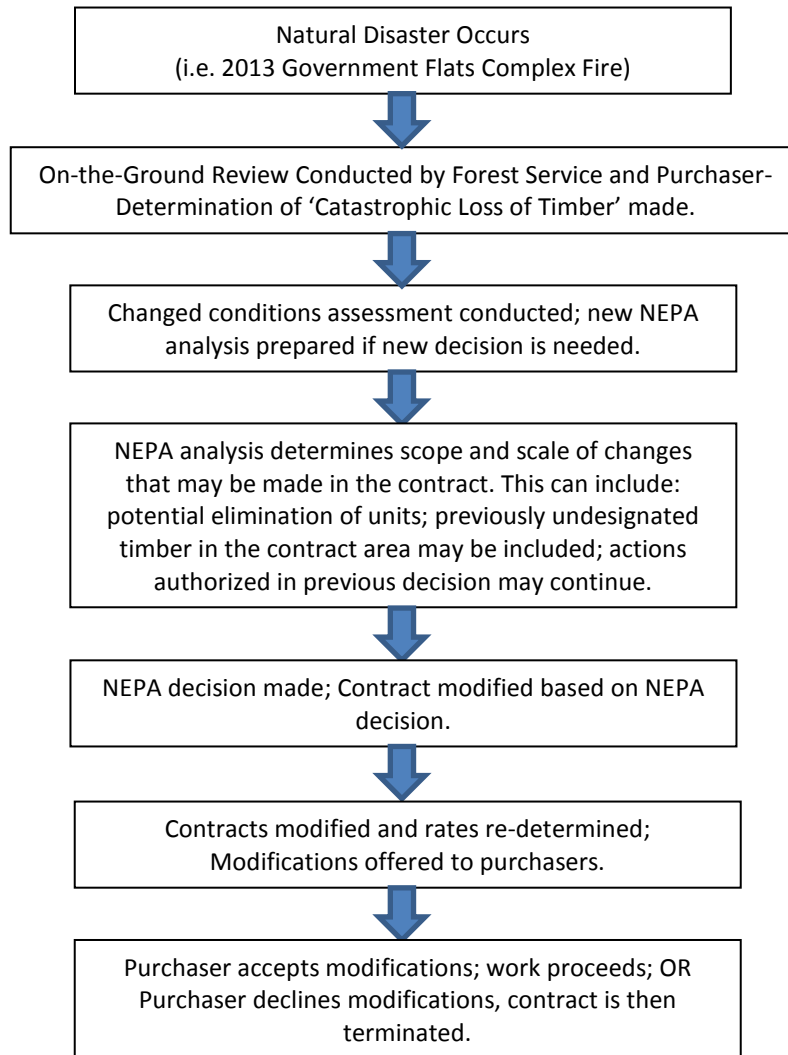
The desired future condition is the same in both the 2008 and 2014 EAs; however, as stated previously, the existing condition for the planning area changed as a result of the wildfire, necessitating revision of the EA in order to determine if and how the desired future condition could be achieved.

In total, two action alternatives that met the purpose and need, along with the no action alternative were analyzed in detailed study. The regulation at 36 CFR 220.7(b)(2) states that an environmental assessment must briefly describe “the proposed action and alternative(s) that meet the need for action. No specific number of alternatives is required or prescribed.” The 2014 EA analyzed alternatives for regenerating the forest to the desired conditions (natural seed source/no reforestation, 622 acres replanted, or 732 acres replanted), removing hazard trees along forest roads (12,500 hazard trees felled and left in place, 134 acres of hazard tree treatment/37,600 snags removed, or 167 acres of hazard tree removal/13,700 snags removed), and meeting contractual obligations (no additional contractual work, 34% of the acres, or 80% of the acres within the Roan and Eques Stewardship Sales). Additionally, the EA considered, but eliminated from detailed study one additional alternative. EA at 2-34 through 2-35. Because multiple alternatives were analyzed in detail that would have met the purpose and need, the Forest did not have a ‘narrow’ purpose and need as asserted by the objector, nor was NEPA used to justify a decision already made; NEPA is being used to make a new decision as to whether or not modifications can be made to contracts that the Forest Service is legally committed to with the contractor.

Objector Statement #2: Objector states that the Forest misrepresented the scope of its contractual obligation. Bark at 4. Objector states that the Forest Service’s Integrated Resource Timber Contract (IRTC) has standard language that allows for contract modification and that all of the provisions in the IRTC were not acknowledged in the DN. Bark at 4.

Response: I find that the Forest correctly interpreted its contractual obligations. The Forest Service does not dispute that the agency has the ability to modify or terminate contracts. Modification of the contract for catastrophic damage is the appropriate next step following NEPA analysis of how the contract may be modified.

The objector focused on the provisions listed in the DN, which the responsible official noted as “serving the foundation for the purpose and need for action for this EA.” Draft DN at 10. Contracts can only be modified or terminated for specific reasons, one of which is because of a natural disaster, such as the 2013 Government Flats Complex Fire. The following flow chart helps explain the method the Forest Service used to determine if or how a contract should be modified or terminated, following such an event:



The Forest described its contractual obligation as “IRTC Provision 1.3.2 requires the Forest Service, in consultation with the Contractor, to review “Any areas of catastrophe-affected live and dead timber meeting Utilization Standards and having undesignated timber so situated that it should be logged with the designated timber.” An environmental analysis is needed to determine the adjustments, if any that are required under the IRTC. EA Appendix 2-16.

According to the Regional Sale Administrator and Contracting Officer Ed Maffei, the Forest correctly conducted an analysis (this revised EA) to determine whether or not the contracts could be modified by potentially pursuing salvage within the area under contract. The fire burned enough acres under contract to invoke the determination of having “Damage by Catastrophe,” as documented in provision C.1.3.3.

As cited by the objector, contract provision 1.2.2, Termination by Forest Service, does allow for termination. As explained previously, this provision only applies if the purchaser rejects the proposed modification for catastrophe. Under the contract, the Forest Service is required to assess the effects of the fire on the area under contract to first determine if the contract can be modified. Contract provision 1.3.1 (changed conditions) is typically used when specific work previously agreed to in the contract may not be needed, such as slash work after a fire or harvest treatment. Instead, provision 1.3.2 applies, which is modification by catastrophe as cited by the Responsible Official. Overall, the Responsible Official stated that “I believe honoring these provisions through this project is of the utmost importance; and thus, these serve as the foundation for my decision.” Draft DN at 9. Ultimately, she made the decision to offer modifications to the contractors, in order to fulfill the Forest’s existing contractual obligations.

Objector Statement #3: Objector states that both the Roan and Eques sales were determined to have “catastrophic damage” as defined in the IRTC and that the Forest omitted the termination clause in its entirety, thus creating “the false impression that it is unable to remove” areas of affected timber from the contract, which improperly narrowed the scope of the Forest’s ability to act. Bark at 4 and 5.

Response: I find that the Mt. Hood National Forest is correct in their decision to conduct a changed condition analysis in response to the “catastrophic damage” (as defined in the IRTC) caused by the 2013 Government Flats Complex Fire.

The objector believes that the Forest intentionally omitted the termination provision from the draft DN; however, after extensive review of the contract and discussion with regional timber contract experts, this provision only applies after the following steps have been completed (see also response to Objector Statement #2 for a graphic display of these steps):

- First, the Forest must assess whether or not there is catastrophic damage as defined by contract provision C.1.3.3;
- Second, the Forest must assess the changed conditions created by the fire under NEPA (not the changed conditions as described in contract provision 1.3.1); and,
- Third, the Forest must determine if affected “Included Timber” can still be utilized or if undesignated timber should be included, as described by contract provision 1.3.2.

These provisions provided the Responsible Official with the outline she needed to determine any modifications that may be made to the existing contracts. Draft DN at 10. According to regional staff, the termination provision (1.2.2) does not apply at this point in the process. Only after the Forest has

done the assessment of the burned timber, conducted a rate redetermination, and then proposed contract modifications would this provision apply. This provision specifically states that the contract may be terminated by the contractor after rate redetermination (they may not agree with the redetermination and elect to terminate at that point) or by the Forest Service if the Contractor does not agree with the modifications proposed to the affected timber. Each provision is explained below; both the Roan and Eques contracts contain these provisions and are found in the Project Record in their entirety.

The contract includes the provision "C.1.3.3. Damage by Catastrophe" which states that "As provided under I.3.2, undesignated live and dead timber within Contract Area, meeting Utilization Standards, and affected by Catastrophic Damage. "Catastrophic Damage" as used hereunder is major change or damage to included Timber on Contract Area, to Contract Area, to access to Contract Area, or a combination thereof:

- (a) Caused by forces, or a combination of forces, beyond control of Contractor, occurring within a 12-month period, including, but not limited to, wind, flood, earthquake, landslide, fire, forest pest epidemic, or other major natural phenomenon and
 - (b) Affecting the value of any trees or products meeting Utilization Standards, within Contract Area and estimated to total either:
 - (i) More than half of the estimated timber volume stated in A.2 or
 - (ii) More than two hundred thousand cubic feet (2,000 CCF) or equivalent.
- Catastrophic Damage does not include changes caused by forest pest epidemics or foreseeable deterioration if Included Timber was sold for salvage or pest control."

The fire burned enough acres under contract to be determined to have Damage by Catastrophe, C.1.3.3; the 2013 Government Flats Fire affected 89% of the Roan Stewardship Sale and 54% of the Eques Stewardship Sales. EA at 1-3. Therefore, the Forest determined that they had a contractual obligation to analyze the changed conditions resulting from that fire to determine any modifications that may need to occur.

In order to determine how the fire affected the area under contract, the North Fork Mill Creek Revised EA was prepared in accordance with Forest Service Handbook (FSH) policy for "Reconsideration of Decisions Based on Environmental Assessment and Finding of No Significant Impact", FSH 1909.15, 18.4. This section directs the agency to "Supplement or revise an EA if the interdisciplinary review of new information or changed circumstances indicates that changes in the EA are needed to address environmental concerns that have a bearing on the action or its impacts." Thus, the EA documented the changed conditions caused by the fire in this EA and allowed the Forest to determine which areas under contract needed to be eliminated because of catastrophic damage, which areas under contract could proceed under the original decision, and if previously unincluded timber should be included in the timber sale. The EA clearly outlined the results from the changed condition analysis and documented the acreage that is proposed to be eliminated based on the damage that occurred; it also documented which acres could be moved forward and analyzed for potential inclusion in a modified contract. EA at 1-10 through 1-14. Preparation of the revised EA means that the Forest complied with Forest Service Policy and has set the stage for the next steps in the process of determining any modifications that need to be made to the contract as a result of the fire.

Since the Forest determined that there was catastrophic damage and conducted a changed condition analysis, the next step in the process is to conduct a rate redetermination based on the revised EA (once a decision is made). This would then allow the Forest to propose modifications to the contract. The

contract includes provision “D.3.2. Rate Redetermination after Catastrophic Damage” which states that “In event of Catastrophic Damage and adjustment, if any, of Included Timber, Contracting Officer shall make an appraisal to determine for each species the catastrophe caused difference between the appraised unit value of Included Timber remaining immediately prior to the catastrophe and the appraised unit value of existing and potential Included Timber immediately after the catastrophe. Included Timber is any that would not be eliminated under I.3.2. Potential Included Timber is any that would be added under I.3.2.”

Rate redetermination only happens after a final NEPA decision has been made because the redetermination and reappraisal is based on “what’s left” after the catastrophe. Because no decision has been made yet, a rate redetermination and reappraisal has not been done for this project. Upon rate redetermination, the Forest would then take the next step in the process, which is to propose modification of the existing Roan and Eques contracts. This is provided for in the contract provision of “I.3.2. Modification for Catastrophe” which states that “In event of Catastrophic Damage, Forest Service, in consultation with Contractor, shall outline on Contract Area Map:

- (a) Any areas of catastrophe-affected live and dead timber meeting Utilization Standards and having undesignated timber so situated that it should be logged with the designated timber;
- (b) If needed, any such areas where the damaged undesignated timber can reasonably be logged separately; and

(c) Areas of affected or unaffected timber that are to be eliminated from Contract Area.

Forest Service shall locate and post the boundaries of all such areas, as needed.

After Contract Area Map has been outlined under this Subsection, Forest Service map propose contract modification to permit the harvest of catastrophe-affected timber. If Contractor accepts Forest Service proposed modifications, this contract shall be modified to include rates redetermined under D.3.2 and other related revisions as necessary, such as revision of Operating Schedule to ensure prompt removal of affected timber when necessary to avoid further loss and provision for additional contract time, if needed.”

The final step in the process is for the Contractor to either accept or reject the proposed modifications under provision I.3.2, which allows the Forest Service and purchaser to modify the contract following a catastrophe. As the objector states, contract provision I.2.2 Termination for Catastrophe, allows for termination of the contract by either the Contractor or Forest Service. However, as explained previously, this provision only applies if the purchaser rejects the Modification for Catastrophe based on the rate redetermination that has yet to be completed. Under the contract, the Forest Service is required to assess the effects of the fire on the timber that is included in the contract area, which is occurring through the 2014 North Fork Mill Creek Revised Project EA.

Objector Statement #4: Objector states that the IRTC allows for modification for changed conditions (IRTC I.3.1), which they believe is appropriate for this project, which had the explicit purpose of fuels reduction. Objector believes that since conditions have changed due to fire, the completion of logging would no longer serve the intended purpose. Bark at 5 and 12. Objector believes that the Forest’s interpretation of the changed condition, which the agency limits to changes in law, regulation or policy, is erroneous, as the objector asserts that the clause specifically refers to changes in physical conditions, not legal framework. As such, the objector believes that the Forest should have used that provision to modify the contract. Bark at 5.

Response: I find that the Forest is correctly utilizing provision I.3.2. Modification for Catastrophe, and that the Forest’s interpretation of changed conditions is correct.

Objector cites the DN at 10 and states that the Forest should have applied the changed conditions provision I.3.1 of the IRTC. In the DN at 10, the Responsible Official stated that this provision is typically used when conditions change because of law, regulation or policy, rather than catastrophic acts, which falls under provision C.1.3.3. The Responsible Official is correct in that catastrophic acts are explicitly provided for under provision C.1.3.3 (which explicitly deals with “Timber specifications”) and I.3.2 (which deals with “Other Conditions”). The Responsible Official is correct in citing provisions C.1.3.3 and I.3.2.

The contract states “I.3 Contract Modification. The conditions of this contract are completely set forth in this contract. Except as provided in I.3.2 and I.3.3, this contract can be modified only by written agreement between the parties. Only Contracting Officer may make contract modifications, with compensating adjustments to Current Contract Rates where appropriate, on behalf of Forest Service.

I.3.1 Changed Conditions. When it is agreed that the completion of certain work or other requirements hereunder would no longer serve the purpose intended because of substantial change in the physical conditions of Contract Area or Included Timber since the date of this contract the requirements shall be waived in writing. The estimated cost of such waived work or other requirement shall be charged to Integrated Resource Account.

I.3.2. Modification for Catastrophe. In event of Catastrophic Damage, Forest Service, in consultation with Contractor, shall outline on Contract Area Map:

(a) Any areas of catastrophe-affected live and dead timber meeting Utilization Standards and having undesignated timber so situated that it should be logged with the designated timber;

(b) If needed, any such areas where the damaged undesignated timber can reasonably be logged separately; and

(c) Areas of affected or unaffected timber that are to be eliminated from Contract Area.

Forest Service shall locate and post the boundaries of all such areas, as needed.

After Contract Area Map has been outlined under this Subsection, Forest Service map propose contract modification to permit the harvest of catastrophe-affected timber. If Contractor accepts Forest Service proposed modifications, this contract shall be modified to include rates redetermined under D.3.2 and other related revisions as necessary, such as revision of Operating Schedule to ensure prompt removal of affected timber when necessary to avoid further loss and provision for additional contract time, if needed.”

Changed conditions under I.3.1 are typically used when specific work associated with the contract may not be needed (e.g., reducing fuel loading to an end result of 8 to 10 tons per acre) or by other physical changes that may occur outside of catastrophic changes, which are specifically included in contract provision I.3.2, Modification for Catastrophe, to deal with fires and damage by natural causes on the contract area. See response to Objector Statement #3 regarding contract provision I.3.2.

Objector Statement #5: Objector states that the IRTC has an additional provision (IRTC I.3.3(a)(1)) that allows the Forest to modify the contract to prevent environmental degradation or resource damage and that this provision should have been use to protect the spotted owl from the impacts of this project. Bark at 5. Objector asserts that there is no legal basis for the Forest to suggest that the only way to comply with the contract is to offer a post-fire sale. Objector states that “Obviously, conditions have changed, the original purpose of the project is no longer valid, and the ecological impact of the logging will be far greater in the recently burned area. These are precisely the conditions for which these contract clauses were created, and should be used as such.” Bark at 5 and 6.

Response: I find that the Forest correctly applied contract provisions to ensure protection of the environment and to prevent resource damage.

Contract provision I.3.3(a)(1), Contract Suspension and Modification, allows the Contracting Officer to “delay or interrupt authorized operations under this contract or modify this contract, in whole or in part: (i) To prevent environmental degradation or resource damage, including, but not limited to, harm to habitat, plants, animals, cultural resources, or cave resources.”

As stated previously, the Forest prepared the revised EA to respond to the changed conditions. Certain units are proposed to be eliminated based on these changed conditions, resulting in protection of the environment and compliance with the Forest Plan. EA at 1-10. Changes to the contracts will be done using the contract modification provision of 1.3 as previously stated.

The objector asserts that the Forest is not fully protecting the Northern spotted owl. Because of the fire, the Forest reinitiated consultation with the U.S. Fish and Wildlife Service on August 22, 2014 (Objection record, Reinitiation of Formal Consultation). The draft DN/FONSI documents that the selected alternative may affect and is likely to adversely affect Northern spotted owls and their critical habitat; although the rationale has changed, this is the same effects determination that was made with the original 2008 EA. Draft DN/FONSI at 18. The Draft DN/FONSI notes that consultation has been reinitiated and will be completed prior to signing any decision for this project. Since publication of the legal notice of objection, the biological opinion (BO) from the U.S. Fish and Wildlife Service has been received and is located in the project record. The cover letter of the BO summarized the conclusion made by the U.S. Fish and Wildlife Service that the activities proposed by the Forest would not jeopardize the continued existence of spotted owls, nor would it adversely modify spotted owl critical habitat. Project Record, U.S. Fish and Wildlife Service 2014 Biological Opinion Cover Page.

Two terms and conditions and one conservation recommendation was included in the BO. Under the Terms and Conditions, the Forest is required to: “1) Monitor project implementation to ensure that actual levels of effects do not exceed the effects anticipated by this BO” and “2. Complete a project implementation and monitoring form to show actual levels of effect at the end of each calendar year. This form shall be forwarded to the Service by the Mt. Hood NF to fulfill the monitoring report requirements. Monitoring completes the regulatory requirements of the ESA by documenting the actual effects to the subject species.” Project Record, U.S. Fish and Wildlife Service 2014 Biological Opinion at 32. In addition, the U.S. Fish and Wildlife Service stated that they believe that the following conservation recommendation will reduce the impact of the proposed action on nesting spotted owls within the action area: 1. Delay activities that may disturb spotted owls as late as possible into the nesting season.” Project Record, U.S. Fish and Wildlife Service 2014 Biological Opinion at 33. Further, the U.S. Fish and Wildlife Service requested that they be notified regarding implementation of the conservation recommendation.

Because the BO was received after the draft DN/FONSI was circulated, I direct the Forest Supervisor to include the U.S. Fish and Wildlife Service’s terms and conditions and conservation recommendation in her final decision. The receipt of the BO and the inclusion of the terms and conditions and conservation recommendation fully protect the Northern spotted owl and comply with the requirements of the Endangered Species Act.

Final Remedies/Resolution: With regard to the contract provisions, I believe it would be helpful for the Responsible Official to fully outline the provisions that have been and will be utilized for the Roan and

Eques contracts. In addition, because the BO was received after the draft DN/FONSI was circulated, I direct the Forest Supervisor to include the U.S. Fish and Wildlife Service's terms and conditions and conservation recommendation in her final decision. No other resolution or remedy is suggested.

Economic Analysis

Overview and Suggest Remedies/Resolution: This objection issue is focused on the lack of an economic analysis to support the decision. Suggested remedy is to include the analysis or cancel the contracts.

Objector Statement #6: Objector states that the project is not being planned for ecological reasons, but is being proposed for economic reasons. Objector questions why there is no economic analysis to support this primary purpose of the project. Bark at 6. Objector asks when the trees will be logged, if the trees are decreasing in value; questions how many acres must be logged in order for the economics to work out; and asks why the contracts can only be fulfilled by Alternative 2. Bark at 6. Objector states that the Forest implied that Alternative 3 is not viable economically, but does not answer the questions that they have asked. Bark at 6.

Response: I find the Forest followed laws, policy and direction in seeking comments and analyzing the effects of issues raised from the comment period.

The regulation at 36 CFR 218.8(c) requires that issues raised in objection must be based on previously submitted specific written comments regarding the proposed project or activity and attributed to the objector, unless the issue is based on new information that arose after the opportunities for comment. The regulation at 36 CFR 218.8(d)(6) requires the objector to make a statement that demonstrates the connection between prior specific written comment on the proposed project or activity and the content of the objection, unless the objection concerns an issue that arose after the designated opportunity(ies) for comment.

A review of the record shows that no commenter had requested an economic analysis previously, nor does the objector claim that this objection issue is based on new information. During the notice and comment period for this project, the objector and other commenters did not raise this issue; as such, the objection regulations do not require a written response to this objection statement. 36 CFR 218.10(a)(4).

In spite of this deficiency on the part of the objector, I will provide information that is responsive to the objector's statement regarding the economic analysis. The contractual and economic obligations cited by the Responsible Official are based on the terms of the contract, which are part of the Project Record. The "economics" of the project are entirely based on the final economic value of the timber, which will be determined during the reappraisal, rate redetermination and contract modification phases. The IDT conducted a changed condition analysis to determine what acres and units could be implemented, while meeting all law, regulation and policy. This changed condition analysis included salvage logging on the moderate to high severity burned areas. The intent was to consider all the acres impacted by the fire in order to attempt to fulfill all the contractual obligations. Forest Response to EA Objection at 5.

The Forest described and analyzed Alternative 3 based on issues raised during comments received. The decision maker does not imply that the alternative is not economically viable; instead, she did not choose Alternative 3 because she believed that it did not go as far as Alternative 2 in fulfilling the

contractual obligations that the Forest has with the purchasers of the Roan and Eques contracts. EA at 2-3 through 2-21; EA at Chapter 3; Draft DN/FONSI at 9 through 12.

Final Remedies/Resolution: After the decision, the Forest will reappraise the area and conduct a rate redetermination to determine the final value of the contract, which will be modified and offered to the purchasers. While this does not resolve the concern raised by the objector, it is the next step in the process of determining modifications that may be proposed to the existing contracts.

Impacts of Post-Fire Logging to the Northern Spotted Owl

Overview and Suggest Remedies/Resolution: This objection issue is focused on the impacts of post-fire logging to the Northern spotted owl. Suggested remedy is to cancel the contracts.

Objector Statement #7: Objector states that the project takes place in critical habitat for the Northern spotted owl and that this project will degrade or remove critical habitat, and that this loss of habitat is a significant cumulative effect to the species. Bark at 9 and 10.

Response: I find that the Forest analyzed the effects of the project on Critical Habitat for Northern spotted owls, resulting in an Endangered Species Act determination of “may affect, and is likely to adversely affect spotted owl critical habitat” for alternatives 2 and 3. EA at 2-30 and 3-25 through 3-30.

Section 4(b)(2) of the Endangered Species Act of 1973 states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. Under the Endangered Species Act, designations and revisions of critical habitat can only be completed through rulemaking. Revised Critical Habitat for Northern Spotted Owls was designated December 4, 2012 as a Final Rule in the Federal Register. Volume 77, No. 233, Final Rule 20 CFR 17.

In an EA, the regulation at 36 CFR 220.7(b)(3)(iv) requires a discussion of effects of the proposed action and any alternatives. Direct effects are those effects which are caused by the action and occur at the same time and place. FSH 1909.15(5). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. FSH 1909.15(5). NEPA regulations at 36 CFR 220.4(f) define the nature and scope of the cumulative effects analysis. Cumulative effects are defined as the impact that results from the action when added to other past, present, and reasonably foreseeable future actions. The direction states, “The analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for agency action.”

The EA at 3-27 states that the proposed project falls within subunit 7 of the East Cascades North unit of Critical Habitat for Northern spotted owls. The EA at 3-25 through 3-30 discusses the direct, indirect and cumulative effects to Critical Habitat using analysis methods described in the Final Critical Habitat Rule (Federal Register December 4, 2012, Volume 77, No. 233 p. 71939), concluding that Alternatives 2 and 3 may affect, and are likely to adversely affect spotted owl critical habitat. EA at 3-29 and 3-30.

Furthermore, the U.S. Fish and Wildlife Service Biological Opinion at 32 (Objection Record, Biological Opinion Regarding the Effects of Habitat Modification Activities within the North Fork Mill creek Planning Area, Proposed by the Mt. Hood National Forest; on the Northern Spotted Owl (*Strix occidentalis caurina*), and its Critical Habitat (FWS Reference Number 01EOFW00-2014-F-0253))

concluded that the activities as proposed (in alternative 2) are not likely to adversely modify spotted owl Critical Habitat, given the limited scope of effects to critical habitat (15 acres salvaged) that is outside of core areas. See also response to Objector Statement #5.

Objector Statement #8: Objector states that the cumulative impacts section of the EA was vague, contained a “mere listing of projects, with no additional information” and as such, is not a sufficient analysis. Bark at 9. Objector states that the EA did not provide the public with enough information to assess the cumulative impacts of incremental habitat loss on threatened owls. Bark at 9.

Response: I find that the EA analyzed cumulative effects to spotted owls in the EA at 3-24 and 3-28 through 3-29 and in the 2008 North Fork Mill Creek Restoration Opportunities EA at 3-132, which is incorporated by reference. Objection Record, North Fork Mill Creek Restoration Opportunities Environmental Assessment, December 2008 at 3-132.

The regulation at 36 CFR 220.4(f) defines the nature and scope of the cumulative effects analysis. Cumulative effects are defined as the impact that results from the action when added to other past, present, and reasonably foreseeable future actions. The direction states, “The analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for agency action.”

Cumulative effects to dispersal habitat, suitable habitat and snags are discussed in the revised EA at 3-22, 3-23 and 3-24 and in the 2008 EA at 3-132. Objection Record, North Fork Mill Creek Restoration Opportunities Environmental Assessment, December 2008. Cumulative effects to Critical Habitat for Northern spotted owls are discussed in the revised EA at 3-28 through 3-29. Because the project area was not designated as critical habitat for Northern spotted owls in 2008, the 2008 EA does not discuss critical habitat.

The project considered for cumulative effects in the 2008 EA (at 3-132) is The Dalles Watershed Fuel Break project, which cumulatively with the North Fork alternatives would impact spotted owl habitat negatively through loss and degradation of suitable habitat and degradation of dispersal habitat. Projects considered as future actions for cumulative effects in the 2014 revised EA (at 3-22, 3-24, 3-28 and 3-29) are private land timber harvest, the remaining North Fork Mill Creek stewardship projects and The Dalles Watershed Fuel Break project. As stated in the EA, the effects of all of these projects on the Northern spotted owl would not prevent them from foraging or dispersing throughout the watershed. EA at 3-22 and 3-23. The other projects listed in the EA would not affect snags; as such, there would be no cumulative effects to owls from snag removal. EA at 3-23.

Changed habitat conditions were also analyzed in the Biological Assessment, in the revised environmental baseline, which was updated to reflect habitat loss associated with the Government Flats Complex Fire. Objection record, Reinitiation of Formal Consultation at 6. In addition to the information found in the Biological Assessment, the U.S. Fish and Wildlife Service also assessed the potential for cumulative effects to owls and found that the potential for this project to contribute to cumulative effects to critical habitat was minor, given the project’s scope and scale (15 acres of suitable habitat and 70 acres of dispersal habitat) in critical habitat. Specifically, the U.S. Fish and Wildlife Service stated that “these impacts are not expected to reduce the potential of critical habitat to support spotted owl territories. Objection Record, Biological Opinion Regarding the Effects of Habitat Modification Activities within the North Fork Mill Creek Planning Area, Proposed by the Mt. Hood National Forest; on the Northern Spotted Owl (*Strix occidentalis caurina*) and its Critical Habitat at 28 through 31. Furthermore,

the U.S. Fish and Wildlife Service noted that while one territory will be adversely affected, its current condition is “very low, due to the lack of suitable habitat this is supporting the territory post-fire...” Objection Record, Biological Opinion Regarding the Effects of Habitat Modification Activities within the North Fork Mill Creek Planning Area, Proposed by the Mt. Hood National Forest; on the Northern Spotted Owl (*Strix occidentalis caurina*) and its Critical Habitat at 29.

Because the BO was received after initiation of the objection filing period, I instruct the Forest Supervisor to include the cumulative effects information in the BO in her final decision in order to further clarify why there are no measureable cumulative effects to Northern spotted owl.

Objector Statement #9: Objector states that for the suitable habitat discussion, the Forest “massively inflated the analysis area to the entire subunit scale, effectively minimizing the impacts from loss of suitable habitat to none.” Bark at 10.

Response: I find that the Forest analyzed effects to suitable habitat at the stand level, critical habitat subunit and unit level, and range-wide levels consistent with direction and guidance found in the 2012 Revised Critical Habitat Rule at 71939 (Federal Register Volume 77, No. 233, Final Rule 20 CFR 17) and the Biological Opinion for the project (Objection Record, Biological Opinion Regarding the Effects of Habitat Modification Activities within the North Fork Mill Creek Planning Area, Proposed by the Mt. Hood National Forest; on the Northern Spotted Owl (*Strix occidentalis caurina*) and its Critical Habitat at 13 through 14).

The 2012 Revised Critical Habitat Rule at 71939 discusses the scale of analysis at which evaluation of actions that may affect critical habitat for the northern spotted owl should occur. The 2012 rule identified a 500-acre (200-hectare) circle as a logical scale for determining the effects of a timber sale to critical habitat because research shows northern spotted owls respond more favorably to an area larger than a single tree when choosing where to live.

The rule further states that, when making a determination as to whether an action is likely to adversely affect critical habitat, it is not possible to design a “one size fits all” set of rules due to differences in project types, habitat types, and habitat needs across the range of the species. Fontaine and Kennedy 2012 at 1559, in Critical Habitat Rule at 71939. This determination should be conducted at a scale that is relevant to the northern spotted owl life-history functions supplied by the Primary Constituent Elements (PCEs) and affected by the project. The rule notes that this more localized scale differs from that used in determining whether an action will destroy or adversely modify critical habitat, which is made at the scale of the designated critical habitat. Northern spotted owl critical habitat PCE 4 (habitat to support the transience and colonization phases of dispersal) provides a life-history need that functions at a landscape-level scale and should be assessed at a larger scale than the other PCEs. Potential scales of analysis include the fifth-field watershed or subwatershed, a dispersal corridor, or a relevant landform. Both PCE 2 (habitat that provides for nesting and roosting) and PCE 3 (habitat that provides for foraging) provide life-history needs that function at a more localized landscape, which should help inform the scale at which the determination of whether an action will likely adversely affect critical habitat should be conducted. Finally, the rule encourages local level one consultation teams to tailor the scale of the effects determination to the localized biology of the life-history needs of the owl.

The revised Biological Opinion from the U.S. Fish and Wildlife Service for the project (Objection Record, Biological Opinion Regarding the Effects of Habitat Modification Activities within the North Fork Mill Creek Planning Area, Proposed by the Mt. Hood National Forest; on the Northern Spotted Owl (*Strix*

occidentalis caurina) and its Critical Habitat at 13 through 14) states that their analysis for determination of jeopardy to spotted owls places an emphasis on using the range-wide survival and recovery needs of the spotted owl and the role of the action area in meeting those needs as the context for evaluating the effects of the proposed federal action with other relevant effects. A non-jeopardy determination is warranted if the proposed action is consistent with maintaining the role of habitat and the spotted owl population in the action area for the survival and recovery of the spotted owl. Jeopardy determination is made at the *range-wide* scale of the spotted owl.

Analysis for determination of adverse modification of Critical Habitat emphasizes using the intended range-wide and provincial scale recovery functions of spotted owl Critical Habitat and the role of the action area relative to those intended functions as the context for evaluating the effects of the proposed federal action with other relevant effects. A non-adverse modification determination is warranted if the proposed action is consistent with maintaining the intended recovery role of spotted owl Critical Habitat in the action area. An adverse modification determination is made at the *provincial* scale of the spotted owl Critical Habitat.

Effects to suitable habitat (nesting, roosting and/or foraging habitat, PCEs 2 and 3) were considered at the stand scale and at the critical habitat subunit ENC-7, critical habitat unit and range-wide scales (EA at 3-20 and 3-28; Objection Record, Reinitiation of Formal Consultation at 10 and 12). This is consistent with the direction and guidance found in the Critical Habitat Rule and the Biological Opinion for the project. The U.S. Fish and Wildlife Service concurred with the Forest's analysis for spotted owls and Critical Habitat, concluding that the activities, as proposed, are not likely to jeopardize the continued existence of the spotted owl and are not likely to adversely modify spotted owl critical habitat. Project Record, U.S. Fish and Wildlife Service 2014 Biological Opinion Cover Page.

Objector Statement #10: Objector states that the Forest did not comply with the revised Recovery Plan's recommendation to retain more occupied spotted owl sites and unoccupied high value spotted owl habitat on all lands. Bark at 10. Objector further states that the EA did not include or comply with the Recovery Plan's recommendation for management in post-fire areas, and that the EA is misleading by asserting that the project is consistent with the Spotted Owl Recovery Plan. Bark at 10 and 11.

Response: I find that the Forest complied with the revised Recovery Plan recommendations.

Recovery plans describe reasonable actions and criteria that are considered necessary to recover listed species, and are approved and published by the U.S. Fish and Wildlife Service, the regulatory agency for Endangered Species Act compliance. The U.S. Fish and Wildlife Service evaluated the effects of the North Fork Mill Creek Revised Project relative to the Recovery Plan for the Northern Spotted Owl in the biological opinion for the project (Objection Record, Biological Opinion Regarding the Effects of Habitat Modification Activities within the North Fork Mill Creek Planning Area, Proposed by the Mt. Hood National Forest; on the Northern Spotted Owl (*Strix occidentalis caurina*) and its Critical Habitat at 27). The Biological Opinion concluded that "*The proposed project is consistent with the current Recovery Plan for northern spotted owl.*"

The Service further stated that, in particular the project conforms to Recovery Actions 10 (conserve spotted owl sites and high value spotted owl habitat), 12 (post-fire silvicultural activities should concentrate on conserving and restoring habitat elements that take a long time to develop such as large trees, medium and large snags, downed wood), and 32 (maintain and restore structurally complex

habitat while allowing for other threats such as fire and insects to be addressed by restoration management actions).

For Recovery Action 10, conserve spotted owl sites and high value spotted owl habitat, the Biological Opinion notes that *“though the proposed project was designed to minimize impacts to spotted owls, forest management activities are likely to diminish a home range’s capability to support spotted owl occupancy, survival and reproduction, that conflicts with Recovery Action 10”* and that *“the one territory that will be impacted to an extent that will adversely affect the habitat’s ability to support the territory is prioritized low for conservation, due to the lack of suitable habitat that is supporting the territory post-fire (8% in the home range and 17% in the core). Treatments occurring are not designed to have spotted owl benefits, but suitable habitat treatments are limited to 15 acres and will not occur within the core area.”* Treatments would also reduce dispersal habitat by 70 acres and foraging habitat by 280 acres. Objection Record, draft Decision Notice at 18.

For Recovery Action 12, the U.S. Fish and Wildlife Service noted that the treatments are not designed to have spotted owl benefits, but that the treatments in suitable habitat were limited to 15 acres, which are outside of core areas. Objection Record, Biological Opinion at 28.

For Recovery Action 32, the U.S. Fish and Wildlife Service documented that no treatments would occur in recovery action 32 stands. Objection Record, Biological Opinion at 28.

Thus, the agency in charge of overseeing recovery of the Northern spotted owl fully considered impacts to the Northern spotted owl in context of the recovery plan and concluded that the minor impacts expected from the North Fork Mill Creek Revised Project were consistent with the goals and objectives of the recovery plan.

Objector Statement #11: Objector states that the draft finding of no significant impact (FONSI) *“provides no compelling reason of why these adverse effects will not have a significant impact to threatened owls when assessed cumulatively with the impacts of the fire, private lands logging, past public lands logging, and present and future logging in the same Critical Habitat subunit.”* Bark at 12.

Response: I find that the draft FONSI adequately explained the reasons for the determination of no significant impact to spotted owls.

The regulation at 40 CFR 1508.27(b)(9) requires that the Responsible Official consider the degree to which the action may adversely affect an endangered or threatened species or its critical habitat. The draft FONSI states that *“the selected alternative will impact 70 acres of dispersal habitat and 15 acres of suitable habitat for northern spotted owls.”* The selected alternative may affect, and is likely to adversely affect (LAA) northern spotted owls and northern spotted owl critical habitat. Draft DN/FONSI at 18.

These effects are discussed at the stand level, core area, and home range scale for spotted owls in the EA (at 3-20 through 3-23) for critical habitat at the subunit scale (EA at 3-27 through 3-29), in the 2008 EA (North Fork Mill Creek Restoration Opportunities Environmental Assessment, December 2008 at 3-131 through 3-132), revised biological assessment (objection record, Reinitiation of formal consultation for a proposed project with Signature at 6-14), and the Biological Opinion (Objection Record, Biological Opinion Regarding the Effects of Habitat Modification Activities within the North Fork Mill Creek

Planning Area, Proposed by the Mt. Hood National Forest; on the Northern Spotted Owl (*Strix occidentalis caurina*) and its Critical Habitat at 22 through 26 and 28 through 29).

Cumulative effects were assessed in each of the above documents (see Objector Statement #8). The Biological Opinion states that “*although the Service is lacking information on spotted owls or spotted owl habitat for non-federal lands within the action area, non-federal lands within the Mt. Hood NF boundaries usually only support marginal habitats, and do not notably contribute to the viability of the spotted owl.*” Objection record, Biological Opinion Regarding the Effects of Habitat Modification Activities within the North Fork Mill Creek Planning Area, Proposed by the Mt. Hood National Forest; on the Northern Spotted Owl (*Strix occidentalis caurina*) and its Critical Habitat at 29.

The Biological Opinion concluded that after reviewing the current status of the spotted owl, the environmental baseline for the action area, the effects of the proposed action on the spotted owl and its critical habitat, and the cumulative effects, that the project activities are not likely to jeopardize the continued existence of the spotted owl and are not likely to adversely modify spotted owl critical habitat. Objection record, Biological Opinion Regarding the Effects of Habitat Modification Activities within the North Fork Mill Creek Planning Area, Proposed by the Mt. Hood National Forest; on the Northern Spotted Owl (*Strix occidentalis caurina*) and its Critical Habitat at 30.

These conclusions were reached by the Fish and Wildlife Service because:

1. The conservation needs of the owl would continue to be met at the subunit, unit, provincial and range-wide scale because the proposed action will conform to the guidance of the Recovery Plan for the Spotted Owl.
2. The project will not appreciably reduce the likelihood of survival or recovery of the spotted owl population, because dispersal of spotted owls will still be supported post treatment and that the one territory adversely impacted from 15 acres of suitable habitat being thinned is a territory that is not likely to be providing demographic support to the overall population due to the extremely low levels of suitable habitat remaining in the spotted owl site’s home range and core after the Government Flats Fire.
3. The conservation value of spotted owl critical habitat will not be significantly reduced at the subunit, unit, and range-wide scale because the proposed action will not significantly reduce the function of spotted owl critical habitat, which also provides for large blocks of breeding habitat throughout the range of the owl.

Objection record, Biological Opinion Regarding the Effects of Habitat Modification Activities within the North Fork Mill Creek Planning Area, Proposed by the Mt. Hood National Forest; on the Northern Spotted Owl (*Strix occidentalis caurina*) and its Critical Habitat at 30.

Thus, the very minor impact from removing 15 acres of suitable habitat was determined by the Responsible Official, with concurrence from the regulatory agency (the U.S. Fish and Wildlife Service) to not be significant.

Final Remedies/Resolution: As stated in response to Objector Statement #5, because the BO was received after the draft DN/FONSI was circulated, I direct the Forest Supervisor to include the U.S. Fish and Wildlife Service’s terms and conditions and conservation recommendation in her final decision. In addition, the BO helps support the conclusions in the EA and as such, I instruct the Forest Supervisor to include the cumulative effects information from the BO in her final decision in order to further clarify why there are no measureable cumulative effects to Northern spotted owl. No other resolution or remedy is suggested.

Original Premise of the Project

Overview and Suggest Remedies/Resolution: This objection issue is focused on Bark's concerns that salvage logging and replanting is contrary to the original fuels reduction goals of the project. Suggested remedy is to cancel the contracts.

Objector Statement #12: Objector states that salvage logging and replanting is contrary to the original project's goal of fire hazard reduction because post-fire logging tends to create continuous dense fuel conditions and studies (which represent new information) have shown that post-fire logging appears to increase the severity of subsequent wildfires. Bark at 12.

Response: I find that the 2014 North Fork Mill Creek Revised decision is consistent with the scope of the new environmental analysis and that the EA addressed the goals that were in the 2008 EA.

The FSH 1909.15(18) states that "...a new decision based on the supplemented or revised environmental documents must be consistent with the scope of the new environmental analysis." The regulation at 40 CFR 1502.13 requires that the purpose and need statement "shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."

The 2014 North Fork Mill Creek Revised EA was undertaken to assess the changed conditions to the landscape resulting from the Government Flats Complex Fire. The IDT used a flow chart (2014 North Fork Mill Creek Revised EA at 1-12, Figure 1-5) to address the question as to what should be considered in a changed condition analysis and what specific changes are needed to the original proposed action. The flow chart considers the desired future condition, status of work completed under the original NEPA, and consistency with Forest Plan standards and guidelines.

See response to Objector Statement #1. The existing condition for the planning area changed as a result of the wildfire. Thus, so did portions of the purpose and need for the revised EA, and the need to analyze new alternatives for how to reach the desired future condition. The purpose and need for the 2014 North Fork Mill Creek Revised EA does not focus on hazardous fuels reduction, and it is not being completed under the Healthy Forest Restoration Act. While the desired future condition for the area has not changed, the fire changed the area and as such, this project has different needs than those that were listed in the 2008 North Fork Mill Creek Restoration Opportunities Project. The 2014 North Fork Mill Creek Revised EA's overall purposes "are to meet the existing contractual and economic obligations within the existing Roan and Eques stewardship sales, to conduct a changed condition analysis to determine if changes to the original decision are required, and to improve safety on National Forest System roads within the burned area of the Government Flats Complex Fire. In order to meet these two primary purposes, the underlying needs of the North Fork Mill Creek Revised Project are to:

- Modify the existing stewardship contracts, including salvaging dead and dying trees;
- Improve the health and vigor of forested stands, including within Riparian Reserves;
- Reforest the desired tree species (where natural, on-site, seed sources are lacking) to aid in the accelerated development of forest conditions consistent with Forest Plan management objectives; and,
- Improve public, administrative and operational safety along Forest Service roads." 2014 North Fork Mill Creek Revised EA at 1-3.

The action alternatives and no action alternative in the 2014 North Fork Mill Creek Revised EA include a variety of treatment options to treat the current conditions that have resulted from the 2013 Government Flats Complex Fire, including restoration thinning for moderate to high severity burn areas, restoration thinning for low to no severity burn areas, hazard tree removal along roads, and reforestation (of units that have not met the desired future condition given the severity of the burn and anticipated natural regeneration). EA at 2-1 through 2-39.

The impacts of Alternative 2 – Proposed Action and Alternative 3 on the fuel loading are analyzed and disclosed in the 2014 North Fork Mill Creek Revised EA. The EA recognizes that harvest activities would increase fuel loading. However, each unit would have field reconnaissance after harvest activities have been completed to determine fuel loadings. If the fuels inventories indicate that the fuel loading is in excess of 10 to 26.7 tons/acre, the fuels would be treated through a variety of methods. Overall, the analysis found that the fire regimes and condition class would be maintained and moved toward historical levels. Vegetation would move towards conditions that would have occurred under a natural disturbance regime. The action alternatives would enhance the effectiveness of the neighboring fuels reduction projects. EA at 3-169 through 3-174.

Objector cites several publications that they believe represent new information. These publications have been reviewed and I find that they do not constitute new information that should be considered. Thompson et al. (2007) found that areas that burned severely in the 1987 Silver Fire tended to reburn at high severity in the 2002 Biscuit Fire (located primarily within the Rogue River-Siskiyou National Forest in southwest Oregon); whereas areas unaffected by the 1987 fire tended to burn at the lowest severities in 2002. Areas that were salvage logged and planted after the 1987 fire burned more severely than comparable unmanaged areas, suggesting that fuel conditions in conifer plantations can increase fire severity despite removal of large woody debris.

The activities proposed with this project are consistent with the underlying needs for this project to improve the health and vigor of forested stands (restoration thinning), reforest the desired tree species (planting), and improve public, administrative, and operational safety along Forest Service roads (hazard tree removal). The 2014 North Fork Mill Creek EA does not claim that project activities would result in reducing future fire severity in the treated stands. Consistent with the Mt. Hood National Forest Land and Resource Management Plan and the National Fire Plan, the project was revised to respond to changed conditions caused by the 2013 Government Flats Complex Fire. EA at 1-3 through 1-6, 1-14 through 1-15, 2-1 through 2-6, 2-11 through 2-15, and 3-169 through 3-174.

Mclver and Ottmar (2007) measured stand structure and fuel mass in a ponderosa pine-dominated forest before and after a post-fire logging operation conducted 2 years after the 1996 Summit Fire (located on the Malheur National Forest in northeastern Oregon). Post-fire logging decreased mean basal area and snags, total woody fuel mass increased, and ladder height, tree species composition, and mass of the forest floor (litter or duff) remained the same. Model projections of the fuel bed indicated that a moderate intensity re-burn occurring in the first 15 years post-treatment would likely kill all young trees in both logged and un-logged units due to the influence of other components of the fuel bed (e.g., grasses and shrubs). Model projections showed that 1000-h fuels would collapse quickly, with unlogged stands containing two to three-fold greater masses at 25 and 50 years post-logging, leading to much higher consumption rates of fuel in the event of a re-burn in the same place. Mclver and Ottmar 2007.

According to the EA, for hazard tree treatments, any slash exceeding Forest Plan standards and guidelines (FW-032 & FW-033) would be machine and/or hand-piled to reduce the resulting fuel loading.

For restoration thinning in the unburned and low severity restoration thinning units, target fuel loading is between 7 and 15 tons per acre. For restoration thinning in the moderate to high severity restoration thinning units that are 200 feet beyond roads, target fuel loading is between 10 to 20 tons per acre. 2014 draft DN at 5. Thus, by including treatments to reduce activity generated fuels, the Forest addressed the potential for high intensity re-burns to occur.

Final Remedies/Resolution: No resolution or remedy is suggested.