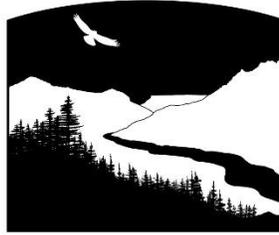




BARK
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**OREGON
WILD**

Formerly Oregon Natural Resources Council (ONRC)

11/03/2015

TO: Jim Peña, Regional Forester
RE: Lemiti Timber Sale Pre-decisional Objection

“The typical cycle of lodgepole pine succumbing to mountain pine beetle and then burning in stand replacing fires has likely occurred in this area for thousands of years.” – *Lemiti EA, Response to Comments, Appendix B-1.*

In accordance with 36 CFR 218, Bark hereby objects to the Environmental Assessment (“EA”) and draft Decision Notice for the Lemiti Timber Sale.

Responsible Official: Lisa Northrop, Forest Supervisor, Mt. Hood National Forest (“MHNF”)

Objection Period End Date: November 3, 2015

Location: Lemiti Butte, Clackamas River Ranger District, Mt. Hood National Forest

Objector’s Interests:

Lead objector Bark has a specific interest in this decision, which we have expressed through providing extensive comments during the scoping period, and again on the Preliminary Assessment, as well as leading public hikes to most units of the timber sale and engaging in public education about the sale.

Bark is a non-profit organization based in Portland, Oregon and has worked to protect the MHNF since 1999. Staff, members, volunteers, supporters, and board members of Bark live in the communities surrounding the MHNF and use and enjoy the Forest extensively for recreation, drinking water, hunting, fishing, general aesthetic enjoyment, family gatherings, viewing flora and fauna, gathering forest products, and other purposes.

Specifically, Bark members regularly visit many of the affected area for hiking, relaxing, bird watching, photography, spiritual renewal and family gatherings. The value of the activities engaged in by Bark members and staff will be damaged by the implementation of this project.

Objector Oregon Wild represents over 15,000 members and supporters who share in the mission to protect and restore Oregon's wildlands, wildlife, and water as an enduring legacy. Oregon Wild has a long history of involvement in the management of the Mt Hood National Forest and actively participated in the NEPA process for this project.

Objector Mt. Hood Forest Study Group is "an association of individuals devoted to the preservation of wilderness and ecosystem processes on the Mt. Hood National Forest since 1972." Mt. Hood Study Group members have extensively used the Lemiti Butte area, and submitted detailed comments on the Preliminary Assessment.

Requested Relief

In recognition that this project fails to comply with standards in the Northwest Forest Plan and Mt. Hood Forest Plan, ignores or misrepresents significant scientific findings that question the project's ability to meet the purpose and need, and has potentially significant environmental impacts, Objectors request that the Forest Service alter its decision, resulting in a project that will actually lead to the short and long term restoration and fire-resiliency of the Lemiti Butte area. Proposed changes to the project include:

- A thorough, unbiased review of the applicable science in the final decision, where the Forest Service explains the conclusions it has drawn from its chosen methodology, and the reasons it considers the underlying evidence to be reliable.
- An explicit commitment in the Decision Notice to enforce truly effective closures on roads built or rebuilt for this project when operations are not occurring;
- Establish a 21-inch diameter limit on cutting all green trees and snags within the fuel breaks and proposed treatment units;
- Remove Unit 22 and corresponding proposed road; and
- Remove Unit 14.

Bark, Oregon Wild and Mt. Hood Forest Study Group (“Objectors”)
submit this Objection for the following reasons:

1. FAILURE TO SUBSTANTIVELY ENGAGE OR RESPOND TO PUBLIC COMMENTS.

The Ninth Circuit Court of Appeals recently reaffirmed that informed public participation in reviewing environmental impacts is essential to the proper functioning of the National Environmental Policy Act. *League of Wilderness Defenders v. Connaughton*, No. 13-35653, May 8, 2014, citing *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (describing one of the purposes of NEPA as ensuring “that the relevant information will be made available to the larger audience that may also play a role in both the decision making process and the implementation of that decision”) and *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Comm’n*, 449 F.3d 1016,1034 (9th Cir. 2006) (noting that one purpose of NEPA is “ensuring that the public can both contribute to that body of information, and can access the information that is made public”).

As recognized by the U.S. Supreme Court, the very purpose of public issuance of NEPA assessment is to "provid[e] a springboard for public comment." *Pub. Citizen*, 541 U.S. at 768, 124 S.Ct. 2204. Objector Bark takes the role of helping create informed decision making seriously – a core tenet of its groundtruthing program is to visit affected sites, survey the conditions, and provide information to the Forest Service under the premise that better information creates better projects.

As noted in Bark’s PA comments, the Forest Service emphasized that the new pre-decisional objection process will increase the likelihood of resolving concerns by stakeholders in a more efficient and timely fashion. In this light, Bark requested more direct responses to public input, including changing the project to address our concerns, as this is the only way to maintain meaningful involvement in the decision making process for our public lands. *PA Comments at 2*. However, it seems that once again Bark sent all its information into a void.

The Forest Service released the Environmental Assessment and draft Decision Notice ***less than a week*** after the close of the comment period, with no changes to the project despite the extensive comments from many well-informed individuals and organizations including Objectors. This leads to, at the least, the perception that the Forest Service had the EA and draft Decision Notice already drafted and ready to release, and that the public comment period was merely a formality the agency had to follow.

Reading the Response to Comments enhances the feeling that the Forest Service was spectacularly uninterested in the public's input into the project – as the tone (and content) of the Response is dismissive at best. That not one substantive comment got positive reception is telling, as is the very rapid turn-around from PA to draft Decision Notice and FONSI. See *Lemiti EA, App. B - Response to Comments* (“Response”).

NEPA is meant to create the conditions for two-way communication: federal agencies disclose their information to the public, and the engaged public discloses its information back to the agency. This two-way disclosure is intended to improve the quality of information – and thus decisions – as well as creating a space for dialogue instead of adversarial actions. MHNH's approach to the NEPA process seems to have become more and more like a series of one-sided communications: “This is what we're doing, and this is the affect it has.” Recent pre-decisional objection meetings have had a similar tone – with the Forest Service resisting any possibility of negotiating changes to the project.

With 35,000 people on Bark's email list (each one stemming from a direct conversation in which the person affirmatively chose to become connected with Bark), it is safe to say that Bark represents many people who have a vested interest in the management of MHNH. However, instead of receiving Bark's comments with interest in how they might make the project better, we are left with the distinct impression that the Mt. Hood National Forest would rather not engage with the input of Bark staff and volunteers – including the many that have been to the Lemiti timber sale area and contributed to the PA comments. Similarly, Oregon Wild and Mt. Hood Study Goup provided very detailed comments regarding forest ecology and science that were also not engaged in a substantive manner, not incorporated into the draft decision.

This is an issue of policy we request the Forest Service to take seriously. The pre-decisional objection process was created to allow for more dialogue between stakeholders before a decision is made. In order for this to be a productive process, the Forest Service must be open to actively engaging the public's concerns and suggestions. This could help change our narrative that MHNH is not open to the public's input in its land-management decisions, to one where MHNH actually takes the intent of NEPA, to “ensur[e] that the public can both contribute to that body of information, and can access the information that is made public”, to heart and view the Objectors as allies – not obstacles – to better management of MHNH.

2. PINE BEETLES INFESTATIONS DO NOT CORRELATE WITH INCREASED FIRE FREQUENCY OR SEVERITY.

We object to the clear misrepresentation of the scientific findings on the correlation between beetle outbreaks and fire, and the lack of substantive engagement to the research provided in our comments.

Agencies violate NEPA when they fail to disclose that their analysis contains incomplete information. *N.C. Wildlife Fed'n v. NCDOT*, 677 F.3d 596, 598 (4th Cir. 2012), *citing N.M. ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 708 (10th Cir. 2009); *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005); *Sierra Club v. U.S. Army Corps of Eng'rs*, 701 F.2d 1011, 1030 (2d Cir.1983); *see also State Farm*, 463 U.S. at 43, 103 S.Ct. 2856 (holding that an agency acts arbitrarily and capriciously when it fails to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made").

In the face of conflicting science, the agency “must support its conclusions” and “must explain the conclusions it has drawn from its chosen methodology, and the reasons it considers the underlying evidence to be reliable.” *Lands Council v. McNair*, 537 F.3d 981, 994 (9th Cir. 2008) (en banc). The Lemiti Environmental Assessment does not comply with the spirit or letter of the law, as it either ignores or misrepresents the current body of scientific research regarding the relationship between beetle-killed trees and fire, and bases its decision on unsupported, anecdotal information.

Specifically as regards the most recent, comprehensive study on this topic, *Does wildfire likelihood increase following insect outbreaks in conifer forests?*¹ the EA misrepresents its findings. In the scientific summary, the Forest Service states only that “Meigs (2015) found a strong correlation between mountain pine beetle and additional acres burned in the west Cascades zone.” *EA at 56*. This omits the vast bulk of information in the study, takes one portion of the paper out of its larger context, and overinflates the study’s statistical findings.

Recognizing that “although Mountain Pine Beetle (MPB) effects on fuels and fire potential have been studied intensively, empirical evidence of linked disturbance interactions has been weak or lacking” and that “if insect outbreaks further increase wildfire likelihood, then these disturbance interactions have profound implications for forest management and policy,” the study undertook answering

¹ Meigs, G. W., J. L. Campbell, H. S. J. Zald, J. D. Bailey, D. C. Shaw, and R. E. Kennedy. 2015, *Ecosphere* 6(7):118.

the question: does wildfire likelihood increase following insect outbreaks in conifer forests? *Meigs, et al. at 4*. As answering this question in the affirmative is the premise of the Forest Service's Purpose and Need, this is clearly an important study to inform the final action.

However, this comprehensive study did **not** answer the question in the affirmative, finding that, "[t]here were no clear associations between fire likelihood and fire size (annual fire extent) for either insect [MPB or Spruce Bud Worm] at the ecoregional or regional scales." *Id.* at 8. The authors also distinguished their study from earlier studies on the same issue:

Whereas previous research has focused on individual insect outbreaks or wildfires at finer scales, this study presents a novel, landscape-and regional-scale synthesis across numerous insect and fire events. Bark beetles, defoliators, and wildfires all influence PNW forests, but they may not overlap consistently enough to facilitate linked disturbance interactions as defined by Simard et al. (2011). **Indeed, in recent decades across conifer forests of the PNW, there does not appear to be a consistent increase or decrease in wildfire likelihood following insect outbreaks.** *Meigs, et.al at 10.*

Bark summarized and cited this study in our comments, to which the Forest Service responds by stating that "Bark did not provide the documents cited". *Response at B-5*. With this dismissal, the Forest Service avoids addressing the substance of Bark's comments; however, to the best of our understanding, at the comment stage of the NEPA analysis, a commentor is not required to provide the actual study that they are referencing. That is a requirement of the post-decision objection process, and you will find the referenced study attached. As this is the most applicable study to the Lemiti Purpose and Need, Bark posits that it is in the Forest Service's best interest to read and accurately represent the entire findings of this study. It is also necessary to comply with NEPA's clear direction to provide **complete** information.

The EA similarly misrepresented the conclusions of the recent study, *Influence of recent bark beetle outbreak on fire severity and postfire tree regeneration in montane Douglas-fir forests*.² The EA seemingly removes one small part of the study out of its greater context, and only includes that in the scientific summary.

²Harvey, B. J., D. C. Donato, W. H. Romme, and M. G. Turner. 2013. *Ecology* 94:2475–2486.

This is, at best, sloppy analysis. One could also say it is deliberately misleading and certainly not something that should be condoned.

Taken as a whole, this study asked the question: “whether post-outbreak wildfires will be more severe than those in undisturbed forests?” which it recognized as “an issue unresolved by studies to date.” Looking at wildfires that have recently burned some post-outbreak forests “provid[ed] ideal opportunities to evaluate the potential for linked or compound disturbance interactions between bark beetle outbreaks and fire.” The study’s sampling design looked at 85 sample stands across a wide range of fire severity and concluded that **the lack of relationship between beetle outbreak severity and subsequent fire severity indicates that these disturbances were not linked.** Instead, the authors found that greatest factors on fire severity were burning conditions (reflective of weather at the time of burning) and slope position.

Yet another paper relied on by the Forest Service comes to a conclusion that does not support its purpose and need: Simard (2010), states that “[o]ur results suggest that mountain pine beetle outbreaks in Greater Yellowstone **may reduce the probability of active crown fire** in the short term by thinning lodgepole pine canopies.” The fact that at least three of the studies the Forest Service cites to support its Purpose & Need actually *refute* the agency’s findings is concerning, to say the least.

In an article just released on October 14, 2015, *In Defense of the Bark Beetle*, Dr. Chad Hanson summarized many of the studies included in Bark's comments, and concludes: "[I]n short, the issue has been studied very extensively, and the **overwhelming weight of scientific evidence from actual field research concludes that bark beetles do not seem to increase fire spread and intensity.**"

Scientific consensus simply does not support the claims that the Forest Service is making in the Lemiti EA. It is arbitrary and capricious of the Forest Service to disregard, or misrepresent, the body of science that contradicts its proposal. NEPA "emphasizes the importance of coherent and comprehensive up-front environmental analysis to ensure informed decision making to the end that the agency will not act on incomplete information." *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1166 (9th Cir. 2003).

The Response suggests that “[l]ocal fire experts have examined the site-specific situation and have found that treatments in the Lemiti area are warranted given the conditions of the fuels, the imminent falling of trees in jackstrawed patterns, the ingrowth of saplings and the proximity to the Confederated Tribes of Warm

Springs Reservation.” *Response at B-5*. Bark appreciates the value of local ecological knowledge, however the Forest Service cannot discount the contrary findings of “academic science.” Nor should the Forest Service rely only on local knowledge that supports the Forest Service’s plans, while ignoring contrary local knowledge such as that offered by the Mt. Hood Study Group.

In addition, where is the publicly reviewable report by the “local fire experts,” so that the public knows *who* is providing expert advice and *what* data underlies their opinions? Failing to provide such information runs counter to established NEPA law and policy. As the courts have found, again and again, while the conclusions of agency experts are surely entitled to deference, NEPA documents are inadequate if they contain only narratives of expert opinions. *Klamath Siskiyou Wildlands Center v. Bureau of Land Management*, 387 F.3d 949 (9th Cir. 2004), citing *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1150 (9th Cir.1998) (“[A]llowing the Forest Service to rely on expert opinion without hard data either vitiates a plaintiff’s ability to challenge an agency action or results in the courts second guessing an agency’s scientific conclusions. As both of these results are unacceptable, we conclude that **NEPA requires that the public receive the underlying environmental data from which a Forest Service expert derived her opinion.**”(emphasis added).

3. THIS PROJECT IS INTERNALLY INCONSISTENT.

The bulk of this project is located in the Matrix, which is given as a primary reason that active management is needed in the area. The Matrix land allocation has primary or secondary goals of maintaining healthy stands and providing forest products through a variety of timber management practices. *Lemiti EA*, at 6. This designation seems to be in conflict with the known natural cycles of the area, and creates an internally inconsistent narrative thread throughout the EA and Response to Comments.

This Response is exemplary of this inconsistency: “The fire science is well understood. Stand replacing fires typically occur every 100 years in this fire regime. Local fire experts recommend fuel reduction treatment as soon as possible to address a problem that is widespread across the west. Fire behavior has been so extreme that it is not prudent to delay treatment in the face of such heavy fuel loads.” (s. 3.1) *Response at B-4*

Let us get this straight: the known fire regime in the area is for a stand replacing fire every 100 years. The area currently has a high fuel build up, and is likely to

experience a stand replacing fire, which seems to be right on schedule. Is this the "problem that is widespread across the west"? Forests burning in their historic fire patterns? The comment seems to state that the heavy fuel load will result in an "extreme" fire - but isn't this what a stand replacing fire is?

Reading it this way, it appears that the Forest Service is actually planning to disrupt the natural fire regime and force something unnatural onto the area. The Forest Service says it *has to* because the Forest Plan designates the area as "matrix" so fire must be suppressed. It seems that an area with a known 100-year stand replacing fire interval does not make for good timber growing, and the Forest Service should focus its logging projects on more productive matrix lands.

4. THIS PROJECT INCLUDES UNNECESSARY IMPACTS TO ROADLESS AREAS FROM (AMONG OTHER THINGS) POTENTIAL UNAUTHORIZED ACCESS

If this project is implemented as planned, areas at Lemiti Butte which are currently unroaded and undeveloped would have stumps, skid trails, temporary roads and other impacts of active management as a result of 7.3 miles of roadbuilding. Both Bark and Oregon Wild advocated for less road building and re-building in the implementation of this project.

As raised in Bark's PA comments, it is well established that roadless areas generally have lower potential for high-intensity fires than roaded areas in large part because they are less prone to human caused ignitions^{3 4 5}. Wildland fire ignition is *almost twice as likely to occur in a roaded area* as in a roadless area, and the median size of large fires on national forests is greater outside of roadless areas.

³ DellaSala, D.A.; Olson, D.M.; Barth, S.E.; Crane, S.L.; Primm, S.A. 1995. Forest health: Moving beyond the rhetoric to restore healthy landscapes in the inland Northwest. *Wildlife Society Bulletin* 23(3): 346-356.

⁴ USDA Forest Service. 2000. Forest Service roadless area conservation. Draft environmental impact statement. Vol. 1. Washington, DC: USDA Forest Service.

⁵Weatherspoon, C.P.; Skinner, C.N. 1996. Landscape-level strategies for forest fuel management. Pages 1471-1492, in: Status of the Sierra Nevada: Sierra Nevada Ecosystem Project, final report to Congress. Vol. II. Assessments and Scientific Basis for Management Options. Wildl. Res. Ctr. Rep. No. 37. Davis, CA: University of California- Davis, Center for Water and Wildland Resources.

As a response to Bark’s comments, the Forest Service responded: Human caused ignitions will not likely increase because the temporary roads that are constructed or reopened to facilitate fuel treatments will be closed and rehabilitated afterward to block use by motorized vehicles. *Response to Comments, B-5.*



Figure 1: Breached berm on "decommissioned" 4660-140

However, this response does not address two key issues: road access during the time of project implementation, and the well-known failure of many road “closures” in the Clackamas Ranger District.

Roads constructed for the Lemiti Butte project could provide unregulated motorized access over the course of multiple years, as the PA discloses that the roads

will needed for more than one season. The relatively flat topography at Lemiti mixed with the documented pattern of breached or circumvented closures in the upper Clackamas is cause for concern. On a recent field trip to the area, Bark volunteers quickly found three breached closures within less than an hour of driving (Fig. 1), which were then reported to FS LEOs. Bark volunteers have observed several roads with either non-implemented closures (Fig. 2), breached closures (Fig. 4), or circumvented closures (Fig. 5) on both temporary roads and on roads recorded as “decommissioned” in Forest Service documents.

This is disconcerting because, as detailed in PA comments, road density is known to positively correlate with increased fire ignitions. Although the Forest Service argues that roads improve



Figure 2: Temporary road in “Rod” Unit 182, still not rehabilitated, and still open to motorized access

access for fire suppression, this benefit is more than offset by much lower probabilities of fire starts in the roadless areas that currently exist at Lemiti Butte.

Objectors suggest that any final decision should mitigate potential fire risks associated with future road development by, 1) limiting construction of new roads; 2) ensuring controlled access during the project; and 3) timely & secure road closure upon the project's completion. Proactively addressing the relationship between fire starts and road density is especially relevant to meeting the project's Purpose and Need.

In addition, according to the EA, after the project's completion, skid trails, landings and temporary roads would be decompacted to a depth of 18 inches to provide better growing conditions and meet Mt. Hood NF's Forest Plan standards and guidelines for soil productivity. Bark agrees that the soils in the Lemiti area would benefit from this decompaction activity after the logging is complete, as Bark volunteers found that soils in this area are thin and easily compacted and eroded.



Figure 3: Impacted thin soils on FSR 4220-130

In Bark's comments, we raised concern about the lack of transparency around



Figure 4: Ineffective closure on recently reopened road 6311-130, accessing Bass stewardship treatment units

where the money to close and de-compact these roads comes from. The Forest Service clarified that the resources for this activity are not appropriated funds but are covered by an appraisal allowance along with the value of trees removed. The rehabilitation is part of the project required in the contract.



Figure 5: Circumvented Closure on FSR 4660-170

While we appreciate that the FS is confident that the closures will be effective, we request as a remedy to the risks associated with roadbuilding in this area: **An explicit commitment in the Decision Notice to enforce truly effective closures on roads built or rebuilt for this project when operations are not occurring.** This

includes time when the area is still under contract but outside the normal operating season, and does not include “overwintering” outside of an unavoidable event such as a wildfire closure.

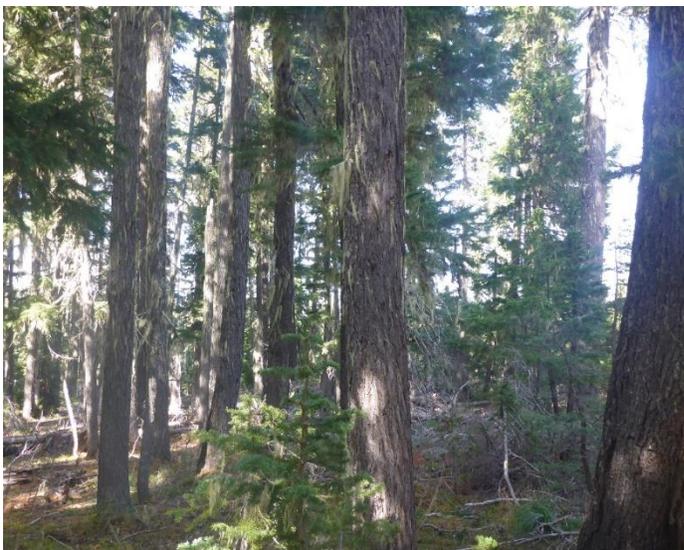


Figure 6a: Large hemlocks within fuel break along FSR 4220

5. DIAMETER LIMITS TO PROTECT LARGE TREES IS NECESSARY TO MEET PURPOSE AND NEED

As noted in Bark’s scoping and PA comments, the edges of the roadway along FSR 4220 adjacent to and within the proposed fuel breaks have been previously cut. Where this occurred is a now dense stand of young lodgepole pine.

It seems inevitable that in the proposed fuel break, as well as in other heavily cut areas, this project would create similarly a dense lodgepole pine structure across a much larger area (as the frost pocket topography, disturbed soils and lack of canopy would hugely favor lodgepole re-establishment over other conifers).



Figure 6b: Large diameter Douglas fir in Unit 24

In contrast, in much of the proposed fuel break and treatment units Bark groundtruthers found large, well-spaced live trees with little underbrush or ladder fuels (Fig. 6). To convert these older forest stands into young, dense lodgepole pine thickets along the road results in a failure to meet the Purpose and Need of providing “long-term forest productivity” as larger, reproductively viable and more fire-resistant trees are removed from these fuel breaks. In this case, removing large trees in the units or the fuel breaks is contrary to the Purpose and Need of enhancing firefighter and public safety, or reducing potential wildfire hazard.

A 21-inch diameter limit on trees cut (live and dead) would reduce impacts to existing wildlife habitat, ensure a viable future mixed-conifer seed source, while promoting human safety within all proposed treatment units. Because of this, and to protect the most fire-resistant tree structure in these fuel breaks, Bark recommended retaining green trees at a spacing of 12 feet at the *maximum*, along with a 21-inch diameter limit on trees cut within these planned fuel breaks.

The FS responded by saying that “*Diameter limits are not used because a one-size-fits-all diameter does not adequately address spacing and ladder fuel treatments.*” *Response, B-5-6.* However, a diameter limit does not conflict with these two objectives. In addition, there is no mention in the projects’ Purpose and Need regarding the spacing of large diameter trees, only that it must address fuels from dead wood and flammable saplings.



Figure 6c: Large diameter Douglas fir in Unit 14

The FS went on to describe that they did not pursue a diameter limit within the fuel breaks because the “impacts to mixed stands with some trees over 21 inches diameter were found to be minimal and because it would provide a similar level of resource protection when compared to the proposed action and is therefore not substantially different from the proposed action in that respect.” *Draft Decision Notice, at 11.* Bark believes that favoring large tree structure by imposing a 21-inch diameter limit would provide a higher level of resource protection and would differ from the proposed action by retaining the most fire-resistant, mature and old growth trees within the fuel breaks that currently have no guarantee of being retained.

Again, a stated purpose of the sale is to “reduce potential wildfire hazard because of the accumulation of fuels and dead trees that could result in severe burning conditions and increased risk of spread of wildfire onto neighboring Tribal land” These larger late-seral, healthy trees are the most resistant to fire. This is especially relevant as we have seen parts of this sale which include legacy snags and green trees within the beetle-killed areas. As the EA states, live trees such as hemlock and Douglas-fir “can be favored to enhance the diversity of the residual stand”. *EA at 15.* Bark believes that a diameter limit will assist in retaining a seed source of a viable mix of conifers, so the stands may continue on the trajectory already initiated towards a more diverse, mixed conifer tree community.

Since Lemiti is in a frost pocket, many of understory trees may have more difficulty reestablishing themselves as reproductively viable trees in the area without the climate-regulating canopy structure that exists now. If a fire does occur at Lemiti soon after this project is implemented, it will be these large trees

that are most likely to survive that carry on the canopy and seed source for this area (providing long-term forest productivity). **As a remedy to this objection point, Objectors propose that in addition to retaining green trees at a spacing of no more than 12 feet, the FS should adopt the suggested 21-inch diameter limit on all green trees and snags within the fuel breaks and proposed treatment units.**

6. A DECISION INCLUDING UNIT 22 & UNIT 14 VIOLATES PURPOSE AND NEED

The Lemiti PA states that “(s)ome areas have live medium sized conifer inclusions mixed with the dead lodgepole pine, including hemlock and Douglas-fir trees over 12 inches diameter. This type describes approximately 5% of the treatment area.” Bark volunteers have seen these “inclusions” (Fig. 7) in small to medium-sized pockets over areas greater than 5% of the Lemiti Butte proposed treatment areas we have walked, as in Units 22 and 24 south of the butte, and Unit 14 west of FSR 4220.

In areas of smaller inclusions (10-30 live trees), Bark originally recommended placing a “skip” around groups of multiple intact green conifers with less lodgepole mortality, to protect the diversity that exists within these pockets of mixed conifers. The FS stated that this alternative was not thoroughly explored in the EA because the ladder



Figure 7: Medium-sized conifer inclusion with downed lodgepole pines in Unit 24

fuels that would remain in these skips would put the live trees at greater risk of crown fire (it did acknowledge that this alternative would provide a “similar level of resource protection”).

While reducing ladder fuels is in fact part of the proposed action within “fuel treatment harvest” areas, Bark visited stands at Lemiti Butte where logging would *not* achieve the FS’s desired conditions. These stands currently contain forest with a diverse, mixed-conifer tree composition including a thriving

understory that, if logged, would surely revert back to a dense lodgepole pine thicket seen throughout artificial openings along FSR 4220 and 4220-130.

For these reasons, the Objectors proposed that the Forest Service remove Units 22 and 14 from this project. Modifying this sale to protect existing seed-producing live trees and snags in these units would keep intact the current transitional processes that are occurring in these areas. In response to public input, the PA states, “In the lodgepole pine stand type, it is very unlikely that stands would transition to old growth because of the cyclic nature of the interaction of beetles and fire.” However, as brought up in comments by Bark and Mt. Hood Forest Study Group, the Lemiti area may be in the process of transitioning away from this lodgepole pine dominated stand type. We have seen that in these areas there is much greater than 10% mountain hemlock in the understory. The “Plant Association and Management Guide for the Mountain Hemlock Zone” for the Gifford Pinchot and Mt. Hood NFs states that a 10% or greater cover of mountain hemlock regeneration in the understory keys out to the mountain hemlock (TSME) plant association series.⁶

To achieve the project’s Purpose and Need of promoting a less fire-prone landscape over the long term, the Forest Service should leave these mixed conifer trees to transition towards the TSME plant association series rather than inadvertently promoting another dense stand of lodgepole pine which could be subject to another insect attack.

In Unit 22, the majority of live trees (many of which are quickly approaching overstory standing) are mountain hemlock, with an understory of silver fir, grand fir, western hemlock, Engelmann spruce and western white pine. This is more of a shade-tolerant community which could potentially extend the fire regime from the standard 80 year fire return interval of LPP to the 200 year fire return interval of mountain hemlock. The aforementioned guide says this zone has a “fire regime of stand-replacement fires 1-3 centuries apart, and with occasional low to moderate intensity fires”. This unit is approximately 47 acres (not including fuel break). A description of this unit is included in our PA comments.

The EA states that “stands such as unit 22 are included because they have high levels of fuels including ladder fuels that are proposed for treatment as part of a suite of treatments that work together to create a broader landscape scale effective fuel treatment project.” Even if removing live and dead trees in this unit may work together *logistically* with tree removals closer to Warm Springs or

⁶ USDA Forest Service. 1997. Plant Association and Management Guide for the Mountain Hemlock Zone: Gifford Pinchot and Mt. Hood National Forests, p28.

existing Forest Service system roads, building a new road alignment into this area is not *required* to access these areas or fulfill the purpose and need of reducing risk of fire spread to the reservation. While the proposed fuel break along FSR 4220, 4690 and in areas adjacent to the Warm Springs boundary could increase safety of firefighters in these areas in the event of a severe fire, logging and roadbuilding in Unit 22 would do nothing to increase safe access towards the boundary of Warm Springs. Therefore, logging and roadbuilding in Unit 22 does not address the issues of firefighter safety, fire spread to Warm Springs, or forest productivity. However, roadbuilding into the forest directly from 4220 would be another obvious avenue of human caused ignition from a frequently travelled road, not to mention unauthorized motorized vehicle access.

Since Unit 22 demonstrates such a departure from what the EA describes as a primarily dense standing lodgepole pine with a “thick carpet of young seedlings and saplings” Bark believes dropping this unit along with the new road proposed to access it would provide a remedy for this project. After we suggested this alternative in our PA comments, the FS replied that *“this action would provide a similar level of resource protection with slightly reduced fire hazard effectiveness when compared to the proposed action and is therefore not substantially different from the proposed action in that respect”*. Obviously removing this unit from consideration does not make a huge difference in terms of risks due to fire, but would keep intact the ecological processes and communities now present in this stand. **To interrupt this process would result in a violation of Purpose and Need, as it would favor establishment of the kind of dense lodgepole pine stand which resulted in the beetle kill in the first place.**

Objectors believe the same reasoning applies for removal of Unit 14, which is approximately 9 acres (not including the fuel break along FSR 4220). While there are small pockets of dead lodgepole (as in the SE corner of the unit), mature hemlocks greater than 21 inches in diameter are common in this unit, with very few live lodgepole pines currently in the understory (Fig. 10). The adjacent stands were initially dropped from this proposal because they were determined to be suitable northern spotted owl habitat. On the ground, we observed little significant structural difference between much of Unit 14 and surrounding forest. Some areas of difference we did find (more small dead and downed wood, less spacing) were within the proposed fuel break, which is a significant percentage of the unit itself.

Because it is the smallest treatment unit proposed (especially so when one subtracts the uncontested fuel break from the conversation), includes mature live trees similar to nearby areas already dropped from the treatment areas, and

similarly demonstrates a departure from what the PA describes as a baseline of primarily dense standing lodgepole pine with a “thick carpet of young seedlings and saplings” **we recommend removing Unit 14 from the project.**



Figure 10: Mixed conifer stand in Unit 14

To comply with NEPA's "hard look" mandate, courts have held that agencies are obligated to maintain a current inventory of resources so that an adequate baseline exists to evaluate the environmental impacts of a proposed action. *Ctr. for Biol. Diversity v. Bureau of Land Mgmt.*, 422 F.Supp.2d 1115, 1163 (N.D. Cal. 2006); see also *Or. Natural Desert Ass'n v. Rasmussen*, 451 F.Supp.2d. 1202, 1212-13 (D. Or. 2006). The environmental baseline is an integral part of an EA, because it is against this information that environmental impacts are measured and evaluated; therefore, it is critical that the baseline be accurate and complete. *Am. Rivers v. Fed. Energy Regulatory Comm'n*, 201 F.3d 1186, 1195 & n. 15 (9th Cir. 2000); *Ctr. for Biol. Diversity*, 422 F.Supp.2d at 1163. **After groundtruthing Units 14 and 22 we do not believe the Forest Service is accurately describing the baseline conditions of these stands.** Objectors are more than happy to accompany Forest Service decision makers to the area in question and continue this conversation in the forest.

SUMMARY OF REQUESTED REMEDIES:

- A thorough, unbiased review of the applicable science in the final decision, where the Forest Service explains the conclusions it has drawn from its chosen methodology, and the reasons it considers the underlying evidence to be reliable.
- An explicit commitment in the Decision Notice to enforce truly effective closures on roads built or rebuilt for this project when operations are not occurring;
- Establish a 21-inch diameter limit on cutting all green trees and snags within the fuel breaks and proposed treatment units;

- Remove Unit 22 and corresponding proposed road; and
- Remove Unit 14.

The objectors would welcome a productive pre-decisional objection resolution meeting with the Regional Office and MHN staff. If you have any clarifying questions about this objection, please don't hesitate to contact us.

Sincerely,



Brenna Bell
NEPA Coordinator/Staff Attorney, Bark



Michael Krochta
Forest Watch Coordinator, Bark

/s/ Doug Heiken
Oregon Wild

/s/ Dave Corkran
Mt. Hood Forest Study Group