

Cascadia Wildlands

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In accordance with 43 CFR 5003, this is a protest of the Wagon Road Pilot Project (EA OR-C040-2011-0008) and FONSI decision made by Kathy Hoffine, Myrtlewood Field Manager, on January 18 and published on January 19, 2012. This protest is submitted by Cascadia Wildlands on behalf of Cascadia Wildlands and Klamath Siskiyou Wildlands Center. Our contact information is at the end of this protest.

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The decision we are protesting and an incorrect FONSI that includes:

- * Regeneration Harvest on 121 acres in Matrix,
- * Density Management on 5 acres in Riparian Reserves to enhance *Xerophyllum tenax*
- * Alder Conversion in 9 acres of a Marbled Murrelet reserve buffer.
- * Broadcast Burning requiring a 3' wide fire trail in the Riparian Reserve.
- * .8 miles of new road building.
- * Replanting with 200 trees per acre in matrix, and 400 TPA in hardwood conversion.
- * Incidentally takes two adult spotted owls and 2 juvenile spotted owls.¹

¹ USFWS Wagon Road Biological Opinion. December 2, 2011. page 52.

1. Purpose and Need

The first EA stated that one of the needs for this project is to “break existing administrative and legal **gridlock** in order to move forward with ecosystem restoration”.² Our comments pointed out that the data does not support the notion of “gridlock”. Over the past 5 years the Coos Bay BLM has advertised almost 150% of their target volume annually under the Northwest Forest Plan³, and successfully sold most of that. Just in FY 2011, Coos Bay BLM offered 14 timber sales totaling 40 mmbf, or 148% of their ASQ. Zero sales were appealed or litigated.

Our comments found that the “gridlock” assertion appeared to be baseless. We asked, what is Gridlock about Coos Bay BLM timber sales? In response, the BLM issued a new EA, changing the Purpose and Need, from a need to break “legal gridlock”, to a need to break “legal gridlock concerning regeneration harvest”. In other words, there is no “gridlock” on the volume of timber, it’s only on the method of cutting the timber. The EA was not clear on this, as required by NEPA. The EA should have explained why the method of harvesting is important to providing jobs and logs to mills, instead of the volume.

The BLM simply refocused the Wagon Road Pilot Project “purpose and need” to specifically do regeneration harvest, not just a need to produce wood volume for the local economy. This makes no sense. There is no need in the RMP to specifically do regeneration harvest to meet the ASQ of 27 mmbf a year, as the BLM is now claiming.

The new EA actually says the Secretary of Interior, Ken Salazar, expressed a need to break regeneration harvest gridlock. We never saw that statement. The BLM should disclose where we can find a Secretary of Interior statement that the need to meet the ASQ must come from regeneration harvests, instead of the way the BLM has successfully been meeting it over the past half-decade.

The Coos Bay BLM RMP estimates, but does not require *any* specific volume from specific types of logging methods. The RMP allows the BLM to meet their ASQ as they have been, via thinning projects, including heavy thinning, and thinning that leaves large gaps. The new Wagon Road EA never points to any RMP requirement that is not being met. “Gridlock Regeneration Harvest” is a made-up “need” to clearcut, even though the BLM has been meeting and exceeding their RMP timber target for years without controversy.

The EA failed to document a need to “break gridlock” of “regeneration harvests” because there is no mandate to meet the ASQ via regeneration harvests. The RMP is very clear that the ASQ is not even a requirement that the BLM must meet with any kind of harvest method. Instead, Coos Bay BLM RMP says:

² Wagon Road EA. page 3.

³ Between 2007 and 2010, the Coos Bay BLM offered 159 mmbf, sold 152 mmbf, which is about 147% of the annual 28-mmbf target volume. For 2011 sales, see <http://www.blm.gov/or/districts/coosbay/timbersales/index.php?display=2011>

“The ASQ for the RMP is an estimate ... surrounded by uncertainties. The actual timber sale levels may differ, as timber sale levels will be an effect of overall forest management rather than a target that drives that management. ...”

“The ASQ represents neither a minimum level that must be met nor a maximum level that cannot be exceeded. It is an approximation because of the difficulty associated with predicting actual timber sale levels over the next decade, given the complex nature of many of the management actions/direction.”⁴

Another problem with the “Purpose and Need” is the claim that gridlock is caused by *certain individuals*. “The shortfall in regeneration harvest is a direct result of the numerous protests, appeals and litigation efforts brought forth by certain individuals and organizations against decisions to conduct regeneration harvest.”⁵ Who are the “certain individuals”?

NEPA requires⁶ that the EA be clear, not ambiguous with vague accusations against unnamed provocateurs. The Protest Response must disclose exactly WHO are “certain individuals and organizations”? It’s not us. We haven’t appealed or litigated a regeneration harvest sale for years and years. In fact, the Coos Bay BLM hasn’t even offered a regeneration harvest sale for about 8 years.

The protest response must also be clear on what is “numerous protests, appeals and litigation” on Coos Bay BLM sales. What percentage of sales has been stopped, gridlocked, by appeals and litigation. Even if an appeal or litigation was successful it was because the timber sale was illegal.

Instead of “certain individuals” plotting against the BLM, there have been many factors contributing to the lack of regeneration harvests offered over the past few years, such as new information on the spotted owl, and the spotted owl recovery plan. It is a testament to the BLM’s resourcefulness to not only meet, but to exceed the ASQ in these conditions. But the new EA states (implies) that exceeding the target-volume by 148% is not good enough, that somehow the ASQ must not be met by thinning.

The new EA says that breaking the “gridlock of regeneration harvest” is necessary “to move forward with ecosystem restoration and with economic recovery in southwest Oregon”.⁷ The EA failed to explain, if providing 148% of the ASQ timber volume through thinning doesn’t contribute to economic recovery in southwest Oregon, why would the harvest method change that? What it is about wood produced by regeneration harvests that contributes to economic recovery that wood produced by thinning does not? 148% of the ASQ should meet all economic expectations of the RMP. This project and

⁴ Coos Bay BLM Resource Management Plan (RMP) 1995. Page 52.

⁵ Wagon Road new EA. page 3.

⁶ 40 cfr 1500.1 “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.”

⁷ Wagon Road new EA. page 3.

thinning projects are producing about the same size of wood⁸. Why does only regeneration harvest contribute to ecosystem restoration and economic recovery, where thinning the same size trees does not?

The new EA tried to prove the BLM's regeneration-gridlock point by quoting Johnson and Franklin: "Johnson and Franklin state, "Restoration of moist forests ...is intended to accelerate the development of older complex forest and provide a modest amount of early successional communities and timber harvest". (2009)."⁹ But if one looks up that quote in Johnson and Franklin 2009, it appears next to the box on THINNING. It is also in the section of why wildland fire is restorative. This quote has nothing to do with promotion of regeneration harvests, and fails to explain why a gridlock of regenerating harvesting is harming the development of older complex forests.

In the end, the NEED for this project does not meet NEPA's requirement of clarity and accuracy. Instead, it is all muddled between wood volume from thinning and volume from regeneration harvest. It was muddled in the first EA, and the second EA makes it even more confusing.

Another "need" for this project is to address the "**lack of quality early-successional habitat** across all ownerships"¹⁰. The old EA failed to adequately document this, as described in our comments, and we can't find the new EA addressed this either. Private industrial forestland in the checkerboard, and immediately adjacent to this project, have been recently clearcut, or are in an early-seral stage. The EA argues that this early-seral habit is not good enough for early-seral dependent species because these clearcuts:

"...are densely reforested to truncate the length of early-succession and often involve the use of herbicides to limit competition of brush with desired tree species (Swanson et al. 2010). Spies et al. (2007) modeled 100 years into the future to determine what the Oregon coast landscape would look like under all current forest management policies. Industrial forest management is expected to "intensify over time, decreasing the period required for plantations to reach canopy closure, increasing the uniformity of plantations and decreasing the occurrence of remnant trees in the open, early-successional stage." This would result in the decline of overall ecological diversity associated with early-successional forest types."¹¹

However, the referenced studies, Swanson and Spies, never did any surveys on industrial forest clearcuts to see what wildlife they do or do not provide for. The claim that this project is needed to provide for early-seral dependent species, because other clearcuts do not, is without basis. The EA should have cited some study with some wildlife surveys in older clearcuts.

In fact, industrial style clearcuts go through a dense brush phase in the coast range. It occurs several years after the herbicides are sprayed and before the canopy closes. While

⁸ For instance, the BLM is thinning a 70-year old forest in the Green Chain sale, adjoining this sale. They are the same age, same size trees, etc.

⁹ Wagon Road new EA. page 3.

¹⁰ Wagon Road new EA. page 4.

¹¹ Wagon Road EA. page 4.

it is not 20-30 years, there is *so* much clearcutting on private industrial forest land, with such short rotations, that there are a large number of acres in the heavy-brush stage at any one time. One only has to look at the private land clearcut that adjoins the project area to the south for a good example of this. The EA failed to consider this existing early-seral habitat in the “need” for this project.

In response to these comments, the New EA provided additional studies “conducted on Mount St. Helens”¹² which found more species richness in naturally occurring early-seral sites than in industrial clearcuts. We don’t disagree with those finding. But the BLM is not proposing a “naturally occurring early-seral site”. Instead the BLM is proposing a regeneration harvest that doesn’t even remotely resemble a Cascade Mountain naturally occurring early-seral site. In Mount St. Helens, the naturally occurring early-seral site is the result of a volcano erupting with tons of ash deposits. There is no basis to expect the same results from a Coast Range regeneration-logging site.

The BLM stated:

“The structure and composition of early successional stages are important to perpetuating species populations at the local scale, thereby enabling reestablishment of species into the regenerated forest and promoting the sustainability of current ecosystem dynamics while providing timber harvest opportunities.”¹³

Our EA comments asked for the EA to identify what “structure and composition” is needed and what specific wildlife species is “important to perpetuate” that is not sustained on the adjoining industrial clearcuts. For instance, the industrial clearcut just south of section 17 has tall salmonberry, elderberry, hazelnut, rhododendron, and other early-seral brush species. To measure the ultimate success of a “pilot project”, it is necessary to identify specific species, structure and composition that the project is intended to perpetuate. We failed to find a response to this comment in the new EA or the decision document.

The Purpose and Need statement in the EA was not clear and did not list any native wildlife needing early-seral habitat. It is important for this need to be established because without it, it is unclear what this pilot project is piloting. The need for more mature forests for wildlife is well established. Since this is a 70-year-old forest that already provides some NRF habitat, it was explicitly designated in 1992 as critical habitat for the northern spotted owl. The EA failed to establish why it was needed as critical habitat for the NSO in 1992, but now there is no need to let it become an older forest.

The BLM likes to point to the **LSRs, claiming that is all that is needed by wildlife dependent on older forests.** However, when the LSRs were established in 1994, the extent of the barred owl impacts on the northern spotted owl was not known. Now we know that LSRs are not adequate to provide for both owls. Even the Northern Owl Recovery Plan requires older forests to be protected in the matrix. This forest is one of

¹² Wagon Road new EA page 5.

¹³ Wagon Road Pilot scoping notice. Coos Bay BLM. 5-18-11.

the closest forests the BLM has to becoming superior NRF habitat for owls, and nesting habitat for murrelets in the near future.

Another problem is the claim that existing LSRs provide for old growth species, therefore mature forests in the matrix can be clearcut. However, almost half of the near-by LSRs are old clearcuts -- young tree plantations. There are thousands of acres of these plantations in the adjoining Late Successional Reserve that are younger than this stand, and will not reach NSO nesting habitat as quickly as this stand will under the no-action alternative. Therefore, the EA should have considered whether these matrix stands are also important to the recovery of the spotted owl and marbled murrelet. Section 17 is either close to, or is providing a large block of the best nesting habitat on the landscape, closer than young plantations in the LSR. The EA failed to consider this important contribution to spotted owl and murrelet habitat in the no-action alternative.

The EA failed to describe what wildlife need this project would provide for. Since the project will remove 60% of cavity nesting habitat, there must be some other early-seral structure, other than snags, that this project will promote. But what is it? The EA never tells us what early-seral plant species will be promoted and for what wildlife species. The EA never describes any need for native brush like hazelnut, huckleberry or salmonberry. Worse, the EA never describes how the existing, healthy nut and berry producing plants will be crushed by the logging, and set back for decades.

Our comments asked for the BLM to describe how different this project is from other alternatives the BLM usually considers for plantations, such as thinning using skips and gaps, or in unsalvaged post-fire events. Other BLM clearcut proposals also only protect 40% of cavity nesting habitat. The legacy component of large, soft pieces of down wood, left over from the first logging is also protected in the usual BLM thinning projects, so that component should not have been considered a benefit over other alternatives included in the EA.

The Wagon Road project has the appearance of being just like any other BLM clearcut, with no good description of how it is a "pilot" focused on early-seral habitat. The EA failed to enumerate what specific legacy components are needed, as well as the wildlife species that need them, wildlife that is not currently being provided for in either a no-action alternative, in a thinning alternative, or on adjoining industrial clearcuts, and why these components are important to develop now in a regeneration harvest.

2. Riparian Reserves

Beargrass: This project will log in riparian reserves to benefit Beargrass. The Riparian Reserve logging is not within the Franklin and Johnson proposal. Riparian Reserves are only being logged because the Coquille Tribe is involved and so have labeled this as a Culturally Significant project. The problem is, logging in riparian reserves is not allowed by the northwest forest plan to enhance beargrass.

The EA states "Beargrass requires an open forest overstory with filtered light (Fluharty et

al. 2010) and responds to thinning and fire treatments.”¹⁴ A riparian reserve in the temperate rainforest of the coast range is not prime habitat for beargrass. The Northwest Forest Plan forbids managing for plants like beargrass in the riparian reserves.

It is illegal for the BLM to log in Riparian Reserves for any purpose, except “as needed” to enhance aquatic species. Beargrass is not an aquatic species. The BLM tried to fix this problem in the new EA by inserting text claiming the beargrass is in a relatively dry site that “just happens to be within an interim riparian reserve”.¹⁵ Is the BLM claiming that the northwest forest plan requirements do not apply to riparian reserves that are “relatively dry”? In the first place, for the coast range, this riparian reserve is NOT relatively dry. It is as wet as any other riparian reserve with this slope and aspect. This riparian reserve is 220 wide because that is the height of an average mature tree that influences the creek when it falls into the creek. Any management here must comply with the northwest forest plan for riparian reserves, for the entire 220’ riparian reserve.

The new EA also added “By treating this site, the beargrass would flourish and might expand up the ridge.”¹⁶ Is the BLM implying here that if beargrass is enhanced in the riparian reserve, it will be enhanced outside of the riparian reserve, which is why we should enhance it inside the reserve? If so, there is still no legal path for converting riparian reserves to beargrass optimum habitat.

The EA incorrectly claims the following statement applies to the coast range and the project area: “There has been a decline in abundance and quality of traditional beargrass gathering sites, likely due to forest encroachment resulting from the absence of fire...”¹⁷

No, the coast range is NOT suffering from the absence of fire¹⁸. Our comments asked for the decision document, or a new EA to correct this statement, but the BLM failed to address this error. There is absolutely nothing to back this up fire-claim for wet forests. The BLM cannot simply pull unsubstantiated statements out of the air in a NEPA document¹⁹.

Franklin and Johnson find the coast range wet forests are not suffering from fire suppression²⁰. Beargrass might be present due to a past fire or clearcut, but the riparian reserve must be allowed to recover back to its original old-growth species composition. The BLM cannot artificially maintain beargrass by logging in Riparian Reserves.

¹⁴ Wagon Road new EA. page 6.

¹⁵ Wagon Road new EA. page 6.

¹⁶ Wagon Road new EA. page 6.

¹⁷ Wagon Road new EA. page 6.

¹⁸ Applying Restoration Principles on the BLM O&C Forests in Southwest Oregon. Franklin – Johnson. Nov. 30, 2010. Page 3. “Moist Forest ecosystems evolved with infrequent... wildfires.... Generally, silvicultural treatments are not needed to maintain existing older forests on Moist Forest sites and can actually contribute to degradation of such forests.”

¹⁹ 40 CFR 1500.1 “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.”

²⁰ Applying Restoration Principles on the BLM O&C Forests in Southwest Oregon. Franklin – Johnson. Nov. 30, 2010. Page 3.

One of the big problems with managing for beargrass is that the BLM feels it must do prescribed burning, only in the riparian reserve, making sure sufficient heat is applied to individual beargrass plants. This completely unnatural event in a wet part of this wet forest will require the construction of a fire trail scraped down to mineral soil 3' wide. None of this is *needed* to restore large trees in the riparian reserve. This reserve is well on its way to restoring itself just fine.

Page 44, the new EA again claims, "Due to forest encroachment from the absence of fire, beargrass is believed to have declined in traditional gathering sites." This is completely unfounded when describing the riparian reserve of the Wagon Road project. The riparian reserve has traditionally been forested, the forest has not "encroached". Beargrass is declining here because past disturbance is being healed by time, not by a lack of fire or an encroaching forest. The EA cannot make these claims and comply with NEPA's requirement for clear, honest, correct, high-quality information.

Even if this area did have natural fire, it certainly doesn't occur in the spring. Burning an area in the spring means all the wildlife that have adapted to no-spring-burns will be harmed, including snails, salamanders, snakes, and other wildlife that cannot run away from the burn. The EA failed to estimate how long it would be before these aquatic species would recover and repopulate the area. This lack of analysis violates NEPA.

The riparian area in question has very steep slopes, and is dense with native understory shrubs such as salal, Oregon grape and huckleberry. It has deep moss and abundant well-decayed coarse woody debris. This area is currently, and may historically have been, a good huckleberry gathering area. Nothing about the ecosystem suggests that this will become a successful beargrass site. The tribe owns other sites better suited to beargrass enhancement that are not already dedicated to aquatic wildlife.

Beargrass is not an aquatic species. "The plant thrives with periodic burns and is often the first plant to sprout in a scorched area".²¹ It grows in open areas, especially burnt areas, not in rainforest riparian areas unless there has been a rare, recent burn. There are no frequent burns here. The coast range has a very long fire return interval, so long, Franklin and Johnson says these moist forests are not yet impacted by fire suppression. While there might be some existing beargrass in the riparian reserve of this project because of a rare, relatively recent burn, beargrass will not survive forest succession into old growth. Riparian Reserves are set aside to provide old growth habitat, now or in the future.

There is no way the riparian reserve can be "restored" to enhance this non-old growth, non-aquatic species. "Beargrass is found in open forests and meadows"²². While these riparian reserves were open forests after the last forest fire and logging, the future of riparian reserves is NOT open forests or meadows. Beargrass grows in "open woods and clearings"²³, not in mature forest conditions, as the Riparian Reserves is supposed to revert to. Trying to force long-term habitat conditions for beargrass in riparian reserves is

²¹ http://en.wikipedia.org/wiki/Xerophyllum_tenax

²² <http://www.blueplanetbiomes.org/beargrass.htm>

²³ http://montana.plant-life.org/species/xero_ten.htm

not allowed under the Northwest Forest Plan.

Removing any of the overstory in a riparian reserve, to enhance beargrass is not allowed and is clearly illegal. Riparian Reserves are “where riparian-dependent resources receive primary emphasis”.²⁴ Beargrass is not a riparian-dependent resource.

“Under the Aquatic Conservation Strategy, Riparian Reserves are used to maintain and restore riparian structures and functions of intermittent streams, confer benefits to riparian-dependent and associated species other than fish ...”²⁵

Beargrass is not a riparian structure, not a function of intermittent streams, and not a riparian-dependent species. Clearly, thinning, removing the overstory, building a road-like fire trail, to enhance beargrass in a riparian reserve is not allowed.

These Riparian Reserves do not need thinning. The first EA tried to justify beargrass enhancement in reserves by claiming, “Stand projection simulations on the Coos Bay District suggest that unthinned stands may not regularly produce large diameter forest structure associated with late-seral forests until the stands are about 200 years old (USDI 2003)”²⁶. Our comments pointed out that that reference was not for a legitimate study that we could find. The BLM should have cited a study that was not on artificially reforested plantations, but instead, on a 70 year old, almost mature, naturally regenerated forest. We pointed out that the old EA’s reference, “USDI 2003” referred to the “North Coquille DM/CT EA”, not a study.

In response to our comments, the new EA retained the claim that this unthinned reserve could not produce larger trees. But the reference was changed to USDI 2002, which instead refers to the North Fork Coquille Watershed Analysis. We looked in that watershed analysis, and could not find any study describing how unthinned, naturally regenerated, almost-mature forests would not grow into larger trees. In the BLM’s protest response, either drop this claim or provide a clear reference.

The other study the EA uses to justify logging in the riparian reserves is:

“Tappeiner et al. (1997) found that many Coast Range old-growth stands developed under low stocking densities and developed large diameter trees capable of providing large structure by the time those trees were 50-years-old.”²⁷

This stand is 70 years old, far older than the stands in Tappeiner studies. It is simply not a relevant justification for enhancing beargrass in reserves.

The BLM claims the riparian reserve is “overstocked”²⁸, but offers nothing to back up this claim showing that it is overstocked for it’s age and salvage recovery. These reserves were not reforested, have restocked from seed trees that were left, and are not overstocked at all, much less to the point human intervention is *needed*.

The EA claims this 70-year-old riparian reserve, that was never artificially planted, has

²⁴ Northwest Forest Plan. B-12.

²⁵ Northwest Forest Plan. B-12

²⁶ Wagon Road EA. page 27.

²⁷ Wagon Road new EA. page 29.

²⁸ Wagon Road new EA. page 6.

“low stand vigor”.²⁹ We disagree. It has normal vigor for a naturally regenerated 70-year-old forest. The EA offered no evidence of “low vigor”.

In trying to justify logging for beargrass, the EA mis-quoted the Coos Bay BLM RMP as saying:

“The 1995 RMP has management direction to apply “silvicultural practices for Riparian Reserves to control stocking, re-establish and manage stands and acquire desired vegetation characteristics”.

Conveniently left out is the last part of that statement: “... acquire desired vegetation characteristics *needed to attain Aquatic Conservation Strategy objectives.*” The EA forgot to mention the “needed” part. Logging is not “needed” unless (1) existing vegetative conditions are somehow preventing attainment of the ACS objectives and (2) the ACS objectives could not be attained without logging. This is clearly not the case with the Riparian Reserves in this project. The Northwest Forest Plan has identical language (C-22). If logging is not *needed* it is not allowed.

The EA clearly says the riparian reserves would become “old growth” like within 100 years if no logging occurred. “In the absence of stand-replacing disturbances, the harvest unit as a whole would probably enter horizontal diversification (old-growth) stages within 100 years.”³⁰ And if left alone for just 10 years, the stand would be designated as “mature” at 80 years old. If they are thinned instead, putting much of that structure on a log truck, mature forest conditions, and later old growth, will clearly be delayed or degraded. For instance, many of the future snags would be removed. Stumps could pass on root rots. Yarding corridors would have compacted or eroded soils. Logging will degrade the riparian reserves. There is absolutely no science in the EA showing that logging will enhance riparian functions or is *needed* to meet ACS objectives.

The EA actually makes no claim that the existing vegetative conditions are preventing attainment of the ACS objectives or that the ACS objectives could not be attained without this commercial logging. Instead, the yarding corridors through the reserves, the removal of many future snags, the reduction of cavity nesting habitat down to 40% of the population, and the building of 3’ wide trails, and the broadcast burn afterwards, all degrade the reserves. One way it degrades the reserves is it destroys the existing brush growth. Currently, 20’ tall rhododendron bushes, lush huckleberry and elderberry bushes dominate the understory. Trampling this old, large brush, cutting it, and burning it, means this important wildlife component of the reserves will be ruined for decades.

The riparian reserve is not overstocked. It is well on its way to a full recovery, including providing abundant wildlife snag habitat as suppression mortality continues.

Hardwoods: The EA states that Hardwoods would be removed from Riparian Reserves in preference to suppressed conifers.³¹ This is a bad idea. Hardwoods are often found near streams instead of conifers because of chronic disturbance. Big leaf maple, myrtlewood

²⁹ Wagon Road new EA. page 6.

³⁰ Wagon Road new EA. page 28.

³¹ Wagon Road new EA. page 17.

trees, and alder should be allowed to remain as an important component of the reserve, as they are important for species diversification and restoring a species mix that is similar to what was present before logging disturbance 70 years ago. Hardwoods should also be allowed to retain their natural clumps, and never be single stemmed. While conifers are a more important commercial species, this is a riparian reserve, where the commercial aspect is not the point. Therefore, hardwoods must not be removed when they are older and bigger than near-by suppressed conifers and were a species historically present at this site.

DBH Limit: The EA states that trees greater than, or equal to 24" DBH would be reserved from harvest in the riparian reserve³². This DBH limit is useless since there are few, if any trees greater than 24" in the riparian reserve logging area. If the BLM believes that a DBH limit is important, then it is important to make it low enough to actually cover most of the larger trees in the riparian reserve. The EA states that the average tree in the reserve is 12" DBH³³. Therefore, a reasonable DBH limit would be larger trees like 16" or 18" DBH. Clearly, in a riparian reserve that averages 12" DBH, cutting a tree that is 20" or 22" DBH is not appropriate.

In fact, when this riparian reserve was first proposed for thinning, as unit 116 in the East Fork Coquille Timber Sale, the EA determined that 18" would be the upper diameter limit (see Table C-4 in that EA). Why would the BLM determine that now the trees between 18" and 24" are fair game to log? If there was justification for 18" upper diameter limit in 2005, this EA or decision should have explained why it is now changed to 24" DBH.

Another interesting observation when looking at these same units in the East Fk. Coquille EA is that in the 2005 EA the riparian reserves extended past road 18-10-17. But now, the west end of the same riparian reserve stops before road 17. The west end of the next riparian reserve south also extends much further west and south in the East Fork Coquille EA than the Wagon Road EA. NEPA requires that the BLM give an explanation for this, especially when that explanation is requested by the public. Why did those EAs find 220' went much further than 220' in this project? Why did the reserves shrink?

Broadcast Burning: The EA states the riparian reserves, and only the riparian reserves will be broadcast burned for the sole purpose of enhancing beargrass³⁴. Burning can have negative impacts on the reserves, potentially killing wildlife trees, burning soil organisms, and burning up the existing and abundant understory vegetation. One of the worst impacts will be the three-foot wide fire trail scraped down to mineral soil within the riparian reserves, and to within 45' of the streams.³⁵ If the trail encircled the entire 5 acres, it could be ½ mile long.

The Northwest Forest Plan requires burning within riparian reserves only when needed to

³² Wagon Road new EA. page 20.

³³ Wagon Road new EA. page 45.

³⁴ Wagon Road new EA. page 17.

³⁵ Wagon Road new EA. page 21.

meet ACS objectives.³⁶ The EA failed to demonstrate that burning reserves in a wet forest was needed, especially since the EA failed to demonstrate that logging in the reserves was needed to meet ACS objectives.

3. Other ACS issues

Regeneration harvests degrade the watershed because it increases peak flows, not allowed by the Aquatic Conservation Strategy. While the EA discusses peak flows and roads, it fails to discuss peak flows and regeneration harvesting, including the cumulative impact of the new industrial clearcut adjacent to the west side of the project area.

Another EA that proposed a regeneration harvest in section 17 was the 2005 East Fork Coquille EA. That EA documents that removing overstory vegetation from the watershed will increase peak flows in streams, which in turn, increase erosion and degrade the watershed. "Studies suggest a direct association between the high evapotranspiration rates of coniferous forests and the deviation in year-to-year water yields following harvest".³⁷ "Water yield increases are repeatedly detectable when at least 20% of forest cover has been removed" within 30 years.³⁸ In that document the BLM also stated that "Seventy-nine percent of the forest vegetation in the watershed is older than 30 years of age",³⁹ leaving 21% of the watershed under 30 years of age. This exceeds the 20% threshold to show water yield increases. Since more of the watershed has been clearcut since 2005, including right next to the project, it exceeds it even more. The BLM failed to explain why Peak Flows would increase in 2005, but not in 2012 from regeneration harvesting in the same place. Additional regeneration harvesting will cause peak flow increase beyond the 20% safety level, degrading the watershed even further. The Aquatic Conservation Strategy does not allow this. It requires the BLM to "Maintain and restore in-stream flows... The timing, magnitude, duration, and spatial distribution of peak, high, and low flows must be protected."⁴⁰

The EA just waived away the peak flow issue by saying there is "no impact" from regeneration harvest at the site scale, therefore there is none at the watershed scale.⁴¹ The BLM did not take into account the cumulative impacts of regeneration harvests in the watershed. While each clearcut has "no impact", cumulatively they have a noticeable impact, which the EA failed to consider.

The EA also states "The water resources analysis concluded there would be no effect to peak flows (p.3-5)"⁴². This water resource analysis is not included in the EA, not even in an appendix. In our EA comments, we asked for a copy, but as of yet, have not received it. Our guess is that it does not include a valid study showing regeneration harvests do not increase peak flows.

³⁶ NWFP C-36 FM-4.

³⁷ EFC EA. Coos Bay BLM 2005. page 58.

³⁸ EFC EA. Coos Bay BLM 2005. page 58.

³⁹ EFC EA. Coos Bay BLM 2005. page 58.

⁴⁰ Northwest Forest Plan page B-11.

⁴¹ Wagon Road new EA page 63.

⁴² Wagon Road new EA page 64. Old EA also said: or annual yield from the vegetation treatments

The new EA did include additional information on Annual Yield, beginning on page 47. However, the BLM sill failed to substantiate the claim that clearcut logging practices (including regeneration harvests) do not increase peak flows or annual yields. For instance, then EA mentions a paired watershed study by Moore and Wondzell in 2005, but does not name the paired watershed or describe how it so similar to this project that the findings can be applied here. Moore and Wondzell 2005 are not listed in the references, and the BLM failed to send us the watershed resources report. However, we looked Moore and Wondzell 2005 up on the internet and found their study⁴³, which says: "annual water yields generally increased following forest harvesting in the Pacific Northwest"⁴⁴ They also say: "In small headwater catchments, forest harvesting generally increases annual runoff and peak flows..."⁴⁵ There are exceptions for the fog belt, but the EA never described any exceptions for the Wagon Road project.

The EA also claims (page 68) no peak flows are possible if the unit is less than 2,000 feet elevation, out of the snow zone. We disagree. Studies have found peak flows are still possible at lower elevations. The EA itself says, "peak flows are caused by large rainfall events."⁴⁶ While the area is less susceptible to snow, it does happen. In fact, the units were under snow the week the decision was made to log them, followed by a large rainfall event. The unit is very close to 2,000 feet elevation. According to Google Earth, the unit climbs to 2,200 feet (680 meters). While some of the unit *is* less than 2,000 feet, most of it is close to 2,000 feet and some of it over. This makes the EA Peak Flow analysis even more faulty.

The EA again excuses this project from causing peak flows, because peak flows in rain-dominated areas include "roads and other harvest practices (primarily through soil compaction) that can also increase peak flows"⁴⁷. Well, 1.1 miles of new road with permanent road beds, and 21 acres of tractor logging, including in riparian reserves, meets that criteria. The EA excuses itself by saying the proposed regeneration harvest is less than 1% of the sub-watersheds. Again, it's the cumulative impacts the EA failed to look at. While this project might be 1%, the EA failed to disclose the percent of the watershed that is clearcut.

The EAs conclusion that there would be no effect to annual yield or peak flows, even cumulatively from this project, is unsubstantiated and without merit.

4. Marbled murrelets

Murrelets are susceptible to nest predation when their occupied habitat is too close to forest edges. That is why the murrelet recovery plan recommends a 300 to 600 foot logging buffer. The regeneration harvest units appear to not leave enough buffers in some

⁴³ Physical Hydrology and the Effects of Forest Harvesting in the Pacific Northwest: A review. Dan Moore and S.M. Wondzell. August 2005. Journal of the American Water Resources Association.

⁴⁴ Moore/Wondzell 2005. page 778.

⁴⁵ Moore/Wondzell 2005. Page 763.

⁴⁶ Wagon Road new EA page 68.

⁴⁷ Wagon Road new EA. page 68.

areas Edge effects can occur over 700' into the stand. Yet the regeneration harvest will give only a 300' buffer⁴⁸ to occupied and unsurveyed murrelet nesting habitat, and 0' buffer in the density management area. The EA should have considered alternatives that do not impact murrelet habitat. The EA also failed to follow the East Fork Coquille watershed analysis recommendation:

“Landscapes dominated by edge habitats favor generalist species at the expense of those dependent on interior habitat and microclimate. Some bird species may experience higher failure rates due to predation and nest parasitism when nesting on edges (see Noss and Cooperrider 1994 for a discussion). For now, protecting remaining refugia sites is critical to maintain populations of late-successional species, and facilitate re-colonization of recovering habitats. Based on the existing age class distribution, four decades of growth will be needed for late-seral stands to attain the vegetative and structural complexity of functional old-growth habitat.... emphasis should be to defer harvest as long as possible in stands that contribute most to connectivity. Priority for harvest deferral should be given to those stands which connect to adjacent subwatersheds or to larger more contiguous stands.”⁴⁹

These conditions already exist in section 17, a contiguous stand of mature forests. The EA failed to consider the watershed analysis recommendation, not even in the no-action alternative.

The alder conversion severely impacts the adjoining murrelet habitat. As talked about below, the 50' to 100' tall alder adjacent to old growth is better than a young conifer plantation with just 2' seedlings. The alder conversion clearcut will severely degrade the murrelet habitat for at least the next 50 years, until the seedlings reach the same height as the alders. Since murrelets are loosing up to 7% of their population every year⁵⁰, the next 50 years is critically important to protecting existing habitat. Now is no time to clearcut immediately adjacent to their suitable habitat.

The BLM last did murrelet surveys around the stand in 1999 and 2000, twelve years ago. Those surveys are out-of-date. Murrelets could have expanded into the unit. Those surveys were *around* the regeneration harvest area, not in the unit. There are many big trees with platforms scattered within the aggregates that will be clearcut next to, and individual retention trees. The BLM failed to do recent murrelet surveys within the harvest unit, as required by the survey protocols. The EA claims (page 36) that there are “fewer than six trees per five acre area so these do not meet the South Coast Interagency Level 1 Team’s criteria for remnant habitat that could support nesting murrelets.”⁵¹ This is wrong. There are clearly more than six trees per five acres with potential platforms. The EA should have told us when this assessment was done, who did this assessment, and what their qualifications were, and how many trees per five acres were found.

The Marbled Murrelet Survey Protocols say: “...any area with a residual large tree

⁴⁸ Wagon Road new EA. page 37.

⁴⁹ EFC Watershed Analysis. Page V-25.

⁵⁰ <http://www.fws.gov/oregonfwo/Species/Data/MarbledMurrelet/>

⁵¹ We could not find this document. Please provide it with the protest decision.

component, small patches of potential habitat, or suitable nest platforms should be evaluated for the need for surveys. Failure to identify potential habitat, and thus 'clear' an area for management activities, could have a substantial negative impact on the population. Deciding what constitutes murrelet habitat may involve local or region-specific considerations".⁵²

Even if there were less than six trees per five acres, the area should have been surveyed. "Some occupied sites also have included large, residual trees in low densities, sometimes less than one tree per acre (Grenier and Nelson 1995, Ralph et al. 1995)... Therefore, any forested area with a residual tree component, small patches of residual trees, or one or more platforms should be considered **potential** murrelet nesting habitat."⁵³ "...In cases where habitat quality varies throughout the survey site (specifically, where larger residual trees containing suitable platforms are spaced at regular or irregular intervals within a site that contains no other potential platforms), survey stations should be strategically placed to cover the most likely nesting habitat within a site."⁵⁴

Even the USFWS says in the Biological Opinion for this project: "In surveys of mature or younger second-growth forests in California, murrelets were only found in forests where there were nearby old-growth stands or where residual older trees remained (USDI FWS 1992c, Singer et al. 1995)."⁵⁵

The BLM failed to do the required two years of surveys for murrelets within the regeneration harvest unit. The BLM failed to survey the residual older trees with platforms scattered as aggregates within the 121 acres proposed for regeneration harvest. Any murrelets nesting in these areas will be harmed by clearcutting extremely close to their nest tree.

5. Northern Spotted Owl

This project is within CHU OR-60, as designated for spotted owls in 1992. Because it was illegal to degrade critical habitat, the Coos Bay BLM had to withdraw their proposal to clearcut units 116, 117, and 139, what is now the Wagon Road Project. But in 2008 the USFWS illegally⁵⁶ removed critical habitat protection on over 1.5 million acres. Because it was illegal, the USFWS is currently re-doing critical habitat designations.

The first EA said the USFWS promised "this area will not be designated as Critical Habitat when the new rules are published."⁵⁷ In the new EA the BLM now says: "The USFWS expects to issue a revised Critical Habitat rule by January 2012, and what lands will be designated as Critical Habitat is unknown."⁵⁸ The due-date for the new critical

⁵² Methods for Surveying Marbled Murrelets in Forests: A revised Protocol for Land Management and Research" For the Pacific Seabird Group. January 6, 2003. Page 5.

⁵³ Methods for Surveying Marbled Murrelets in Forests. Page 2-3.

⁵⁴ Methods for Surveying Marbled Murrelets in Forests. Page 11.

⁵⁵ Biological Opinion of the Wagon Road Pilot Project. USFWS. Page 37.

⁵⁶ See our CHU comments dated August 10, 2007, and June 18, 2008 submitted by Earthjustice.

⁵⁷ Wagon Road EA page 29.

⁵⁸ Wagon Road new EA page 31.

habitat designation is now late February 2012. At that time, there is a very good chance this proposed regeneration harvest, with its resident spotted owl and NRF habitat in and around the unit, would be in designated critical habitat. If it was critical in 1992, there is no good reason why it would not be re-designated as critical. The ESA forbids degrading critical habitat, and a regeneration harvest (and questionable alder conversion) degrades NSO habitat, and sets back almost-NSO habitat by 70 years.

When this sale was surveyed, a spotted owl was found right inside the unit. Plenty of spotted owl habitat is scattered throughout the unit. In fact, the map depicting spotted owl habitat is wrong, and left off important habitat. For instance, one area that spotted owl habitat was left off the map is in part of the Hardwood Conversion area, above spur 9, and into the regeneration harvest part of the unit. Trees over 50" DBH, and likely over 150 years old dominate that area. Yet Map 5, Spotted Owl Habitat, failed to show any owl habitat in this area. Even the new EA map didn't correct this oversight.

Under the no-action alternative, the EA failed to consider whether these 151 acres in section 17 are our next-best old growth needed to sustain healthy populations of late-seral species, especially now that barred owl is competing for space with the spotted owl. Instead, the EA claims this is Matrix, so it would be clearcut under the no-action alternative. That is incorrect. This area was designated as spotted owl critical habitat in 1992. That designation was illegally removed in 2007 and will likely be restored under the new critical habitat designations in 2012. The BLM had to drop the last clearcut proposal of these stands in 2005 (East Fork Coquille Timber Sale) because the court found it is illegal to degrade critical habitat. It will likely remain illegal in the future.

Even if critical habitat is not a factor – in just a few years this stand will provide high quality spotted owl nesting habitat. The spotted owl recovery plan forbids clearcutting here because of Recovery Action 32. Indeed, seven acres within the project area already meet the terms of RA 32⁵⁹. The EA claims these 7 acres are being protected (except for yarding corridors and new roads), but fail to recognize that these scattered 7 acres speeds up the recovery of the 70-year-old forests surrounding the 7 acres. A spotted owl was even using this forest last summer. The no-action alternative failed to consider the impacts to the NSO if this forest were left to grow just one more decade.

The EA also failed to consider the 7 acres of NRF habitat within the unit. Clearcutting around these 7 acres will degrade them, eliminating any interior habitat they now harbor.

If the EA were to be clear and correct, as NEPA requires, the no-action alternative for spotted owls, described on page 32 of the first EA, would have described the emergence of a rare, valuable, late-seral forest important to threatened and endangered species. Instead, it simply claimed that this is Matrix land, so it's future is always destined to be clearcut. In response to this comment, the new EA (page 34) claims that this stand will never be good spotted owl habitat because barred owls are present, the position of the stand in the slope is not good for owls, and that stand replacing events such as fire or

⁵⁹ Wagon Road new EA. page 36.

wind will ruin it all anyway. None of these claims were substantiated. If this analysis were correct, there would be no spotted owls left today.

The EA argues that this is just matrix, so if it is not cut now, it will just be cut later. This argument doesn't hold up because when the Northwest Forest Plan designated Matrix and LSRs, very little was known about the future impact of the Barred Owl. Now that we know the Barred Owl's impacts on Spotted Owls, the BLM can no longer claim LSRs are enough protection. The EA should have considered waiting for the near-by LSRs, the LSRs that were clearcut before they were designated as LSRs, to be restored to NRF habitat before clearcutting this almost-NRF habitat. NEPA requires that the BLM make a more honest assessment of the no-action alternative.

6. Port Orford Cedar

There is a significant component of Port Orford Cedar (POC) within this stand. We were disappointed to see many large, healthy POC's marked with blue paint for logging. Some of the POC's we saw with blue paint even looked like old growth over 150 years old. The timber sale advertisement confirms that 904 Port Orford Cedars, 45 thousand board feet, will be auctioned off, at one of the highest appraised prices of the entire sale, \$256.80 per mbf⁶⁰. Selling these old, big, and potentially disease-resistant Port Orford Cedars was never properly disclosed or impacts analyzed in the EAs. Instead of selling 904 POCs uninfected with root rot, or only lightly infected, all POCs should be protected.

POC are not subject to the export ban of federal timber. They are excluded from that law, and likely will be exported. Therefore, the 904 of POC trees that will be sold should have reduced any calculations of how many local jobs this project will provide.

In response to our previous comments concerning exports, the BLM still insists in the new EA that "All timber sold to the Purchaser of this contract is restricted from the export from the United States in the form of unprocessed timber..."⁶¹ This is incorrect. The sale prospective says: "**Excepting Port-Orford-cedar**, all timber offered for sale hereunder is restricted from export from the United States in the form of unprocessed timber and is prohibited from being used as a substitute for exported private timber."⁶² NEPA does not allow the BLM to claim in the EA that nothing can be exported, and then tell the timber purchasers that POC is an exception to the export ban.

Our previous comments were clear about the issues of retaining uninfected POC and the allowance for export. It is unfortunate the EA ignored these comments. An alternative could have been developed that protected all healthy POC.

The BLM also failed to plant POC where required. The POC management guidelines require "planting to increase the presence of POC"⁶³. In response to these comments, the

⁶⁰ Wagon Road sale advertisement January 19, 2012, and prospectus at www.blm.gov/or/districts/coosbay/timbersales/index.php.

⁶¹ Wagon Road new EA. page 11.

⁶² www.blm.gov/or/districts/coosbay/timbersales/index.php.

⁶³ Management of POC in SW Oregon FEIS. 1/2004. page 2-22.

BLM made clear that where the POC is abundant, in the Alder Conversion area, “Planting would consist of Douglas fir at approximately 400 trees per acre”⁶⁴. Why, in response to our concern that this area has old growth POC marked with blue paint for cutting, in an area that will be clearcut for alder conversion, where disease-resistant POC should be replanted, the BLM still insists on replanting Douglas fir, and replanting it so dense that no natural POC could ever squeeze back into this area.

Another concern over the fate of the Port Orford Cedar is the BLM co-managing this project with the Coquille Tribe. The Tribe has a different standard of protecting Port Orford Cedars than the BLM. Recently, the Tribe has written that:

“It is true that the Tribe must follow the same standards and guides on adjacent federal forest lands; however the Tribe is not mandated to follow BLM policies, procedures, or instruction memorandum recommendations. The Tribe has complied with the NWP by developing a *tribal management strategy for controlling the spread of POC Root Rot diseases*.”

The Tribal management strategy for POC is different than the BLM’s. The EA was not clear on who’s protections would be used, or if what we are seeing, large POCs marked for cutting, not replanting disease-resistant POC, is the tribal management strategy for controlling *Phytophthora lateralis*.

7. Alder Conversion

This project includes 9 acres of “density management and alder conversion treatments” purported to help marbled murrelet recovery. The logging would occur within the 300’ foot buffer required on reserved murrelet habitat. The proposal is to remove “alders that would not contribute to future habitat and thinning overstocked conifer stands to develop structural complexity”. The EA says that dipping into the murrelet habitat 300’ buffer is justified because “...it may take over 100 years before the site becomes dominated by conifer.”⁶⁵

We disagree that it is beneficial to the adjoining occupied murrelet site to clearcut alders, build a new road, create a new edge for predators, and thin out hemlocks on the western side of the alder conversion area.

The alders are large and provide a buffer to the murrelet habitat, protecting it from predators, which is why the marbled murrelet recovery plan requires a 300’ buffer. In fact, the Marbled Murrelet Recovery Plan recommends that 300’ is the smallest buffer, and that it should go to 600 feet for better predator protection. But the BLM is giving a 0’ foot buffer, logging within 300’ (clearcutting alder). Starting at 301 feet, the BLM is virtually clearcutting the rest of the 700’ recommended buffer.

In addition to large alders, Port Orford cedars are being marked for cutting in the Alder Conversion area. We also saw clumps of western hemlocks that would be torn apart. Western hemlocks often grow in clumps. The BLM has marked some of the trees in the

⁶⁴ Wagon Road new EA. page 17.

⁶⁵ Wagon Road new EA. page 17.

clump to cut, and left some, as if this was a healthy thing to do. However, there are problems with breaking up 70-year-old clumps of hemlocks that have developed a single crown and share a root system. In any case, this type of “fixing overstocked” forests is not going to help the marbled murrelets at all.

We saw 7' diameter, old growth Douglas firs with big fat murrelet-friendly branches that were so close to tall red alder trees marked for clearcutting that their branches could be touching. As we discussed above, replacing those tall alders with 2' tall conifer seedlings will set back predator protection for the murrelet habitat by 70 years, when the murrelets are severely declining right now. Corvids will be able to access more interior forests in the murrelet habitat. The EA admits it may take over 100 years before conifer are reestablished onsite. This would result in a 100-year edge effect during this timeframe.

Just the act of rebuilding spur 9, running logging trucks and ground based logging equipment, taking too many trees, disturbing too much soil, will not improve the murrelet habitat forest health. Spur 9 is a big, long road accessing a small 9 acres (actually, accessing more like 5 acres because the western 4 acres would be accessed on road 28-10-9). Building spur 9 is simply wasteful.

The EA gives no accurate description of the mature forest already occupying part of the alder conversion area north of spur 9. The EA gives us no reason for the Port Orford Cedar to be taken out and no reason for not replanting it. The EA offers no alternatives to address the hardwoods the BLM thinks are harmful, like just releasing existing conifers, instead of clearcutting alders. The EA also failed to describe the benefits of nitrogen-fixing alders.

The EA gives other inaccurate information, apparently to justify logging in the murrelet buffer. It says: “The stand north of the unsurveyed suitable habitat is predominantly hardwoods.”⁶⁶ That area is not predominately hardwoods. Where the hardwoods do exist south of spur 9, there are some conifers already interspaced, so clearcutting those alders is not necessary. Hemlocks, especially on the west side of the 9 acres, dominate the rest of the 9 acres.

The EA says: “Where salmonberry is present, conifer establishment may not occur at all”.⁶⁷ But, isn't prolific salmonberry the goal of the other 121 acres being clearcut? Salmonberry is not hurting the murrelet now, or the future. What is hurting murrelets is the logging in the murrelet buffer: “The hardwood conversion could increase predation”.⁶⁸ So don't do it. “Nest predation is a major cause of nest failure for murrelets based on research where 56% of the failures in known nest trees in North America were due to predation.... As the hardwood stands already constitute an edge, current nesting would likely be >210 feet from the stand edge.”⁶⁹

⁶⁶ Wagon Road new EA page 37.

⁶⁷ Wagon Road new EA. page 37.

⁶⁸ Wagon Road First EA. page 36.

⁶⁹ Wagon Road First EA. page 36.

The EA claims that logging out the hardwoods would “meet Recovery Action 3.1.1.3 (USDI 1997)”.⁷⁰ That recovery action says nothing about alder conversion, creating a edge, building a new road, or breaking up hemlock clumps in the murrelet buffer. Instead, Recovery Action 3.1.1.3⁷¹ requires at least a 300’ buffer to be maintained. Degrading this buffer is counter to this Recovery Action. The Recovery Plan also says, “Unthinned buffers should be left around any occupied stands.”⁷² The Recovery Plan also wants the BLM to “protect recruitment nesting habitat”, which is what is being clearcut in the 121 acres next to the murrelet habitat. If the BLM wants to help murrelets, there a better ways to do it than get a few extra board feet out of their buffer.

The proposal is to replant 400 Douglas fir trees per acre. Why? The EA failed to consider replanting disease resistant Port Orford Cedar, since this is a large component of POC overstory in the area. Planting 400 TPA means it will need pre-commercial and commercial thinning. This amount of ground and canopy disturbance is not good for murrelets.

This entire area is within the 300’ buffer for the remarkable old-growth murrelet habitat. Logging here seems to be just an excuse for logging in a buffer zone where logging is otherwise not allowed. NEPA requires a more detailed description of the present condition and the environmental impacts of logging here. The EA failed to make the case that logging in the murrelet buffer would improve anything for the buffer or the murrelet.

8. Old growth trees should be protected

The BLM claims this project will protect old growth. “Conservation of older stands and trees are in our proposed restoration strategy because of their ecological and cultural significance.”⁷³ Therefore, our previous comments said that old growth trees must not be left isolated, with the surrounding forest clearcut around it, leaving the tree susceptible logging damage, blow down, or sun scald. Unfortunately, the BLM makes no commitment to protect old growth retention from logging damage.

For instance, contractors are not financially penalized for old growth trees that are damaged by other trees falling on them, from yarding damage, or from the slash burning. The decision document failed to confirm that the BLM is committed to protecting these trees with proper oversight and contract stipulations.

Yarding Corridors: Old growth is not protected from being cut or damaged by yarding corridors. We found old-growth trees marked for cutting in the eastern part of the project. When we asked the BLM about this, they said the Tribe had marked those trees for a yarding corridor (later the BLM said they would re-mark SOME of them). The EA has not confirmed that yarding corridors are routed around *all* older parts of the stand. For instance, spur 3 ends at an aggregate block. If this, or any other aggregate block needs to

⁷⁰ Wagon Road new EA. page 17.

⁷¹ Marbled Murrelet Recovery Plan. 1997. Page 140.

⁷² Marbled Murrelet Recovery Plan. 1997. Page 143.

⁷³ Applying Restoration Principles on the BLM O&C Forests in Southwest Oregon. Drs. Jerry Franklin and Norman Johnson. November 30, 2010. Page 4. Posted on the Coos Bay BLM Pilot Project web site.

be yarded through, the EA should have disclose this, and considered the damaging impacts of yarding through what is supposed to be a retention area.

While the EA promises never to yard over streams, the EA is silent on yarding through retention areas, where every old tree being protected from logging could be felled at the contractor's whim.

Tailhold and Guyline trees: The BLM has failed to assure the public that old growth trees will be fully protected from being used as tailhold and guyline trees, killing them, or severely shortening their life.

Within and near to the area proposed for logging in section 17 are very old forests (450 years old) and 160-year-old occupied marbled murrelet habitat, not to mention old trees retained individually and in aggregates. These trees are in danger of being used as tailhold or guyline trees. The new EA says the BLM will "avoid using a tailhold or guyline tree within the occupied and unsurveyed suitable marbled murrelet habitat."⁷⁴ This is alarming. The word "avoid" is useless in protecting the old growth trees. It simply means the purchaser can use them if it is the most convenient. There are old growth trees over 7' across next to the alder conversion section, and they could be the best trees to use for logging cables.

The BLM has a policy, written in a 2009 CE, detailing what is allowed in the use of BLM tailhold and guyline trees. It says:

"Use of tailhold and guyline trees to facilitate logging operations Use of tree protection devices would be required; however, trees may be damaged on occasion as a result of bark or skyline slip resulting in partially girdled trees. Trees that are partially girdled, which may die within a few years, would remain on site to provide snag or coarse woody habitat for wildlife."⁷⁵

This policy also allows the killing of old growth trees within the murrelet occupied areas next to the logging areas. In the Wagon Road Pilot, the BLM failed to clearly promise that older trees within the murrelet reserves would not be used, damaged or killed.

When the Coquille Tribe used BLM old growth trees for yarding in Section 5 (4 miles south of this project), those trees were cut down, put on a log truck, and removed. We did not understand how this was in compliance with the BLM policy for tailhold and guyline trees. We even saw a 400-year-old tree the Coquille Tribe cut on BLM land in the area used for yarding. We have asked the BLM to explain how the Tribe could use old growth trees, *in an occupied marbled murrelet stand*, without protective devises, and not leave them on site if they did need to be cut. We have never received an adequate answer.

Now we are facing a similar situation, with occupied marbled murrelet forests surrounding a proposed regeneration harvest, designed by the Coquille Tribe, which will use guyline and tailhold trees to cable yard the sale. Since the EA failed to unequivocally

⁷⁴ Wagon Road new EA page 22.

⁷⁵ Categorical Exclusion Review. DOI-BLM. 9/21/09. Fiscal Year 2010 Tailhold and Guyline requests. Pg 1.

protect older trees from being used as tailhold and guyline trees, it could mean this is exactly the BLM and the Tribe's intention when convenient.

9. Aggregate Retention Areas

The aggregate blocks for this pilot are much smaller than they are on Roseburg BLM pilot project. If both projects are meeting the same goal of VRH in "wet forests", either the Roseburg BLM is correct, or Coos Bay is correct, but both can't comply with the same description by Drs. Johnson and Franklin for aggregate retention:

"The general prescription proposed in the Coos Bay Pilot Project is retention of 20 to 30% of the pre-harvest forest. The majority of the retention will be in the form of small (e.g., 1/2 to 3-acre) intact patches ("aggregates") that are not entered during the harvesting operation."⁷⁶

The final sale layout appears to not comply with this: 30% aggregate with *most* in the 1/2 acre to 3-acre intact patches. The 10 intact patches scattered throughout the unit total 5 acres⁷⁷. 5 acres is 4% of the pre-harvest forest, not 20 or 30%. Table II-2 (page 13 and 16) is counting Survey and Manage buffers and all near-by Riparian Reserves to come up with a total of 30% aggregate. But "aggregate" means scattered patches within "the pre-harvest forest". It is not intended to include forests that are not part of the regeneration harvest area.

The EA page 14 claims the percent of aggregate retention is based on "151 acres available for regeneration harvest". However, 151 acres are NOT available for regeneration harvest. 25 acres of Survey and Manage areas are not available for regeneration harvest, and neither are the 15 acres Riparian Reserves (both counted as part of the 151 acres in Table II-2 page 16). The BLM is also claiming that the nine acres of 300' murrelet occupied site buffer is available for regeneration harvest.

There are 121 acres available for regeneration harvest, or 9 acres less if counting the murrelet buffer. This is the part of the forest Franklin and Johnson referred to as "the pre-harvest forest", not the already reserved forest outside of logging area.

While some of the Riparian Reserves can be counted, 15 acres is too much. Franklin-Johnson said, of the Coos Bay Pilot:

"Riparian buffers that extend into harvest units can often be counted as contributing to some portion of the retention target. Limitations on credit for riparian buffers are necessary, though, because such buffers typically are spatially concentrated in portions of harvest units, rather than well distributed throughout the unit."⁷⁸

Therefore, while a small part of riparian reserves could be counted, 15 acres out of 45 acres of aggregates, over a third of the aggregates, is too much.

⁷⁶ A Guide to Creating Diverse Early Successional Ecosystems through Variable Retention Regeneration Harvest on the Coos Bay District of the BLM. June 1, 2011. Jerry Franklin and Norm Johnson.

⁷⁷ Wagon Road new EA. Table II-2 page 13 and page 16.

⁷⁸ A Guide to Creating Diverse Early Successional Ecosystems through Variable Retention Regeneration Harvest on the Coos Bay District of the BLM. June 1, 2011. Jerry Franklin and Norm Johnson. Page 3.

Only riparian reserves that contain structures targeted for aggregate retention⁷⁹ can be counted as aggregate retention. The EA described one of these riparian reserves (the 5 acres to be enhanced for beargrass), and from that description, the riparian reserves is just in terrible shape and has no structures that would have been prioritized for an aggregate retention. The EA failed to describe what important forest structures are being protected as aggregate retention in other reserves. Also missing is the location of the 15 acres of reserves being counted as aggregates. The new EA never mapped the riparian areas being counted as aggregates.

Other areas that should be added to retention should be trees that are older than the stand age of 70. DBH should have nothing to do with it. Also, all healthy Port Orford Cedar should have been retained, as one of those could contribute to disease resistant POC.

10. Dead Wood

Snags are the most common early-seral structure missing from the landscape, especially on private land (industrial clearcuts provide for plenty of brush after herbicides wear off). Therefore, our comments asked for the pilot project EA to fully describe how the snag component will be restored (or retained), and in what quantity, *compared to the no-action alternative*. Unfortunately, the EAs failed to describe the natural dead wood component existing now or in the future undisturbed stand. Comparing it to a natural forest fire producing abundant snags, would also have been useful.

By having no comparison of snag habitat under the no-action alternative we have no way of knowing if the EA is destroying this important missing component of the landscape. If the regeneration harvest is supposed to be emulating natural early-seral habitat, a fire event, by replacing valuable snag habitat, we have no comparison of that scenario either.

This violates NEPA, which requires the alternatives to be compared to each other. Because of a lack of EA analysis, we do not know how close the action alternative is to providing this missing early-seral habitat. The only thing we do know is that the action alternative will displace or kill 60% of the cavity nesters present now⁸⁰. One alternative that the BLM failed to include was to retain the biggest trees that would otherwise be cut and put on a log truck, to provide for 100% of early-seral snag habitat and 100% of cavity nesting habitat.

The Franklin/Johnson June 30 paper on the Wagon Road Pilot brings up the importance of snag creation using fire, or mechanical means.

“Additional retention will occur as individual trees and snags and small clusters of trees. Retention of some of the individual trees will be to provide candidates for snag creation either using fire (broadcast slash burning) or mechanical means”⁸¹.

The EA failed to include this method for snag creation.

⁷⁹ These targets are described on page 3 of the above paper.

⁸⁰ Wagon Road new EA. page 16.

⁸¹ A Guide to Creating Diverse Early Successional Ecosystems through Variable Retention Regeneration Harvest on the Coos Bay District of the BLM. June 1, 2011. Jerry Franklin and Norm Johnson.

In compliance with the Johnson-Franklin restoration principles, the Roseburg BLM will create groups of snags with fire in their Pilot Project. The Forest Service often does this also. The main purpose of the Coos Bay BLM project is to create early seral features; the most important one missing from the landscape is snags. Meeting only 40% of cavity nesting needs is not in keeping with this need.

If fire, the most natural and best method for creating snags will not be used, the EA should have compared the different environmental impacts of using another method. But unfortunately, the EA completely failed to describe any method of snag creation.

Because this is a “restoration” pilot project of early-seral habitat, we asked for the BLM to provide for 100% of the woodpecker and cavity nesting population, not just 40%. Unfortunately, the BLM is going to maintain only 40% of the woodpecker and cavity nesting population. What is confusing is that the BLM is also going to “monitor bird populations using standard protocols.”⁸² The EA failed to explain the purpose of this monitoring. Is it to make sure the cavity nesting population was actually reduced to 40%?

11. Monitoring

Appendix E describes the monitoring of the “breeding bird” population to be focused on comparing the post-harvest pilot project area with a “traditional regeneration harvest”⁸³ on private industrial forest land. That is backwards. The comparison should be the bird population before logging, compared with the bird population after logging on BLM land. If the populations are reduced after logging, this project has failed.

The EA describes comparing the post-harvest pilot project with the Lone Rock Timber clearcut just west of section 17, clearcut the summer of 2011. That’s not a fair comparison. The Pilot Project area has scattered old growth remnant trees. The Lone Rock Timber land did not. The Pilot Project adjoins occupied marbled murrelet habitat as well as unsurveyed, likely occupied marbled murrelet habitat. The Lone Rock Timber land has no such structure around its unit. Clearly, there will be more birds on the BLM regeneration harvest than private land because of these, and other factors. If the BLM really wanted to see if the goals were met in this project, the BLM should compare the bird population before logging and after logging, on the same site, not compare two sites as different as apples and oranges.

Monitoring should be done on more than just breeding birds. Monitoring should be done on butterflies, moths, and other early-seral species mentioned as the target species in the presentations of Johnson and Franklin. Nuts and berries are a goal, as well as nesting cavities. Why limit monitoring to just breeding birds? Especially since this is a pilot project, the BLM should be monitoring to see if objectives were met, such as providing for multiple species early-seral dependent wildlife.

⁸² Wagon Road new EA. page 19.

⁸³ Wagon Road new EA. page 83.

For a pilot project designed to be replicated over thousands of acres, on lands that are our next-best-old growth, monitoring is important to make sure the creation of early-seral habitat is doing what it is supposed to do, to make sure it is worth setting back this almost-mature forest by 70 years. Desired outcomes needed to be clearly defined, and a monitoring protocol described. The EA failed to do either one. The EA also failed to describe how monitoring will be funded and the qualifications of the monitors.

Monitoring should also track the impacts to wildlife that is dependent on mature forests. Did the marbled murrelets really benefit from logging in their buffer? Did the resident spotted owl that lives in the unit leave?

12. Roads

This project builds far too many new roads. There were no alternatives proposing less roads or fully decommissioning all the new roads. The EA has too little analysis on the impacts from these roads. The current road density for this watershed averages 4.1 miles per every square mile!⁸⁴ Any project with “restoration” in the name needs to address this serious condition, consider an alternative that would build fewer miles of road, or fully decommission more miles of road.

The EAs also failed to disclose, for each segment of new road being proposed, how many acres of harvest that road will access. For the longest road segments accessing the fewest acres, an alternative could have considered dropping that segment of road. Instead, the BLM claims, “each proposed road segment is integral for implementing the Proposed Action...”⁸⁵ We disagree because this simply says that every acre of the 121 proposal must be accessed. It doesn’t tell us how many acres each road segment accesses, and, for instance, if spur x were eliminated, the proposal would be 120 acres instead of 121 acres.

The EA should have discussed how many acres each road segment accesses, so that new roads that access the least acres could be reconsidered. The Purpose and Need did not require 121 acre clearcut. A 120 or 115-acre clearcut would have also met the purpose and need, and should have been considered if it meant significantly less road building. Lengths of new roads could have been considered in different action alternatives (see below for more on alternatives).

For instance, take Spur 8 (changed to road 28-10-17.1 in the new EA). It access very few acres of the matrix land that road 28-10-17 or road 28-10-9 does not access. How many acres of matrix would have had to be dropped if Spur 8 was not built? One or two acres? Clearly, the BLM could still meet the purpose and need without having to build that new road. Or, is spur 8 only needed to log in the Riparian Reserve? Since the riparian reserve logging is illegal (see above), spur 8 is not needed at all.

Spur 9 (now called 28-10-8.3) is also questionable. It only accesses the alder conversion, which is unnecessary and should dropped altogether and allow Spur 9 to continue its path

⁸⁴ EFC Watershed Analysis. Page V-25.

⁸⁵ Wagon Road EA. page 9.

of self-decommissioning. Opening up Spur 9 will promote OHV use right next to a marbled murrelet occupied habitat. The EA failed to consider that impact.

Spur 2 and 3 (now called 28-10-17.7 and 28-10-17.8) also look questionable. The EA should have considered how many acres will they access that the main road cannot.

The EA states that the 2010 Transportation Management Plan was used to determine the transportation system for this project. However, that plan states “TMO’s will be established for new roads to ensure that they are properly incorporated into the transportation system”⁸⁶. There were no TMOs done for this project

Decommissioning: Between the original EA and the new EA, the BLM changed the spur numbers of all the new roads in the project map, to BLM permanent road numbers. Now that all 1.1 miles of new roads have the three-digit BLM road numbers, they will be considered permanent additions to the BLM road system. The intent is to not really “decommission” these roads.

The BLM uses the word “Decommission”, but the definition on page 18 implies that the road bed would remain on the ground. The roads would only be blocked by “earthen or rock barriers” and as such would remain available for use by OHVs. Since the roads will be “existing” after they are built, and BLM allows OHV on all existing roads, OHVs would be allowed on all the new roads in the project areas. The EA states “Closure of decommissioned roads would... prevent vehicular traffic”.⁸⁷ The EA then describes a method of closure that does NOT prevent vehicular traffic: “tank traps and boulder barriers”. The EA provided no evidence that these methods prevent OHV traffic, especially to what OHVs consider legally available to them, existing roads. The EA failed to consider the impacts of OHV traffic on these roads after they install tank traps that are the most fun to breach.

In the Roseburg BLM pilot, new roads will be fully decommissioned by pulling up the compaction and by replanting desired early-seral vegetation in the roadbed. ATVs will be discouraged by pulling slash over the road. The Wagon Road EA failed to consider an alternative that does the same.

Fertilizer: EA page 23 states that fertilizer would be used on the roads, even roads within riparian reserves. Fertilizers can have negative impacts in a watershed. Used cumulatively with private forest land, fertilizers cause algae blooms in water, and can easily be washed down into fish-bearing streams. The northwest forest plan states: “... chemicals shall be applied only in a manner that avoids impacts that retard or prevent attainment of Aquatic Conservation Strategy objectives.”⁸⁸

The EA argues that:

“Fertilizer would be applied at the rate of approximately 32 lbs. available nitrogen +

⁸⁶ 2010 Western Oregon Transportation Management Plan. Page 17.

⁸⁷ Wagon Road new EA. page 24.

⁸⁸ Northwest Forest Plan C37.

40 lbs. available phosphoric acid per acre. There would be approximately 10 acres of disturbed area across the entire project that would need fertilization. This amount of fertilizer (320 lbs. nitrogen and 400 lbs. phosphoric acid) would not affect water quality and would not be measureable or detectable in drinking water supplies. A much larger amount of fertilizer is applied to agricultural lands and populated areas (lawns and gardens) in the DWPA's.⁸⁹

While the amount of fertilizers on this 10 acres might be less than that applied to agricultural lands, it contributes to the cumulative impacts. Agricultural lands in Sitkum, just upstream from the project area, as well as the fertilizers sprayed on all of the adjoining industrial forest lands are likely already causing a pH imbalance in the watershed. The EA failed to consider the cumulative impacts of yet another 920 pounds of nitrogen and phosphoric acid fertilizer.

Routine road maintenance: The EA threatens that if we don't build new roads and log here, "Sediment delivery to streams and fish habitat from the 28-10-9.0 road would continue..."⁹⁰. Therefore, the EA concludes that if BLM doesn't log here, there will be "Chronic sediment input to streams" that will reduce "spawning production, juvenile rearing survival, and insect production".⁹¹ Here the EA is disclosing that the BLM will refuse to do routine road maintenance on existing logging roads if more logging can't occur. We protest this. The BLM should do routine road maintenance on all past logging roads, and should not have to depend on future logging to fix roads.

The EA also says that BLM is doing a poor job of road maintenance: "Adjacent streams have been subject to episodic and/or chronic fine sediment input due to poor road design and lack of maintenance."⁹² This sounds like deferred maintenance. BLM is referencing the 2010 TMP, which requires: "In accordance with Statement of Federal Financial Accounting Standard #6 (SFFAS), BLM is required to disclose the amount of deferred maintenance on roads and other facilities. To comply with SFFAS, deferred maintenance on roads must be identified and submitted according to the following procedures".⁹³ The BLM failed to comply with this requirement for the project area roads.

The BLM cannot afford to maintain the roads they now have, including controlling unauthorized OHV use. Building more roads, with a permanent road bed, could set the BLM back even more. NEPA requires that the BLM fully disclose the impacts of this project. Concerning roads, the BLM has failed to do that. The BLM has also failed to provide adequate mitigation for building new roads, such as full decommissioning.

13. Reforestation

The EA describes reforestation for the regeneration harvest to be 200 trees per acre of Douglas fir, western redcedar and Port Orford cedar. No other alternatives were

⁸⁹ Wagon Road new EA. page 67

⁹⁰ Wagon Road new EA page 45.

⁹¹ Wagon Road new EA. page 45.

⁹² Wagon Road new EA. page 45.

⁹³ 2010 TMP. page 19.

considered. Our previous comments had asked for an alternative that stayed true to the original proposal of a no-tree planting (or only minor tree planting). Drs. Jerry Franklin and Norm Johnson were very clear that the wet-forest pilot project must use primarily natural regeneration. They say:

“Elements of a silvicultural prescription for regeneration harvests in Moist Forests to provide diverse early successional habitat and regeneration of shade-intolerant tree species ... Regeneration of trees will be primarily by natural regeneration.”⁹⁴

This is the original recommendation for the Wet Forest Pilot Project, as presented to Ken Salazar at our December ‘10 meeting in Washington DC. It was the basis for the Secretary to approve the wet-forest pilot projects. Natural regeneration is critical to the entire purpose of early-seral restoration. It should have remained a part of this project, yet it was not even considered as an alternative in the EA. The BLM failed to give a good reason for completely eliminating this important concept.

The Purpose and Need for this project includes “maintaining a complex early-successional forest stage for 20 to 30 years”⁹⁵ Considering the profuse natural regeneration that will occur in the area because of the “variable retention” strategy, planting an additional 200 trees per acre will undermine this purpose by stocking this stand as heavy as an industrial tree plantation. 200 trees per acre averaged over 121 acres of the regeneration harvest is 24,200 trees that will be planted.

The EA does say that replanting will not occur “near natural seed sources like the retention aggregates”⁹⁶. Our previous comments asked the BLM to be more specific. How far away from “near natural seed sources” will planting occur? 100’ from the drip line seems reasonable if the intent is to not mix natural regeneration with nursery stock. 10’ away is a useless specification.

NEPA requires that the BLM be clear about their plans in the action alternative. There are scattered retention trees throughout the stand, as well as the group aggregate areas. If half of the 121 acres are farther than 100’ from the dripline of a retained tree or area, planting 24,200 seedlings will result in about 400 TPA being planted. Or perhaps each acre that is planted will have just 200 TPA. The EA is unclear, in violation of NEPA.

The EA tries to assure us that: “If abundant natural regeneration augments planting, the BLM would conduct treatments to maintain 200 trees per acre or a relative density of less than 0.15.”⁹⁷ The EA is still unclear if this 200 TPA is averaged over 121 acres, or only averaged over acres that are not near a retained tree.

Jerry Franklin and Norm Johnson recommended, “Regeneration of trees will be primarily

⁹⁴ Applying Restoration Principles on the BLM O&C Forests in Southwest Oregon. Dr. Jerry Franklin and Dr. Norman Johnson. November 30, 2010. Page 8.

⁹⁵ Wagon Road FONSI. page 1.

⁹⁶ Wagon Road new EA pages 21 and 30.

⁹⁷ Wagon Road new EA. page 21.

by natural regeneration.”⁹⁸, which means some limited replanting could occur. This should occur where specific species are under-represented on the landscape where they once were more abundant, such as Port Orford Cedar (POC). Other than planting under-represented species, the EA failed to consider no artificial reforestation.

Johnson and Franklin state, “Regeneration would be considered in the context of the goal of nurturing the development of structurally-complex, early-successional communities. The need for artificial reforestation would be carefully evaluated. This evaluation would consider such issues as the availability of surviving seed trees...”⁹⁹ There was no adequate consideration in the EA, just 24,200 seedlings (average of 200 TPA over 121 acres) that will be planted someplace.

14. Alternatives

In violation of NEPA, the “pilot project” contains only one action alternative. We provided comments suggesting a number of alternatives that could be considered for a pilot. For instance, we asked for an alternative that considered the original Johnson-Franklin recommendation to not do artificial reforestation; for alternatives to protect more than 40% of cavity nesting habitat; for alternatives that do not include hardwood conversion or beargrass enhancement or building less roads or other alternatives suggested in our comments. The BLM had a number of important alternatives that should have been considered, but were not.

This violates NEPA, which requires the BLM to: “Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.”¹⁰⁰ “(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.”¹⁰¹

While the courts have extended most of the EIS requirements to EAs, such as the requirement to consider alternatives, NEPA actually addresses this specifically for Environmental Assessments. “1508.9 Environmental assessment..... shall include brief discussions of... alternatives required by sec. 102(2)(E)...” The Wagon Road had no discussion of any alternatives except for one action alternative.

The requirement to rigorously explore a reasonable range of alternatives applies to EAs because it applies to EIS’s. NEPA requires the BLM to include in its EIS a “detailed statement . . . on . . . alternatives to the proposed action.”¹⁰² “NEPA regulations describe this alternatives requirement as the ‘heart’ of the EIS and require the agency to produce an EIS that ‘[r]igorously explore[s] and objectively evaluate[s] all reasonable

⁹⁸ Applying Restoration Principles on the BLM O&C Forests in Southwest Oregon. Dr. Jerry Franklin and Dr. Norman Johnson. November 30, 2010. Page 8. Posted on the Coos Bay BLM Pilot Project web site.

⁹⁹ Applying Restoration Principles on the BLM O&C Forests in Southwest Oregon. Page 70.

¹⁰⁰ 40 CFR 1501.2 (c).

¹⁰¹ 40 CFR 1502.14 (a).

¹⁰² 42 U.S.C. § 4332(C)(iii).

alternatives' so that the agency can 'sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decisionmaker and the public.'¹⁰³ "The existence of a viable but unexamined alternative renders an [EIS] inadequate."¹⁰⁴ The "alternatives provision" of 42 U.S.C. § 4332(2)(E) applies whether an agency is preparing an EIS or an EA and requires the agency to give full and meaningful consideration to all reasonable alternatives.¹⁰⁵ The alternatives requirement is triggered where unresolved conflicts as to the proper use of resources exist, whether or not an EIS is required. There are plenty of unresolved conflicts involved in this project, as described elsewhere in this appeal.

Reasonable alternatives are those that are viable, feasible, meet the stated goals of the project, or are reasonably related to the purposes of the project.¹⁰⁶ The BLM must look at every reasonable alternative, within the range dictated by the nature and scope of the proposed action, sufficient to permit a reasoned choice.¹⁰⁷ The agency cannot contrive the project's purpose so that competing reasonable alternatives cannot be fully considered.¹⁰⁸

The BLM is required to consider alternatives in both EISs and EAs and must give full and meaningful consideration to all reasonable alternatives.¹⁰⁹

The No-Action alternative was inadequate. It should have considered what would happen if no commercial logging occurred in this stand. This is a 70-year old forest that was not commercially replanted, and thus has more species and spacing diversity than a young plantation. It contains scattered old growth trees and currently provides some nesting, roosting, and foraging habitat for the Northern Spotted Owl. It is only about 30 years away from providing good spotted owl habitat, while nearby LSR plantations are less diverse and many more years away from meeting this goal. Considering the NSO is in deep trouble now, the no-action alternative should consider the benefits to the owl from doing nothing.

A no-action alternative would still meet the "need" for restoration, because the definition of restoration the BLM is using fits with spotted owl needs: "...activities that are designed to restore forests and landscapes to conditions that provide the diversity *needed* to restore and sustain native biodiversity and essential ecosystem functions."¹¹⁰ The "economic and social" purposes can still be met by BLM continuing to exceed their timber targets through thinning, for decades into the future.

The no-action alternative should have included how much spotted owl (or late-seral) habitat exists within the watershed, not just on BLM land, but the complete watershed,

¹⁰³ *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1120 (9th Cir. 2002) (40 C.F.R. 1502.14(a)).

¹⁰⁴ *Natural Resources Defense Council v. U.S. Forest Service*, 421 F.3d 797, 813 (9th Cir. 2005) (quoting *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985)).

¹⁰⁵ *Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1245 (9th Cir. 2005); see *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229 (9th Cir. 1988).

¹⁰⁶ *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519; *City of Carmel-By-The-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997); *Trout Unlimited v. Morton*, 509 F.2d 1276, 1286 (9th Cir. 1974).

¹⁰⁷ *Idaho Conservation League*, 956 F.2d at 1520.

¹⁰⁸ *City of Carmel*, 123 F.3d at 1155.

¹⁰⁹ *Te-Moak Tribe v. Interior*, 608 F.3d 592, 601-602 (9th Cir. 2010)

¹¹⁰ Coos Bay BLM Wagon Road Pilot Project scoping notice.

and then considered if the watershed would benefit from an additional 151 acres in section 17. The BLM has stated they will take a watershed-landscape view of this pilot project, and one of those views should have been the amount of mature and old growth forests remaining.

The East Fork Coquille Watershed Analysis says that 70% of the watershed is currently in plantations under 60 years old.¹¹¹ Historically, 61% of all Coast Range coniferous forests were in old growth condition (over 200 years).¹¹² Only 12% of the East Fork Coquille watershed is now in forests over 160 years old.¹¹³ Since the watershed is already below historical acres of mature forests, the no-action alternative should have considered the impacts to wildlife if this stand were not harvested and allowed to continue on its current trajectory of growth into higher quality late-seral habitat.

When determining which is needed more in the watershed, early seral or late seral habitat, the EA should consider the East Fork Coquille Watershed analysis. It states:

“Species requiring old-growth forest habitats, or key habitat components (snags, complex tree canopies, down logs, etc.) have been most affected. Populations of these plant and animal species have declined dramatically, and many are restricted to small isolated habitat islands. The small size and isolation of these populations put these species and ecological communities at risk (Noss and Cooperrider 1994).”¹¹⁴

The no-action alternative should have included the importance of forest connectivity between the 160 year old forests, marbled murrelet occupied sites in the southern and northwest part of section 17, with the old growth in the eastern part of section 17 and the BLM ownership in section 16, and with the older forests in section 18 and 21. The EAs failed to consider that, doing a regeneration harvest of 120 acres of mature forests in the middle of section 17, severely fragments these older forests. The no-action alternative never considered the health of the forests if this fragmentation were to not occur, and the impacts of edge effects if fragmentation were to occur.

An alternative should have considered deferring the regeneration harvests until sufficient spotted owl habitat has been restored in the LSR.

The no-action alternative should have considered what projects the BLM will not do, because they are busy doing this one. For years the Coos Bay BLM has been focusing on doing needed thinning in managed plantations, instead of regeneration harvests. There has been widespread consensus that this is the right path for the BLM to generate jobs and timber volume, to get caught up on the needed thinning before more plantations are created. The BLM has been able to provide almost 150% of their timber targets through plantation thinning. The EA should have considered if this needed thinning would be replaced with regeneration harvesting.

¹¹¹ East Fork Coquille Watershed Analysis. Coos Bay BLM. May 2000. page ES IV.

¹¹² East Fork Coquille Watershed Analysis. page V-5.

¹¹³ East Fork Coquille Watershed Analysis. page V-7.

¹¹⁴ EFC Watershed Analysis, page V-37.

At the public meeting, we were told that the reason for beginning regeneration harvests again is because the plantations that need to be thinned are running out. However, the no-action alternative failed to give any data backing up this claim. That data should include reducing the Coos Bay BLM harvests back to 27 mmbf a year. 27 mmbf a year is the target set in the RMP, yet the BLM has been averaging closer to 40 mmbf a year.

15. Forest Carbon and global warming.

The EA failed to consider the full impacts on carbon from this regeneration harvest, including the tons of carbon lost to the atmosphere through the loss of overstory trees, the delayed regeneration for 30 years, the fossil fuels used to harvest those trees and manage the plantation that results from that harvest, and the loss of carbon that would have been stored from not harvesting.

The first EA claimed there were no cumulative impacts to carbon from this project. "There are no cumulatively significant impacts... including... carbon storage."¹¹⁵ Later the first EA tells the proposed action "would result in a cumulative 50 year flux of greenhouse gasses... on the order of 9,068 metric tons..."¹¹⁶ Is it no cumulative impact or a cumulative 50 year flux? The new EA actually reduces the 9,068 metric tons down to only 5,000 metric tons without a clear explanation of why it was reduced by 45%.¹¹⁷ The new EA failed to be clear on if the "no cumulative impacts" finding was reversed.

5,000 metric tons of carbon lost to the atmosphere from the proposed action seems low for virtually clearcutting 121 acres and delaying regeneration afterwards. The EA failed to clearly describe how it came to the 5,000 metric tons or how many tones of carbon are lost per year, compared to the standing forest sequestering carbon. This should be done for 70 years, the age of the existing forest, not 50 years.

The EA failed to disclose if the BLM accounted for a closed canopy has been delayed for 30 years to enhance early-seral habitat. The EA failed to show that how much carbon use was calculated for the petroleum products used to log, such as:

- * in logging equipment, hauling lumber to mills, and in milling wood products;
- * by loggers and inspectors commenting to the project area in vehicles;
- * by BLM to get to the project area to prepare the sale, do the wildlife surveys, marking stand boundaries, etc.
- *in fertilizers and herbicides, including road-side spraying used in preparation for logging equipment use, as well as used to stabilize roads after logging, as well as the carbon the equipment used to apply chemicals.

Some other errors in BLM's calculation that were apparent:

- * The EA quotes the WOPR (USDI 2008) as the source of calculations. But those calculations did not account for a 30-year delayed regeneration. Therefore, the cumulative carbon lost over the next 70 years could be double what the BLM predicted.

¹¹⁵ Wagon Road EA. page 3.

¹¹⁶ Wagon Road EA. page 51.

¹¹⁷ Wagon Road new EA. page 55.

* Another problem is that the carbon calculation covers only 50 years, when this is a 70+ year old stand. Perhaps the BLM plans on clearcutting it again in 50 years? Not likely since regeneration is being delayed 30 years.

The EA concludes that this carbon loss “would not produce measurable change in global climates”¹¹⁸. Of course it won’t. That’s not the point of this exercise. The point is the *cumulative* impacts of carbon loss through deforestation in the coast range. Nothing is significant at the site level. Everything is cumulative and NEPA requires the BLM to consider the cumulative impacts. The EA should have considered the cumulative loss of carbon to the atmosphere from logging the highest carbon sinks in the world. Instead, under the heading of Cumulative effects, the EA says carbon sequestration will *increase* over the next 50 years as a result of this regeneration harvest¹¹⁹. This doesn’t make sense. Removing a mature forest and replacing it with a tree plantation that will have reforestation delayed by 30 years cannot increase carbon in 50 years, especially when considered with the near-by industrial tree plantations that are re-clearcut every 50 years.

Carbon calculations must be more up to date than that used in WOPR 2008. Greater accuracy is important, as this is a *pilot project*, and carbon sequestration in Oregon’s coast range is of great significance world-wide. These forests have the potential to store more carbon per acre than virtually any other place in the world, including tropical rainforests. The BLM should not skimp on this important topic.

16. Co-Management with CIT

Staff Qualifications: The amended cooperative agreement between the Tribe and BLM is posted on BLM’s web site. It says that the Tribe will be paid \$116,500 for “technical expertise and support” for wildlife surveys, BA preparation and scientific oversight for the Pilot Project.

We asked the BLM for the Tribe’s qualifications. The BLM responded “we do not have qualifications on file.”¹²⁰ The BLM is paying \$116,000 for “Technical Expertise”, without knowing the qualifications of the people doing the work. Our comments asked that the BLM correct this oversight and disclose staff qualifications in the EA, but the EA failed to do so. NEPA requires this information to be disclosed in the EA (1502.17).

Cooperative Agreement: The current “Cooperative Agreement” between the BLM and the Tribe is restricted to “improve watershed health”.¹²¹ The goal of the cooperative agreement is “restoring aquatic and upslope habitats to benefit native fish and wildlife species and water quality”. We fail to see how this project fits in with that agreement.

¹¹⁸ Wagon Road new EA. page 57.

¹¹⁹ Wagon Road new EA. page 58.

¹²⁰ Email from Kathy Hoffine, 9-19-11

¹²¹ Cooperative Agreement No. L10AC20045 Coquille River Basin Watershed Restoration, Coos Bay District, Oregon Cooperative Agreement No. L10AC20045. 9/15/2010. The BLM agreement authorizing the Tribal work on this project.

The Coquille Tribe is required to submit quarterly reports on the expenditures received through this Cooperative Agreement. The BLM must provide those reports to the public since, in effect, the Tribe is working for the public on this Cooperative Agreement Pilot Project. Five quarters have passed since this agreement was first made. Our comments requested that BLM post the quarterly reports on the same web page as the original agreement is posted. We repeat that request through this protest.

Tribal Management of 58,000 acres: At the public meeting for this project, John Gordon presented the Tribes expected outcome of this pilot project: management of 60,000 acres of the Coos Bay Wagon Road BLM lands in Coos County. The BLM's Wagon Road Pilot Project web site also showcases the Tribe's proposal to take over management on 58,000 acres of BLM land on its front page.

The purpose and need in the EA failed to describe this. The CIT has asked for management of the Coos Bay Wagon Road Lands and has been to Washington DC with Coos County Commissioners several times to lobby for this. NEPA does not allow hidden agendas in the purpose and need for projects. Also, transfer of BLM land to the tribe has many other problems associated with it, as we discussed in our EA comments.

17. An EIS is needed

For reasons stated elsewhere in our comments, an EIS is necessary. The FONSI is incorrect. NEPA requires preparation of an EIS for all "major Federal actions significantly affecting the quality of the human environment."¹²² "Significance" has two components: context and intensity.¹²³ "Context" refers to the setting in which the proposed action takes place, in this case the Coos Bay BLM lands and their resources such as water quality, endangered species habitat, and healthy Port Orford Cedars, which serve as a focal point for environmental analysis.¹²⁴ "Intensity" refers to "the severity of the impact" and is determined by looking at several criteria.

The Wagon Road Pilot Project decision, considering both context and intensity, will result in "significant" effects to the environment, requiring the BLM to prepare an EIS. The project will impact unique characteristics of the geographic area: including Riparian Reserves; Port Orford Cedar, Red Tree Voles, fisher, and other rare species. In addition, species protected by the Endangered Species Act are present on within the project area, including the Marbled Murrelet and Northern Spotted Owl.

As the Ninth Circuit has explained, the BLM must prepare an EIS if substantial questions are raised as to whether a project *may* cause significant degradation. A decision not to prepare an EIS must be supported by a "convincing statement of reasons" demonstrating why a project's impacts are not significant.¹²⁵ An EA can never substitute for an EIS.

¹²² 42 U.S.C. § 4332(2)(C).

¹²³ 40 C.F.R. § 1508.27; *Anderson v. Evans*, 371 F.3d 475, 488 (9th Cir. 2004).

¹²⁴ 40 C.F.R. § 1508.27(a).

¹²⁵ *Blue Mtns. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

An EIS must be prepared if the effects “are likely to be highly controversial”.¹²⁶ Doing a regeneration harvest in almost-mature public forests, with a resident spotted owl, is controversial. There is controversy on if the project will be re-designated it’s lost critical habitat designation. The first EA makes claims that the USFWS promised it would not be redesigned, but the USFWS refutes those claims. Enhancing early-seral habitat in the industrial checkerboard full of early-seral habitat is also controversial.

A project is significant if “the possible effects... are highly uncertain...”¹²⁷. Clearly, it is uncertain if this project will actually enhance early-seral wildlife habitat, or it is just another fiber farm. The project is significant, needing an EIS, if “the action may establish a precedent for future actions with significant effects”¹²⁸ This is a pilot project, so it obviously establishes a precedent.

A project requires an EIS if it “is related to other actions with individually insignificant but cumulatively significant impacts”. Regeneration harvest in the already heavily clearcut East Fork Coquille watershed fits this requirement.

Finally, this project will “adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act.”¹²⁹ The project area “has been determined to be critical” in 1992, and is likely to be re-designated as critical in 2012. This project requires an EIS.

Sincerely

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¹²⁶ 40 CFR 1508.27 (b)(4).
¹²⁷ 40 CFR 1508.27 (b)(5).
¹²⁸ 40 CFR 1508.27 (b)(6).
¹²⁹ 40 CFR 1508.27 (b)(9).

