DECISION RECORD
for
Whitehorse Heaven
Analyzed within the Seneca Right-Of-Way Road Construction Project
Environmental Assessment Number # OR-118-06-007

United States Department of the Interior
Bureau of Land Management
Medford District
Glendale Resource Area
Douglas County, Oregon

INTRODUCTION

An environmental assessment for the Seneca Right-of Way Road Construction Project (EA Number OR-118-06-007), including a Finding of No Significant Impact (FONSI), was made available for a 15-day public review period on September 27, 2006. Two letters were received. The Bureau of Land Management's (BLM) responses to the comments in these letters are found in the attached *Public Comments to Seneca Right-of-Way Construction Project EA and BLM Response* and were considered in reaching a final decision. A copy of the EA and FONSI can be obtained from the Grants Pass Interagency Office, 2164 NE Spalding Ave., Grants Pass, Oregon 97526. Office hours are Monday through Friday, 8:00 am to 4:00 PM, closed on holidays.

This decision conforms with the *Final Supplemental Environmental Impact Statement* and *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (Northwest Forest Plan FSEIS,1994 and ROD, 1994); the *Final-Medford District Proposed Resource Management Plan/Environmental Impact Statement* and *Record of Decision* (EIS, 1994 and RMP/ROD, 1995); the *Final Supplemental Environmental Impact Statement: Management of Port-Orford-Cedar in Southwest Oregon* (FSEIS, 2004 and ROD, 2004); the *Final Supplemental Environmental Impact Statement and Record of Decision and Standards and Guidelines for Amendment to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (*FSEIS, 2000 and ROD, 2001); the *Final Supplemental Environmental Impact Statement Clarification of Language in the 1994 Record of Decision for the Northwest Forest Plan National Forests and Bureau of Land Management Districts Within the Range of the Northern Spotted Owl Proposal to Amend Wording About the Aquatic Conservation Strategy* (FSEIS, 2003 and ROD, 2004) and the *Medford District Integrated Weed Management Plan Environmental Assessment (1998*) which is tiered to the *Northwest Area Noxious Weed Control Program* (EIS, 1985).

The Medford District Bureau of Land Management (BLM) is aware of the August 1, 2005, U.S. District Court order in Northwest Ecosystem Alliance et al. v. Rey et al., which found portions of the *Final Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines* (January, 2004) (EIS) inadequate, and the subsequent Court order on January 9, 2006, which reinstated the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer,*

and other Mitigation Measure Standards and Guidelines (January, 2001) (2001 ROD), including any amendments or modifications in effect as of March 21, 2004. The BLM is also aware of the November 6, 2006, Ninth Circuit Court opinion in Klamath-Siskiyou Wildlands Center et al. v. Boody et al., No. 06-35214 (CV 03-3124, District of Oregon) relative to the 2001 and 2003 Annual Species Reviews (ASRs) regarding the red tree vole. Finally, the Medford District BLM acknowledges ongoing litigation Pacific Coast Federation of Fishermen's Associations et al. v. National Marine Fisheries Service et al. (W.D. Wash.) related to the 2004 supplemental environmental impact statement and record of decision (ROD) for the Aquatic Conversation Strategy (ACS). The Magistrate Judge issued findings and recommendations to the Court on March 29, 2006. The District Court has not yet adopted them. The Court has not found this amendment to be "illegal," nor did the Magistrate recommend such a finding. The Magistrate did agree with the Plaintiffs in that case that the biological opinions issued by the United States Fish and Wildlife Service and NOAA Fisheries Service were defective. However, the District Court has yet to adopt the findings and recommendations and rule. The lawsuit and legality of the 2004 ACS ROD is outside the scope of the project.

We do not expect that the litigation over the ASR process in Klamath-Siskiyou Wildlands Center et al. v. Boody et al will affect this project, because no commercial trees will be cut and Whitehorse Heaven Project complies with the Northwest Forest Plan prior to the ASR process. Therefore, the decision for the Whitehorse Heaven Project is neither altered by changes made through the ASR process or the 2004 decision to eliminate the Survey and Manage program.

ERRATTA:

1/ On page 11, "Whitehorse Construction Project" the first sentence should read, "The construction of 167 feet of rocked road for the Whitehorse Project in T32S-R4W-Section 9 off BLM road 32-4-9.4 for Seneca to access their land in Section 10, and the new road would be identified as road [32-4-9.05]."

2/ On page 11, "Whitehorse Construction Project" the third sentence should read, "The clearing width would be approximately 40-60 feet and the useable road widths would be approximately 16 feet. To minimize sedimentation, road drainage for road [32-4-9.05] would consist of ditch-outs at the end of the newly constructed road".

These modifications of a road number are minor and do not change the scope of the action analyzed, nor do the modifications affect the adequacy of the analysis contained in the EA.

DECISION

Based on site-specific analysis, the supporting project record, public comments, management recommendations contained in the Upper Cow Creek Watershed Analysis (2005), Middle Cow Creek Watershed Analysis (1999), South Umpqua/Galesville Late Successional Reserve Assessment (2004), as well as the management direction contained in the Record of Decision and Standards and Guidelines of the Northwest Forest Plan (1994), Medford District Resource Management Plan and Record of Decision (1995) and *Evaluation of the Medford Resource Management Plan Relative to Four Northern Spotted Owl Reports* (2005), I have decided to implement the Whitehorse Heaven Project as described in Alternative 2 with minor

modifications noted above which is hereafter referred to as the "Selected Alternative." Alternative 2 was analyzed in the Seneca Right-Of-Way Road Construction Project EA, pp. 22-36. The Whitehorse Heaven Project will construct 167 feet of rocked road in Township (T)32S-Range (R)4W-Section 9 off BLM road 32-4-9.4 for Seneca Jones Timber Company to access their land in Section 10, and the new road would be identified as road 32-4-9.05. The construction would occur in the South Umpqua/Galesville Late Successional Reserve (LSR). No commercial timber would be removed for the road construction.

This decision document applies only to the Whitehorse Heaven Project activities associated with construction and log hauling on 167 feet of road under Amendment No.25 to Right-of-Way and Road Use Agreement R-656 (OR 056498 PT) and O. and C. Logging Road Right-of-Way Permit R-656 (OR 056498 FD). A separate decision document will be issued for the proposed Snow Creek road construction and hauling, and Reciprocal Right-of-Way Agreement amendment analyzed in the Seneca Right-of-Way Construction EA.

ALTERNATIVES CONSIDERED

The alternatives considered in detail included the No Action Alternative (Alternative 1) which serves as the baseline to compare effects, and the Proposed Action (Alternative 2) which initiated the environmental analysis process. A description of each alternative is found on pages 10-11 of the EA.

REASONS FOR THE DECISION

The Selected Alternative addresses the purpose and need of implementing the Medford RMP through providing right-of-way access to non-federal lands through Late Successional Reserves (RMP ROD p. 35) and to plan road systems that meet resource objectives and minimize detrimental impacts on water and soil resources (RMP ROD p.157).

The effects of the Whitehorse Heaven road construction and log haul were adequately analyzed in the EA and the action is in compliance with applicable land use plans. No commercial trees would be removed by the implementation of this decision. The construction of a permanent 167 foot ridge top road spur would not negatively effect threatened, endangered, special status, or survey and manage fish, wildlife, or botany species.

The 167 feet of road construction on BLM land in T32S-R4W Section 9 (road #32-4-9.05) occurs in designated spotted owl critical habitat OR-32, and within the South Umpqua/Galesville Late Successional Reserve #RO223. No suitable (nesting, roosting, foraging) or dispersal habitat would be removed from the construction of the road, and therefore would remove no primary constituent elements contributing to nesting, food, cover, shelter, and would not impact known sites for breeding, reproduction, or rearing of offspring. No owl sites occur within ¼ mile of the proposed road construction, and therefore no disturbance would occur to nesting owls. (EA p. 33).

The construction and use of the 167 foot ridge top road would re sult in no m easurable sediment to the closest fish bearing stream over ¼ mile downstream of the project area (EA p.23).

Road densities would remain at 4.8 mi/mi^2 within the Cow Creek-Whitehorse Creek HUC 6 drainage, with the construction of only 0.03 miles (167 feet) of road (EA p. 24).

The benefit of providing access to private land outweighs the impacts to hydrology, water quality, and soil productivity on .2 acres of soil disturbance and .1 acre of soil compaction (productivity loss). "Given the scope and location of this proposed spur road, this action is anticipated to have a negligible impact to soil productivity on federal lands at the 6th field sub-watershed scale... Additionally, it would not be expected that this project would measurably contribute to an increase in flows or runoff timing" (EA, p.24).

Alternative 1 was not selected because this alternative would not meet the purpose and need of the project (described in Chapter 1 of the EA) to consider as valid uses access to nonfederal lands through late-successional reserves and existing rights-of-way agreements (RMP ROD p. 35) and to plan road systems that meet resource objectives and minimize detrimental impacts on water and soil resources." (RMP ROD p. 157). Alternative 1 would require a helicopter landing and decking on road 32-4-4.0 within 50' of a water quality limited anadromous fish stream, require maintenance of two miles of road within 100' of a stream, and hauling would require crossing five intermittent streams which would likely contribute sediment to Whitehorse Creek (EA p.21).

Two letters were received in response to the 15-day comment period on the EA and FONSI. Attachment 1 contains the BLM's response to the comments received. Comments did not identify an error of law, a demonstrable error of fact, or that the analysis contained in EA Number OR-118-06-007 failed to consider a substantial environmental question of material significance to the action for which the environmental analysis was prepared.

FINDING OF NO SIGNIFIANT IMPACT

Two letters were received during the 15-day review period for the EA and FONSI. Those letters did not provide new information, nor did they identify a flaw in assumptions, analysis, or data that would alter the environmental analysis disclosed in the EA or conclusions documented in the FONSI. It is my determination that the Selected Alternative will not significantly affect the quality of the human environment, individually or cumulatively with other actions in the general area. No environmental effects meet the definition for significance in context or intensity as defined in 40 CFR § 1508.27. Therefore an environmental impact statement will not be prepared.

EFFECTIVE DATE OF DECISION

This is a land decision on a right-of-way action in accordance with BLM regulations at 43 CFR Subpart 2812. All BLM decisions under 43 CFR 2812 will become effective on the day after the expiration of the appeal period (30 days after publication of the legal notice of decision) where no petition for a stay is filed, or 45 days after the expiration of the appeal period where a timely petition for a stay is filed, unless the Director of the Office of Hearings and Appeals or an Appeals Board has determined otherwise in accordance with specified standards enumerated in 43 CFR 4.21(b).

RIGHT OF APPEAL

This decision may be appealed to the U.S. Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals (Board) by those who have a "legally cognizable interest" to which there is a substantial likelihood that the action authorized in this decision would cause injury, and who have established themselves as a "party to the case." (See 43 CFR § 4.410). If an appeal is taken, a written notice of appeal must be filed with the BLM officer who made the decision in this office by close of business (4:00 p.m.) on March 8, 2007. Only signed hard copies of a notice of appeal that are delivered to the Glendale Field Manager, 2164 NE Spalding Ave., Grants Pass, OR 97526 will be accepted. Faxed or emailed appeals will not be considered.

In addition to the applicant, anyone who has participated in the National Environmental Policy Act process for this project by providing public comments on the environmental assessment will qualify as party to the case. (See 43 CFR § 4.410(b)). However, in order to qualify as an appellant, a "party to the case," you also have the burden of showing possession of a "legally cognizable interest" that has a substantial likelihood of injury from the decision. (See 43 CFR § 4.410(d)). Furthermore, you may raise on appeal only those issues you raised in comments on the environmental assessment or that have arisen after the opportunity for comments closed. (See 43 CFR § 4.410(c)).

The person signing the notice of appeal has the responsibility of proving eligibility to represent the appellant before the Board under its regulations at 43 CFR § 1.3. The appellant also has the burden of showing that the decision appealed from is in error. The appeal must clearly and concisely state which portion or element of the decision is being appealed and the reasons why the decision is believed to be in error. If your notice of appeal does not include a statement of reasons, such statement must be filed with this office and with the Board within 30 days after the notice of appeal was filed.

According to 43 CFR Part 4, you have the right to petition the Board to stay the implementation of the decision. Should you choose to file one, your stay request should accompany your notice of appeal. You must show standing and present reasons for requesting a stay of the decision. A petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

A notice of appeal with petition for stay must be served upon the Board, the Regional Solicitor, Seneca Jones Timber Company, and Association of O&C Counties at the same time such documents are served on the deciding official at this office. Service must be accomplished within fifteen (15) days after filing in order to be in compliance with appeal regulations. 43 CFR § 4.413(a). At the end of your notice of appeal you must sign a certification that service has been or will be made in accordance with the applicable rules (i.e., 43 CFR §§ 4.410(c) and 4.413) and specify the date and manner of such service.

The Board will review any petition for a stay and may grant or deny the stay. If the Board takes no action on the stay request within 45 days of the expiration of the time for filing a notice of appeal, you may deem the request for stay as denied, and the BLM decision will remain in full force and effect until the Board makes a final ruling on the case.

CONTACT INFORMATION

For additional information concerning this decision or the BLM administrative review process contact Katrina Symons, Glendale RA Field Manager, 2164 NE Spalding Ave., Grants Pass, OR 97526, telephone 541-471-6653; or Marlin Pose, telephone 541-471-6617.

Additional addresses to serve documents include:

- USDI, Office of Hearings and Appeals, IBLA
  801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203
- Regional Solicitor
  Pacific Northwest Region, USDI
  500 N.E. Multnomah Street, Suite 607, Portland, Oregon 97232
- Seneca Jones Timber Company
  P.O. Box 10265
  Eugene, OR 97740
- Association of O&C Counties
  P.O. Box 2327
  Harbor, OR

2/2/07

Katrina Symons
Field Manager, Glendale Resource Area
Medford District, Bureau of Land Management

Date

Attachment
Public Comments to Seneca Right-of-Way Construction Project EA and BLM Response

The Seneca Right-of-Way Road Construction Project was published in the quarterly BLM Medford Messenger beginning in the 2005/2006 issue. To provide for public scoping a brief description of proposed projects, legal description and general vicinity map were provided along with a comment sheet for public responses. Although inquiries were made about the project, no site specific comments were provided.

The Seneca Right-of-Way Construction Project environmental assessment (EA) was made available for public comment from September 27 to October 12, 2006. The BLM received two comment letters or emails. One letter was from Klamath Siskiyou Wildlands, Cascadia Wildlands Project, Oregon Wild, Siskiyou Project and Umpqua Watersheds. The other letter was from Umpqua Watersheds.

If a number of comments are identical or very similar, agencies may group the comments and prepare a single answer for each group. Depending on the volume of comments received, responses may be made individually to each substantive comment or similar comments may be combined and a single response made. The Code of Federal Regulations (40 CFR §1503.4) identifies five possible types of responses for use with environmental impact statements.

1. Modify alternatives including the Proposed Action.
2. Develop and evaluate alternatives not previously given serious consideration by the agency.
3. Supplement, improve or modify the analysis.
4. Make factual corrections.
5. Explain why the comments do not warrant further agency response, citing the sources, authorities or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

BLM responses to public comments are found below and will be considered in reaching decisions for two right-of-way (ROW) requests (Whitehorse Heaven involving construction of a 167 foot road spur and Snow Creek involving construction of two road spurs totaling 774 feet) across BLM managed land in order for Seneca Jones Timber Company to access their lands to haul harvested timber.

1) Comment: *There is only one action alternative for this project, and no alternative access methods (such as aerial logging) were developed and considered as an action alternative by the agency in the EA.*

Response: As mentioned on page 7 of the EA, "This environmental assessment analyzes the environmental effects associated with Seneca Jones Timber Company's request to amend Reciprocal Right-of-Way R/M-656 Agreement, pursuant to 43 CFR 2812, to authorize the construction and use of three spurs totaling 941 feet of road across BLM land to access their property for the purpose of timber harvest." Under the No Action Alternative, no roads would be

constructed across BLM lands. However, Seneca would still harvest their lands under methods more impactive to water and soil regardless of the Proposed Action by renovating approximately one half to three quarters mile of road near a fish bearing stream and development and use of helicopter and log decking on their lands. The No Action Alternative would increase logging costs by up to 184%-211% per thousand board feet over the costs associated with the Proposed Action, depending on percentage of ground based vs. the more expensive aerial logging. BLM has no authority to control timber harvesting on private land. The Medford Resource Management Plan /EIS anticipated that harvesting would occur on private lands on a 40-60 year rotation (RMP/EIS, p. 4-5).

Under the Proposed Action (Alternative 2) spur roads would be constructed across BLM lands to access private lands.

Since there were no unresolved conflicts concerning alternative uses of available resources identified by the interdisciplinary team (40 CFR § 1502.14), there was no procedural requirement to develop additional action alternatives (Appendix 1 p. 46-49). Development of an alternative that would entail aerial logging for the federal action (ROW construction on BLM) does not resolve any conflict on federal land from the removal of mature trees on the Snow Creek road construction project construction project, or the removal of young trees (non-commercial) on the Whitehorse road construction project.

The BLM has considered a range of reasonable alternatives given the small scope of the Proposed Action (including abandonment of the project, the No Action Alternative) that will avoid or minimize adverse effects of these actions upon the quality of the human environment. You fail to offer a specific alternative that is cost effective and meets the Purpose and Need, and is significantly different than the Proposed or No Action alternative already analyzed in the EA. The only other alternative use of available resources would entail BLM road access, which is discussed in Appendix 1 (p. 46-49) and rigorously explores and objectively evaluates all reasonable alternatives, and alternatives which were eliminated from detailed study, and discusses the reasons for their having been eliminated.

The National Environmental Policy Act (NEPA) directs federal agencies 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, Oregon Natural Desert Association v. Singleton, 47 F.Supp.2d 1182, 1194 (D.OR. 1998). Parties claiming a NEPA violation involving failure to consider a reasonable alternative must offer a specific, detailed counterproposal that has a chance of success. In the Morongo Band of Mission Indians v. Federal Aviation Admin., parties claiming a NEPA violation involving failure to consider a reasonable alternative must offer a specific, detailed counterproposal that has a chance of success. Also in other cases it was determined that an agency does not have to consider alternatives that are not feasible, Headwaters, Inc., 914 F.2d at 1180-1181 and an agency does not have to consider alternatives that would not accomplish the purpose of the proposed project, City of Angoon v. Hodel 803 F.2d 1016, 1021 (9th Cir 1986).

2) *Comment:* *There are no habitat potential benefits from the proposed road construction that exceed the negative impacts to the Umpqua River /Galesville LSR.*

Response: The Proposed Action is consistent with the guidance of the LSR Assessment, and Northwest Forest Plan (C-19). See BLM Response #1 regarding alternative access. The Northwest Forest Plan (NFP), Medford District Resource Management Plan (RMP), and LSR Assessment (LSRA) do not state that road construction in LSR is not allowed, or that road construction in itself must be of direct benefit. The EA describes a No Action Alternative with greater negative cumulative soil and hydrology impacts, and a Proposed Action Alternative that benefits the environment by providing the least environmental degradation through the proposed road construction. The potential benefits of the Proposed Action in the EA are measured by comparison of direct, indirect, and cumulative impacts of the alternatives to soils, water quality, and wildlife habitat associated with the proposed road construction, and a Proposed Action Alternative that through proposed road construction, provides the least effects to the watershed. Other Alternatives were considered that had greater negative impacts (see BLM Response #1, and EA, Appendix 1, pages 46-48).

The NFP, RMP, and LSRA state "potential benefits" and do not state that benefits must come from any particular resource or every resource within the LSR, but that the potential benefits must exceed or outweigh costs or impacts to habitat. The No Action Alternative considered no road construction on BLM, and the use of helicopters (aerial logging), and the environmental effects were considered to be greater to soil and water resources from actions on private land. Regarding the Snow Creek project "Harvest activities would include downhill yarding, helicopter yarding, road renovation, and landing construction and renovation…. This road is adjacent to Snow Creek for approximately ½ - ¾ miles, coming within approximately 50 feet of the stream in some locations. This road also has several intermittent, and at least one perennial, stream crossings. Snow Creek is water quality limited for temperature, and is a fish-bearing stream. Under the no action alternative, renovation and use of this road, including the construction/improvement of landings along this road, would be needed as Seneca's harvest activities would change from those that would occur under the Proposed Action." and "The use and renovation of the road along Snow Creek would be expected to result in additional measurable increases in sediment under this alternative." (EA p.19). Regarding the Whitehorse Heaven project the No Action Alternative would require a helicopter landing and decking on road 32-4-4.0 within 50' of a water quality limited anadromous fish stream, require maintenance of two miles of road within 100' of a stream, and hauling would require crossing five intermittent streams which would likely contribute sediment to Whitehorse Creek (EA p.21).

3) Comment: *BLM neglects to mention that C-19 further requires that the agency "Review all special use permits and when objectives of Late-Successional Reserves are not being met, reduce impacts through either modification of existing permits or education."*

Response: The Proposed Action is not a "Special Use Permit". The appropriate NFP Standard and Guideline to use for Rights-of-Way access to non-federal lands is C-19. The NFP ROD (C-19) recognizes valid uses that occur in LSR's.

4) Comment: *LSR objectives are not being met when the LSR is deficient in NRF habitat, and NSO sites in the LSR are in "take" due to habitat loss and fragmentation.*

Response: The reduction of approximately ½ acre of suitable spotted owl habitat for the Snow Creek ROW adjacent to a known owl site was consulted on with the United States Fish and Wildlife Service (Letter of Concurrence Log #1-15-06-I-0213). The EA does not make any references to the LSR being deficient for Nesting, Roosting, and Foraging habitat. The LSR Assessment addresses the number of owl pairs within the LSR: "Based on pair determination as outlined in the spotted owl survey protocol, 33 owl pairs were present within the boundary of the LSR as of 1994. Not counting pair data from the Forest Service portion gives a total of 30 spotted owl pairs on BLM lands. This is eight owl pairs above projections in the Draft Recovery Plan of April 1992 and 15 pairs above future projections in the Final Draft Recovery Plan (December 1992b). Differences in pair numbers between the Recovery Plan and known owls in the LSR are due to the assumptions used in the Recovery Plan." (South Umpqua/Galesville LSR Assessment p. 31). Approximately four additional currently active sites, including the Not So Bad owl site, have been located since 1994, on the Medford BLM portion of the LSR.

5) Comment: *The watershed is not properly functioning due to high road densities and BLM intends to increase road density in the LSR.*

Response: NFP (p. C-19) acknowledges that new road construction in LSRs may occur. The assessment of alternatives and Proposed Action is within these Standards and Guidelines, and therefore within the analysis of the NFP, and consistent with the development of LSRs for late-successional related species, including the spotted owl. The high road density in the watershed is acknowledged in the description of existing baseline conditions of the Affected Environment (EA pp. 16, 18). "Road densities as a result of past road construction are currently above NMFS recommended levels for properly functioning watershed condition (FWS/NOAA Fisheries Table of Population and Habitat Indicators, NOAA 2004)…Roads in close proximity to streams, un-maintained or poorly maintained roads, and native surface roads used for winter haul, are the major ongoing sediment sources in these watersheds…" The proposed short road spurs (Whitehorse Heaven-167', Snow Creek-170'and 604') are on or near ridgetops, and are not unmaintained roads. The EA, page 25, states "Under Alternative 2, approximately 0.7 acres of late successional reserve (LSR) ground would be compacted and permanently taken out of the productive land base due to road construction. This is consistent with the NFP ROD (p. C-19) that access to nonfederal lands through LSR would be considered, and when routed through LSR, designed and located to have the least impact on late-successional habitat. The cumulative effects from the addition of short spurs were analyzed "However, it would not be expected that the cumulative effects from the construction of the spurs proposed under this project would measurably contribute to an increase in flows or alter runoff timing, because, due to the ridgetop location of the proposed spur, no subsurface flows would be intercepted, and any water intercepted or routed by these short spurs would be expected to infiltrate back into the soil prior to reaching any streams." (EA pp.26, 28).

6) Comment: *The EA did not account for, analyze, or provide alternatives to the impacts of new road construction and fragmentation on LSR values.*

Response: See BLM Response #1. The National Environmental Policy Act directs federal agencies 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, not simply because there are impacts to a given value. Appendix 1 of the EA discussed alternate road construction locations in and outside the LSR to provide access to private land. The establishment of LSRs and development of roads within LSRs was analyzed in the NFP ROD EIS (C-19), and Medford RMP (pp. 35, 157). The proposed project is within those analyses by proposing short ridgetop spur construction and avoid the necessity of extensive riparian road renovation adjacent to a fishbearing stream. The EA acknowledges that extensive habitat fragmentation and high road density in the project area has already occurred.

Page 7 of the EA (Purpose and Need) states: The purpose of this project is to meet the needs identified in the Medford District Resource Management Plan Record of Decision (RMP ROD) to "Consider as valid uses access to nonfederal lands through late-successional reserves and existing rights-of-way agreements", and "For all new rights-of-way proposals, design mitigation measures to reduce adverse effects on late-successional reserves. Consider alternate routes that avoid late-successional reserves. If rights-of-way must be routed through a reserve, design and locate them to have the least impact on late-successional habitat." (RMP ROD p.35). The Seneca EA specifically tiers to and analyzes for these needs. The RMP also provides direction "To plan road systems that meet resource objectives and minimize detrimental impacts on water and soil resources." (RMP ROD p.157).

The Northwest Forest Plan Record of Decision states that "Access to nonfederal lands through Late-Successional Reserves will be considered…New access proposals may require mitigation measures to reduce adverse effects on Late-Successional Reserves. In these cases, alternate routes that avoid late-successional habitat should be considered. If roads must be routed through a reserve, they will be designated and located to have the least impact on late-successional habitat." (NFP ROD p.C-19). The Seneca EA considered access to non-federal lands and developed project design features that were incorporated into the Action Alternative to minimize impacts.

High road density in the watershed is acknowledged in the description of existing baseline conditions of the Affected Environment (Whitehorse HUC 6 drainage are currently at approximately 4.8 mi/mi^2 (p. 16), Galesville HUC 6 drainage are currently at approximately 4.8 mi/mi^2, and at approximately 4.0 mi/mi^2 within the Dismal Creek HUC 6 drainage (p. 18)). A ROW clearing currently exists in the project area (road #32-3-6.0, #32-4-9.4) and adjacent private harvesting would occur under the No Action Alternative, both having fragmentation effects on BLM land.

The EA states that:

> Extensive harvesting on BLM occurred prior to the 1990 listing of the spotted owl as a threatened species, and the implementation of the NFP in 1994. Late-successional stands in this watershed are highly fragmented and frequently isolated from other late successional

stands because of the checkerboard pattern of federal land ownership and past logging practices. Harvesting on private lands continues to be extensive. Most private land has been intensively harvested, much of it in the last few decades (Medford Change Detection Satellite Imagery Program data 1974-2002) (EA p. 34).

Fishers have not been found in the Glendale Resource Area with successive years of peer-reviewed survey methods. Project area has low suitability for fisher, and unlikely to be used because of past forest fragmentation and recent extensive adjacent private harvesting. (EA, Appendix 2, p.53).

Overall, populations in the region would be unaffected due to this small amount of loss that would not be measurable at the regional scale. Partners in Flight support the eco-regional scale as appropriate for analyzing bird populations. (EA, Appendix 2, p.59).

Fragmentation and the effects associated with fragmentation continue to occur under the No Action Alternative. The effects of the Proposed Action on Survey and Manage, and Bureau Special Status Species likely to be present are analyzed in the EA, including Appendix 2 (p.56-58).

Therefore construction of roads as in the Proposed Action is not contrary to the objectives of the LSR. The effects of the proposed Snow Creek road construction on spotted owls were analyzed in the EA, and consulted on with the United States Fish and Wildlife Service (Snow Creek Seneca Jones ROW Project Biological Assessment, USDI 2006 and Letter of Concurrence Log #1-15-06-I-0213).

The Whitehorse road construction would not remove any commercial trees. The proposed Snow Creek road construction would occur within a late-successional stand that has already been affected by roads, and will continue to be affected by private actions. The cumulative impacts from road construction to LSR values were analyzed, and due to past actions and private harvesting, values of the LSR stand would not be changed, or effect sensitive species that may use the habitat.

7) Comment: *The Ortega and Capen (1999) and the Marsh and Beckman (2004) and Trombulack and Frissell (2000) articles are attached for the decision maker to consider the conclusions.*

Response: The watersheds and project area are already affected by high road density (see BLM Response #6); Trombulack and Frissell (2000) focuses on negative impact only, and does not even attempt to give an analysis on benefits from roads. The article review keys in on the importance to conservation of avoiding construction of new roads in roadless or sparsely roaded areas and of removal or restoration of existing roads to benefit both terrestrial and aquatic biota. The project area is not roadless or sparsely roaded. The Purpose and Need for the Proposed Action of the project is not road restoration or removal.

Ortega and Capen (1999) address effects of fragmentation in extensive forested landscapes in Vermont on the Ovenbird. The results of the study are not directly applicable, as the article did

not establish that environmental conditions are similar to the project area. The general concept of fragmentation effecting wildlife has been addressed in the EA. See BLM Response #6.

The Marsh and Beckman (2004) article discusses study results of fragmentation on salamander detectability and surface activity in Virginia. The results of the study are not directly applicable, as the article did not establish that environmental conditions are similar to the project area. Also see BLM Response #6.

8) Comment: *No actual analysis or disclosure of cumulative impacts is being attempted by the BLM for this road construction project and therefore has not met its legal duty. Instead of examining the impacts of your past practices on the functionality of this LSR and watershed as required by NEPA and 9th Circuit case law (KS Wild v. BLM, 9th Cir. Oct. 28, 2004), the BLM relies on illegal CEQ "guidance" directing the agency to ignore the site-specific impacts of your past actions.*

Response: As the Council on Environmental Quality (CEQ), in guidance issued on June 24, 2005 (after the referenced 9th Circuit ruling), points out, the "environmental analysis required under NEPA is forward-looking," and review of past actions is required only "to the extent that this review informs agency decision-making regarding the Proposed Action." Use of information on the effects on past action may be useful in two ways according to the CEQ guidance. One is for consideration of the Proposed Action's cumulative effects, and secondly as a basis for identifying the Proposed Action's direct and indirect effects.

The CEQ stated in this guidance that "[g]enerally, agencies can conduct an adequate cumulative effects analysis by focusing on the current aggregate effects of past actions without delving into the historical details of individual past actions." This is because a description of the current state of the environment inherently includes the effects of past actions. The CEQ guidance specifies that the "CEQ regulations do not require the consideration of the individual effects of all past actions to determine the present effects of past actions." Our information on the current environmental condition as described in the EA is more comprehensive and more accurate for establishing a useful starting point for a cumulative effects analysis, than attempting to establish such a starting point by adding up the described effects of individual past actions to some environmental baseline condition in the past that, unlike current conditions, can no longer be verified by direct examination.

The second area in which the CEQ guidance states that information on past actions may be useful is in "illuminating or predicting the direct and indirect effects of a proposed action." The usefulness of such information is limited by the fact that it is anecdotal only, and extrapolation of data from such singular experiences is not generally accepted as a reliable predictor of effects.

9) Comment: *The EA is simply silent as to the numerous findings contained in the WA indicating that roads and associated timber harvest have drastically impacted wildlife connectivity, hydrological function and health and soil health and productivity.*

Response: As stated on page 9 of the EA "Parts of the Upper Cow Creek Watershed Analysis, Middle Cow Creek Watershed Analysis, and Galesville/South Umpqua Late Successional Reserve Assessment are incorporated by reference; the watershed analyses and LSR assessment provides background for the project planning but are neither National Environmental Policy Act (NEPA) documents nor decision documents." Watershed Analysis (WA) is an analytical process and not a decision-making process as provided in the Record of Decision for the Northwest Forest Plan (p. B-20). The WA does not contain "findings". The process for the WA as described on in the Upper Cow Creek (UCWA) and Middle Cow Creek WA is as follows:

> The process for conducting ecosystem analysis at the watershed scale has six steps:
>
> 1. Characterization of the Watershed, in which the physical setting and the land allocations and designations are described;
> 2. Identification of Key Analysis Topic and Key Questions, which define the scope and level of detail of the analysis;
> 3. Description of Current Conditions within the watershed;
> 4. Description of Reference Conditions or historic conditions;
> 5. Synthesis and Interpretation of Information; and
> 6. Recommendations.

The Proposed Action is consistent with UCWA regarding the Synthesis and Interpretation of Information for road building and road maintenance, "Ridgetop roads on slopes less than 35% depending on soil type have little impact on streams" (page 94), and Recommendations "Future road construction should be avoided in valley bottoms" (page 102). The project does not occur on fragile soils. The UCWA does not include any synthesis of information or recommendations regarding effects of ridgetop spur road building on hydrology, soils, productivity or wildlife connectivity.

The Middle Fork Cow Creek WA similarly emphasizes the most important management concerns and opportunities for future management direction. In the Synthesis and Interpretation of Information, no hydrological, soil health, or productivity concerns were discussed regarding ridgetop spur road building with limited access or adequate surfacing and drainage in non-fragile soils. Road building is listed as one of the causes of habitat fragmentation, although the WA states that on BLM lands in the LSR, habitat conditions will improve in the long term as young stands grow into mature and old-growth habitat. No Recommendations are given for your stated concerns, regarding ridgetop spur road construction.

There is no "associated timber harvest" with the federal proposed action. The past actions which have impacted wildlife connectivity, hydrological function and health and soil health and productivity in the LSR are largely due to past federal timber harvesting which occurred prior to the development of the LSR and the NFP, and the past and continuing private harvesting anticipated in the NFP. The cumulative effects of the proposed action regarding your concerns are analyzed in the EA, and are compliant with the Galesville/South Umpqua LSR Assessment, and are in accordance with recommendations for key issues discussed in the Watershed Analyses.

10) Comment: *There do not appear to be any specialist files or project files addressing cumulative, connected or site specific environmental impacts in the record for wildlife, soils, hydrology, economics, visuals, or any other resource value.*

Response: Your comment did not identify any specific resource value concerns that were not addressed in the EA. Direct, indirect, and cumulative, environmental impacts for affected wildlife, soils, hydrology, economics, visuals, or any other resource values are addressed by resource specialists in the EA, including Appendix 2.

11) Comment: *The EA does not disclose or analyze the impacts of existing, and potential increased, OHV use on hydrology, soils or wildlife, or the effectiveness of barricades.*

Response: See BLM Response #6. The Proposed Action does not propose any change to the existing environment regarding barricades, and therefore the effectiveness of barricades on resources does not need to be analyzed. "The total 0.2 miles increase in road lengths to dead-end spurs is not expected to change the current condition of off-road vehicle use in the area since this is a minimal increase to road mileage and does not connect with the rest of the road system within this watershed. Such conditions would not encourage additional use by the general public." (EA, Appendix 2 p. 55).

12) Comment: *The EA discloses the barest possible information regarding potential impacts to survey and mange species. Please be aware the Annual Species Reviews (ASRs) relied upon to illegally circumvent the requirement of the Northwest Forest Plan and the Medford RMP to conduct pre-disturbance surveys have never undergone a public NEPA process as is required for such Plan amendments. Further, the EA does not take a hard look at the impacts of the proposed road construction on red tree voles in the LSR.*

Response: The Bureau of Land Management (BLM) is aware of the August 1, 2005, U.S. District Court order in Northwest Ecosystem Alliance et al. v. Rey et al. which found portions of the *Final Supplemental Environmental Impact Statement to Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines* (January, 2004) (EIS) inadequate. Subsequently in that case, on January 9, 2006, the Court ordered:

- set aside the 2004 Record of Decision *To Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines in Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern spotted Owl* (March, 2004) (2004 ROD) and
- reinstate the 2001 *Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measure Standards and Guidelines* (January, 2001) (2001 ROD), including any amendments or modifications in effect as of March 21, 2004.

The BLM is also aware of the November 6, 2006, Ninth Circuit Court opinion in Klamath-Siskiyou Wildlands Center et al. v. Boody et al., No. 06-35214 (CV 03-3124, District of Oregon). The court held that the 2001 and 2003 Annual Species Reviews (ASRs) regarding the

red tree vole are invalid under the Federal Land Policy and Management Act (FLPMA) and National Environmental Policy Act and concluded that the BLM's Cow Catcher and Cotton Snake timber sales violate federal law.

This court opinion is specifically directed toward the two sales challenged in that lawsuit. The BLM anticipates the case to be remanded to the District Court for an order granting relief in regard to those two sales. At this time, the ASR process itself has not been invalidated, nor have all the changes made by the 2001-2003 ASR processes been vacated or withdrawn, nor have species been reinstated to the Survey and Manage program, except for the red tree vole. The Court has not yet specified what relief, such as an injunction, will be ordered in regard to the Ninth Circuit Court opinion. Injunctions for NEPA violations are common but not automatic.

We do not expect that the litigation over the ASR process in Klamath-Siskiyou Wildlands Center et al. v. Boody et al will affect this project, because the development and design of this project complies with the Northwest Forest Plan prior to the ASR process. The Glendale Resource Area/Grants Pass Interagency Field Office conducted surveys and provided management prescriptions consistent with Survey and Manage protocol and management recommendations in effect as of the 2001 ROD for Survey and Manage species whose range is in the project area. Information regarding effects of the project on "Survey & Manage" species has been incorporated in Appendix 2 (p. 58) of the EA:

> "No nests were observed within the proposed Snow Creek project proposed 664' spur. Habitat is suitable, and the red tree vole may occur and individuals may be impacted by removal of suitable habitat. Removal of ½ acre of suitable habitat with the LSR and 5th field watershed is not of a magnitude to affect species persistence, nor contribute towards a trend to list the species for federal protection."

A wildlife biologist walked the proposed Snow Creek ROW and adjacent area looking for red tree vole nests, and did not observe any. Not all nests can be seen from the ground when conducting protocol surveys, but areas with stable red tree vole populations will have higher nest and active nest densities and larger nests, and greater nest visibility than areas with low nest density, dispersing voles, or unstable or unsuitable habitat areas not functioning as active population areas. Survey visibility within the suitable stand was good. Construction of the proposed Snow Creek ROW is not expected to reduce the vole viability or persistence.

Therefore, decisions for the Seneca ROW Road Construction Project for Snow Creek, or Whitehorse Creek which removes no suitable red tree vole habitat, are neither altered by changes made through the ASR process or the 2004 decision to eliminate the Survey and Manage program.

13) Comment: *The EA does not include an adequate soil analysis. The BLM must identify parent materials, soil types and management history. Specific soil types and topographic positioning demand different management and mitigation practices to retain site productivity and hydrologic function.*

Response: The EA acknowledges there will be minimal loss to site productivity in the watersheds due to road construction. Best Management Practices in the NFP ROD are being followed through Project Design Features (PDFs) to minimize impacts to soil and hydrology. Road construction is on or near ridgetops and provides adequate stability for slopes in the project area. An Action Alternative was selected with the least cumulative impact to soils and hydrologic function (see BLM Response #1).

14) Comment: *The EA does not adequately disclose and analyze the likely spread of noxious weeds associated with this project.*

Response: The environmental impacts of noxious weeds on the Proposed Action was addressed in Appendix 2 of the EA (page 51) and concluded "Increases in individual noxious weed site occurrences and densities within the Project Area are likely to occur as a result of disturbance on approximately 1.3 acres… However, the mixed ownership pattern of private adjacent to BLM, existing use of reciprocal ROWs, and the cumulative effects from factors affecting weed spread (private logging, motor vehicles, recreation, rural and urban development, and natural air/water/wildlife processes) effecting the project area, and the implementation of BMP's, the presence or absence, or weed density will not be altered to any detectable degree at the 6th field watershed level by the Proposed Action."

In addition, a Noxious Weeds Specialist Report is included in the EA case file. This document discloses that one 250 square feet population of Tansy ragwort was found directly adjacent to the proposed Snow Creek ROW. This noxious weed species can be effectively controlled with a beetle that feeds on this plant's parts and has been very successful in reducing existing populations. One 15 square feet population of *Cirsium sp.* (Thistle sp.) was found along the proposed Whitehorse ROW.

Additional direction is provided by the Medford District RMP, which states the district is to "contain and/or reduce noxious weed infestations on BLM-administered land ...(p. 92)," and "...survey BLM-administered land for noxious weed infestations…(p. 93)." These RMP directions for weed management are intended to be met at a landscape level; whether the direction is achieved is not intended to be measured at the site specific level nor with the implementation of each project. Thousands of acres of weed treatments have occurred on federal (and non-federal) lands over the last decade across the Medford District with the RMP-driven objective of containing or reducing – not eradicating - noxious weed populations (Budesa, 2006).

The summary of the environmental effects of the No Action Alternative in this document is noxious weeds would continue to spread into suitable habitat at an unknown rate that is impossible to quantify and depends on a myriad of factors including, but not limited to, logging on private lands, motor vehicle traffic, recreational use, rural and urban development, and natural processes. To predict the rate of this degradation would be highly speculative, as the extent of weed expansion is dependent on so many factors that it is considered impossible to quantify. More aggressive species are slated for treatment under Medford District's *Integrated Weed Management Plan and Environmental Assessment OR-110-98-14* under a separate project. However, the success of implementing the weed management plan would be temporary, as

logging on non-federal lands, recreational use, rural and urban development, natural processes and vehicle traffic will continue to spread noxious weed populations into the Planning Area.

The Specialist Report discloses that cumulative effects of the Proposed Action on the spread of noxious weed encroachment is limited because there is no available or existing data regarding noxious weed occurrence on local non-federal lands. Therefore, BLM assumes that 1) there is a perpetual source of noxious/invasive weeds on non-federal lands that can spread to federal lands, especially when the land ownership is checkerboard, as within the Planning Area, and 2) conversely that noxious weeds are not established on these lands, and therefore there is a need to reduce the risk of spread of noxious weeds from the federal lands to the adjoining non-federal lands. Since BLM's influence over the cause of spreading noxious weeds is limited to human activities, additional human disturbance and traffic would increase the potential for spreading noxious weed establishment. However, regardless of human activity, spread of these weeds will continue through natural forces. Thus, the BLM cannot stop the spread of noxious weeds, it may only reduce the risk or rate of spread.

PDFs exist to reduce the potential that the Proposed Action would contribute to the spread of weed seed and establishment of new populations. PDFs are not intended or expected to completely eliminate any possibility that the Proposed Action would contribute to the spread of weed seed and establishment of new populations; however, PDFs ensure that any incremental contribution of the proposed action to the spread of weeds, when added to the rate of weed spread caused by past, present, and future actions, would be so small as to be incapable of quantification or distinction from background levels at the 6th field watershed level.

Under the No Action Alternative, noxious weeds are likely to spread over time regardless of whether or not the ROWs are granted, and that rate will not be altered to any detectable degree at the 6th field watershed level by the Proposed Action.

15) Comment: *The Upper and Middle Cow Creek WAs clearly did not serve as the basis for developing this LSR road building project and did not contribute to decision.*

Response: A Decision has not yet been made. Information and recommendations in the WAs have been considered in the development of the EA. References to The Upper Cow Creek WA (USDI 2005) and Middle Cow Creek WA (USDI 1999) are made throughout the document (pp. 16, 18, 29, 60). Also see BLM Response #9.

16) Comment: *The EA fails to account for significant new information contained in the recent Northern Spotted Owl Status Review.*

Response: Your comment does not address what new information in the report is not accounted for in the EA. Effects to Northern Spotted Owl (NSO), including reference to the following reports, is specifically analyzed in the EA pages 29-36.

- *Scientific Evaluation of the Status of the Northern Spotted Owl* (Sustainable Ecosystems Institute, Courtney et al. 2004);

- *Status and Trends in Demography of Northern Spotted Owls, 1985-2003* (Anthony et al. 2004);
- *Northern Spotted Owl Five Year Review: Summary and Evaluation* (USFWS, November 2004); and
- *Northwest Forest Plan – The First Ten Years (1994-2003): Status and trend of northern spotted owl populations and habitat, PNW Station Edit Draft* (Lint, Technical Coordinator, 2005).

The Snow Creek project was consulted on with the USFWS (September 2006, Letter of Concurrence Log #1-15-06-I-0213)

17) Comment: *The EA also fails to address the significant new information contained in the Warranted But Precluded USFWS determination for the Pacific Fisher.*

Response: Your comment did not address specifically what new information was not addressed. Effects to the fisher are specifically addressed in the EA, page 6, and analyzed in Appendix 2 page 53. " Fishers have not been found in the Glendale Resource Area with successive years of peer-reviewed survey methods. Project area has low suitability for fisher, and unlikely to be used because of past forest fragmentation and recent extensive adjacent private harvesting. No denning habitat, snags, or large down wood would be removed. Approximately ½ acre of mature habitat [Snow Creek ROW] which has a low potential of serving as residential fisher habitat would be removed…"

18) Comment: *The EA contains no Aquatic Conservation Strategy Objectives analysis or discussion, and the EA must consider sedimentation as a result of log hauling.*

Response: The four components of the ACS are summarized in the EA, Appendix 2, Table 3, page 60. The impacts of road construction and hauling from the Proposed Action are thoroughly analyzed in pages 19-28 of the EA. Also see BLM Response #5.

19) Comment: *Reducing road mileage by decommissioning roads elsewhere in the watershed as recommended by the Watershed Analysis is also feasible, yet was not considered.*

Response: The Purpose and Need for the Proposed Action is for road construction and amendment to a ROW Agreement. Road decommissioning recommended by the WA is a recommendation that is considered through multiple projects, and is not a requirement that must be met on a per project basis. Road decommissioning was evaluated on a landscape level through landscape EA projects within the LSR (Slim Jim EA, Middle Cow LSR Landscape Planning Project EA).

20) Comment: *The BLM has made no attempt to develop and consider an action alternative that would avoid contributing to the hydrologically unrecovered nature of this LSR.*

Response: An analysis of the cumulative effects of the Proposed Action on transient snow zone (TSZ) and hydrology within watersheds determined "However, it would not be expected that the cumulative effects from the construction of the spur proposed under this project would measurably contribute to an increase in flows or alter runoff timing, because, due to the ridgetop location of the proposed spur, no subsurface flows would be intercepted, and any water intercepted or routed by these short spurs would be expected to infiltrate back into the soil prior to reaching any streams." (EA pp. 26, 28). Therefore another action alternative to resolve peak flows/water yields is not needed. See BLM Response #21.

21) Comment: *The EA fails to justify why a clearing has to be up to 60 feet wide for a 16 foot useable road width.*

Response: "The clearing width would be approximately 40-60 feet and the useable road widths would be approximately 16 feet. Road curve radius would be between 50 and 100 feet, adding 3 to 5 feet road width." (EA page 11); **"**Slopes are generally less than 50% in the area of the proposed construction of these spurs" (EA p.14); the area of disturbance exceeds the useable road width (16'), and includes ditches, curve widening, and vegetative removal beyond ditches. The distance of vegetative removal above and below road prism also depends on hillside slope. The road is designed for safety, maintenance, and was marked by a BLM engineer to minimize resource impacts. The clearing widths will vary, and resource impacts are analyzed at 40-60'; actual clearing widths may fall within that range, or be less.

22) Comment: *LSR is not for commercial values, and should be used for restoration projects.*

Response: The Purpose and Need for the proposed action is not for cutting trees for restoration purposes. The Purpose and Need is to respond to a request for an amendment to an existing O&C ROW agreement, and fall under the regulations pursuant to 43 CFR 2812.5-1, requiring merchantable trees removed for road construction to be sold.

23) Comment: *Effects Northern Spotted Owls should be analyzed as the site specific level.*

Response: "The RMP/EIS assumed that in the future nonfederal lands would have no suitable habitat (RMP/EIS, 4-73) due to 40-60 year rotations on private lands, but are expected to provide some dispersal habitat. The cumulative effect of harvesting from private lands and the Proposed Action is less than what was anticipated in the RMP/ROD. The removal of habitat from private land would reduce primarily roosting, forage and dispersal habitat utilized by adjacent owl sites. This would increase the intensity of use and dependency by the adjacent owl sites on BLM ownership. If habitat resources are no longer adequate to support the adjacent owls, site selection may change, or the owls may remain at the current sites but become less productive." (EA p. 35).

The Proposed Whitehorse Heaven ROW would not remove any commercial trees and would not have an effect on NSO habitat (EA p.33).

The Proposed Snow Creek ROW would remove approximately ½ acre of suitable owl habitat (EA p. 34) and the cumulative effects from the Proposed Action "is not expected to change the actual breeding productivity of the adjacent owl site, or reduce the number of viable sites within the Section 7 watershed, and is not expected to change the stability of the spotted owl population trend in the Klamath Province." (EA p. 36).

Based on pair determination as outlined in the spotted owl survey protocol, 33 owl pairs were present within the boundary of the LSR as of 1994. Not counting pair data from the Forest Service portion gives a total of 30 spotted owl pairs on BLM lands. This is eight owl pairs above projections in the Draft Recovery Plan of April 1992 and 15 pairs above future projections in the Final Draft Recovery Plan (December 1992b). Differences in pair numbers between the Recovery Plan and known owls in the LSR is due to the assumptions used in the Recovery Plan. (South Umpqua/Galesville LSR Assessment p. 31).

The effects from such potential threats as barred owls, West Nile virus, and Sudden Oak Death, that may occur with in project area or surrounding watersheds, are reflected from site specific Northern spotted owl surveys, and contribute to population trend analysis (EA p. 31):

- *Scientific Evaluation of the Status of the Northern Spotted Owl* (Sustainable Ecosystems Institute, Courtney et al. 2004);
- *Status and Trends in Demography of Northern Spotted Owls, 1985-2003* (Anthony et al. 2004);
- *Northern Spotted Owl Five Year Review: Summary and Evaluation* (USFWS, November 2004); and
- *Northwest Forest Plan – The First Ten Years (1994-2003): Status and trend of northern spotted owl populations and habitat, PNW Station Edit Draft* (Lint, Technical Coordinator, 2005).

24) ***Comment:*** *The BLM is not allowed to degrade CHUs. Therefore, the BLM must choose the no-action alternative.*

Response: BLM consults with the USFWS on projects within CHUs that would affect the primary constituent elements with the CHU. The 167' Whitehorse road spur would not remove primary constituent elements as described in 50 CFR 4.2.4.1.2 (EA p. 32) or effect dispersal or NRF habitat (p. 33) and would not cause disturbance to the adjacent owls.

25) ***Comment:*** *The BLM failed to adequately consider cumulative effects to the upper Cow Creek watershed from projects outside of the Medford BLM district.*

Response: BLM analyzed the cumulative effects to soils/hydrology and found that it would not be expected that the cumulative effects from the construction spurs proposed under this project would measurably contribute to an increase in flows or alter runoff timing (EA pp. 26, 28).

Cumulative effects to sensitive wildlife species affected by the Proposed Action when added to other recent, and foreseeable projects, were analyzed including projects from adjacent USFS and BLM districts (EA p. 35). Recent or foreseeable projects are not listed if no cumulative effects are expected to be contributed from the adjacent project to the resource being analyzed.

26) ***Comment:*** *The EA failed to disclose the age of trees or vegetation involved to be logged from the LSRs.*

Response: The EA provides a description of the habitat with ranges of diameter sizes, and tree form, canopy closure, and general forest structure of the stand, and an assessment of the effects from the No Action and Proposed Action on the stand to sensitive wildlife species affected by the Proposed Action. The Proposed Action is consistent with guidelines regarding road development, in the NFP, RMP, LSR Assessment, and Watershed Analysis. The age of individual trees is not a function of habitat in the environment, and can not be reliably used across watersheds or provinces where environmental growth conditions differ, and used as an indicator of the function of trees.

27) ***Comment:*** *Why were no maps of the project area included in the EA?*

Response: A legal description of the Proposed Action was provided, and description of the project area, road numbers involved, effected land allocations, distance to streams. The small size and scope of this proposal does not necessarily warrant an attached map; the nature of the received public comments does not indicate that a provided map would have substantially altered the comments.

28) ***Comment:*** *We looked on your internet site to download information about this project, but it is no where on your internet site. There were old EAs, with the public comment period past, but no current EAs you are asking the public to comment on now. Why not?*

Response: You are on the standard mailing list for projects that go out for public review, and were provided a CD for the Seneca ROW project. Posting projects on the internet site currently is a lengthy process and would take longer than the public comment period, and does not provide quick method for posting projects, receiving public comments, and informing the decision maker in a timely fashion.

29) ***Comment:*** *There is no guarantee that if you allow Seneca to build a road through mature forests in a LSR, they won't still rebuild the road next to Snow Creek anyway, and they should be encouraged to helicopter log.*

Response: BLM is not granting or permitting the logging of private land by Seneca, and private harvesting can take place regardless of a BLM action (No Action Alternative), and BLM does not encourage or provide recommendations for logging activities on private land. Private actions

are guided by regulations set by the Oregon Department of Forestry. The EA Action Alternative analyzes the direct and indirect effects of road construction on BLM, and reasonably foreseeable cumulative effects including expected private actions; the No Action Alternative analyzes the direct and indirect effects of no road construction on BLM and the reasonable foreseeable cumulative effects including expected private actions. The Proposed Action is not a connected action to the private harvesting, and therefore the EA does not provide recommendations for, or analyze different alternatives for private harvesting.