



February 26, 2014

Jon Raby
Field Manager
Butte Falls Resource Area
Medford District BLM
3040 Biddle Road
Medford, OR 97504

Re: Trail Creek Timber Sale EA Comments

Dear BLM Planners,

Thank you for accepting these comments on behalf of the Klamath Siskiyou Wildlands Center, Cascadia Wildlands, and Oregon Wild. Contact information for our organizations may be found at the conclusion of this document. *Please send hard copies of all forthcoming documents regarding this project to our mailing addresses.*

As will be discussed below, the most prominent issues of concern to our organizations are the proposals to construct additional temporary logging roads within this heavily roaded planning area, the proposed regeneration and riparian reserve logging, impacts to the Berry Creek Wildlands, and the proposal to log some larger diameter trees that are currently in severe deficit in this watershed.

As the BLM moves forward with this important project, we would again like to highlight the following concerns-

Roads:

Road construction is a very controversial aspect of this project. It is essential that the Butte Falls Resource Area reduce the impacts of the existing road density within the planning area on hydrological function and terrestrial resources. The cumulative impacts of ORV use, trash dumping, road/stream crossings and habitat fragmentation associated with the existing BLM transportation system are significant. Please take this opportunity to work with the interested public to improve aquatic health and terrestrial wildlife connectivity by

identifying and decommissioning BLM roads that are not needed for agency management activities and by avoiding new road construction.

Owl Habitat:

Often the BLM proposes logging suitable spotted owl habitat down to the bare minimum canopy cover (60% in NRF and 40% in dispersal habitat) that it believes will not “downgrade” the habitat at issue. We are not convinced that every acre of functioning spotted owl habitat requires “treatment.” Often, the impacts from landing construction, yarding, and OSHA snag felling are not known to the public, to agency wildlife biologists, or to the decision maker, prior to the decision being rendered to log the owl habitat. The “regeneration” of forests providing owl habitat is a significant action that may necessitate completion of an EIS for this project. Road construction that removes habitat and logging prescriptions that downgrade function habitat are of the utmost concern to our organizations.

Late-Successional Forests:

We continue to have concerns about a subset of the logging prescription where large trees could be cut where there are patches of older forest. Recent implementation of the Pilot Joe timber sale has shaken our belief in some elements of the BLM’s timber sale program. In that project, the Ashland Resource Area was unable, or unwilling, to actually protect old-growth trees from timber harvest, despite the contention in the EA that such trees would not be logged. Our organizations now very much regret that we endorsed a timber sale that led to old-growth logging. Now that we have been burned once, we require iron-clad guarantees that large-diameter trees will not be felled as part of the Trail Creek project. Similarly, the Medford BLM’s recent contention that 250-year old trees over 4 feet in diameter that are being logged at the Cottonwood project are not “old-growth” has severely curtailed our ability to support BLM logging efforts. Hence an enforceable diameter limit is an essential project parameter to establish trust and certainty.

Riparian Reserve Logging:

In the past our organizations have supported commercial thinning of existing plantations located within Riparian Reserves. Evidently this was a mistake as the BLM is increasingly proposing RR logging in mature and native forest stands in which logging is not needed to attain the objectives of the Aquatic Conservation Strategy of the Northwest Forest Plan. C-32 of the Forest Plan is clear that logging in RRs is prohibited unless “needed” to attain the ACS objectives. Such logging is likely not “needed” in the Trail Creek Watershed and will involve the felling of wildlife snags for OSHA purposes, the reduction of mature forest canopy and the felling of non-target conifers to facilitate yarding. Indeed, the agency is proposing logging stands down to 50% canopy and log riparian stands up to 100 years of age. Such logging removes forest canopy necessary for late-successional forest character and reduces future snag and down wood recruitment.

Regeneration Logging:

Logging all but 6 trees per acre is a gift to the timber industry at the expense of wildlife, watersheds, recreation, fire hazard and collaboration. As we saw in the Timbered Rock fire, every single plantation in that fire burned at a stand replacing intensity whereas less than 20% of old-growth stands experienced high severity fire impacts. Fire severity effects were similar in the recent Douglas Complex in that large trees generally survived at higher rates than did fiber plantations. The stated project objectives of restoring ecological characteristics and decreasing wildfire risk will not be met by removing 85% of forest stands in project units. Regeneration logging destroys forests, it does not restore them. The surrounding checkerboard of private industrial forestlands and the vast network of existing BLM fiber plantations provide far less ecosystem services than the remaining mature forests in this heavily logging watershed. There are no forest conservation organizations that support the conversion of public forests into fiber plantations and proposing this practice precludes collaborative efforts to produce timber volume while increasing forest health. Please note that page 44 of the (nearby) Grave Creek BLM Watershed Analysis indicates that “the high density of small trees and brush may result in increased risk of large, intense fires or increased susceptibility to disease or insect damage.” The risk referred to in that BLM document will be further increased by BLM regeneration logging proposals contained in the Trail Creek scoping notice.

Collaboration:

We are hopeful that a collaborative approach that incorporates forest values in addition to timber production will become the standard operating procedure for BLM management in Southern Oregon. Getting the community and interested stakeholders information early in the planning process, and allowing community and stakeholder concerns to be substantively (rather than procedurally) addressed in the early planning stages will be key to BLM forest management success in the future. Meaningful public involvement is more than simply procedurally responding to comments, rather it requires attempting to understand and incorporate the concerns and values of a wide range of stakeholders into project layout and design.

Thank you for considering our concerns and comments. Our more detailed project comments are as follows-

Logging Larger Trees

It should be noted that dense, small conifer/mixed stands occur at higher elevations on USFS lands posing a potentially higher fire hazard. –Trail Creek WA, page 3-39.

As a result of timbering activity, there has also been a progressive increase of young, even-aged stands with dense regeneration and brush. Coincidentally, the use of pre-commercial, commercial thinning, and other land conversion practices have further increased fuel profiles. –Trail Creek WA, page 3-41.

Because of the paucity of mature and late-successional habitat in this landscape the removal of larger trees exhibiting late-successional structure will greatly increase the ecological impacts and social controversy of the proposed timber sale and will not contribute to forest health objectives. Please note, as pointed out above, the Watershed Analysis indicates that the cumulative logging of private and BLM lands has dramatically reduced the large-tree component in this planning area and adjacent watersheds.

We believe that retaining large diameter trees where they still exist would benefit the project in a number of ways.

Large trees are a primary element of NSO habitat function, which this project should seek to retain.

Retaining large trees in the project would greatly reduce the scientific and social controversy regarding the harvest prescription, and hence could contribute to the production of wood fiber.

Large trees provide disproportionate hydrological benefits to these watersheds. The crowns of such trees help moderate peak flow events via canopy cover. Large live trees are the only source of future large down wood, which also helps to filter and moderate water flow throughout the year.

Please note that our organizations publically supported and endorsed the Pilot Joe timber sale on the Medford BLM District based on the understanding and assurance that large-diameter fire-resilient trees would be retained. Our trust was misplaced. In fact the BLM logged a number of ancient trees in unit 26-1A. This marking, and logging, caused us to regret our previous support of the project. In a field trip (9/27/12) with the District Manager he explained his belief that BLM timber markers should have a great deal of discretion. Given that this discretion has resulted in old-growth trees being logged in a dry forest restoration project, our organizations want an ironclad assurance that large-diameter trees will not be logged in the Trail Creek project. We need an enforceable sideboard that protects big trees. The BLM should implement a diameter limit to protect the big, old, fire-resilient trees that still exist in this watershed.

Please further note that in the Thom Seider FEIS (page 343) both the Klamath National Forest and the Environmental Protection Agency acknowledge that the diameter of conifer trees acts as a “measure of resistance to fire.” Hence the fire resiliency goals of the Trail Creek project may be best achieved by retaining such trees where they still exist in the watershed. That federal agency analysis contained in that FEIS may be viewed: <http://www.fs.fed.us/nepa/fs-usda-pop.php/?project=16796>

Page 10 of the Trail Creek EA indicates that a decision factor for the project will involve whether proposed alternatives promote the development of healthy late-successional forest characteristics. Large trees are the building blocks for every element of late-successional forest character, including a multi-layered canopy, large snags and large woody debris. Large tree retention is essential for retaining or promoting late-successional character.

Findings of the Watershed Analysis

Please note that at E-20, The Northwest Forest Plan requires that:

[The Watershed Analysis] will serve as the basis for developing project-specific proposals, and determining monitoring and restoration needs for a watershed. Some analysis of issues or resources may be included in broader scale analyses because of their scope. The information from the watershed analyses will contribute to decision making at all levels. Project-specific NEPA planning will use information developed from watershed analysis. For example, if watershed analysis shows that restoring certain resources within a watershed could contribute to achieving landscape or ecosystem management objectives, then subsequent decisions will need to address that information.

The Medford RMP states that:

The information from the watershed analyses will contribute to decision making at all levels. Project-specific NEPA planning will use information developed from watershed analysis. For example, if watershed analysis shows restoring certain resources within a watershed could contribute to achieving landscape or ecosystem management objectives, then subsequent decisions will need to address that information.
-RMP page 96.

The Medford RMP further states that:

The results of the watershed analysis will influence final decisions both on timing of land-disturbing activities such as timber sales and on application of design features and mitigation measures, including best management practices (BMPs) for water quality protection.
-RMP page 97.

Hence the Trail Creek project should incorporate and reflect the following findings and recommendations contained in the Trail Creek WA:

- Active road density on BLM lands is 4 miles per square mile. The road density goal within the watershed is 1.5 miles per square mile for BLM lands. Page 3-47.
- Evaluate roads that are adjacent to stream channels using the 1998 BLM road inventory for Trail Creek and consider decommissioning, obliteration, or rerouting to restore the floodplain. Page 4-9.
- Use the 1998 BLM road inventory, and any subsequent updates, to identify existing roads with mass wasting potential, and develop site-specific mitigation plans to reduce hazards to streams where they occur. Page 4-11.

- Use the BLM Trail Creek road inventory to identify road segments that cause concentrated flow and downslope gullying. If sediment from gullies reaches streams, consider control treatments including addition of drainage structures and energy dissipation/erosion control treatments. Page 4-13
- Decrease the direct delivery distance of road ditches (currently averaging 570 feet). Delivery distance of treated road segments should approximate 100 feet. Page 4-13.
- Reconstruct, stabilize, reroute, close, obliterate, or decommission roads and landings that pose substantial risk to Riparian Reserves. Page 4-13.
- Use the BLM Trail Creek Road Inventory to identify road segments within Riparian Reserves, and to determine risk. Page 4-13.
- Designate Riparian Reserves to include active and potentially active landslides. Page 4-14.
- In concert with assessment of road abandonment and transportation system assessment, consider as a high priority abandonment and rehabilitation to forested conditions roads within one site potential tree-height equivalent of stream channels, particularly fish-bearing stream channels. Page 4-18.
- Consider road closures and/or traffic restrictions at upper elevations within and adjacent to late-successional habitat structure is to be developed. This closure strategy would further improve connectivity for old-growth dependent species. Page 4-22.
- Consider road closures and/or traffic restrictions within and adjacent to Riparian Reserves to further improve connectivity. Page 4-24.
- As recommended in the terrestrial habitat section, protection of existing old-growth stands should be considered wherever they exist on BLM lands. These stand conditions tend to exist on about 2,050 acres of dense, large tree stands occurring on cooler, moister upper elevation north facing sites, about 1,500 of which is on federal lands, much of which is within riparian areas. Page 4-25.

Transportation Management

The uniformly high density of roads throughout the watershed has resulted from accessing and removing timber. High densities of roads in forested habitat tend to displace wildlife species, sensitive to human activities, from otherwise suitable habitat near roads. High road densities also allow high levels of human access that tend to reduce security of deer and elk during hunting season and increase mortality due to poaching. –Trail Creek WA, page 1-8.

Most of the weeds found in this watershed, as well as District-wide, are found along road sides, where the seeds are transported by vehicles and control is difficult. –Trail Creek WA, page 1-10.

Trash dumping is a significant problem in the watershed. During reconnaissance of the area, numerous dumping ground locations were observed, frequently adjacent to Trail Creek and its tributaries...Dumping locations were prevalent in areas readily accessible from primary and secondary roadways in the watershed. –Trail Creek WA, page 3-8

Roads are the predominant cause of increased rates of mass wasting associated with forest management, with acceleration factors due to roads commonly found to be in the range of ten to one hundred times greater for roads than for harvesting. –Trail Creek WA, page 3-11.

A number of factors contribute to the high road sediment delivery in the watershed: long contributing road lengths between cross drains, insloped or crowned road surfaces, unsurfaced or lightly surfaced roads, and relatively high road and stream densities. – Trail Creek WA, page 3-20.

For the Trail Creek watershed, road surface erosion alone increased sediment delivery by 80% and exceeded 100% for the Upper East Fork sub-watershed. –Trail Creek WA, page 3-23.

Road mileage within riparian areas is extensive on both federal and other ownerships within the watershed. –Trail Creek WA, page 3-32.

[O]bservations indicate the extent of these [noxious weed] infestations are limited to travel corridors. Observations made during field reconnaissance indicate the road side distribution is considerably more extensive, particularly on roads with frequent traffic. – Trail Creek WA, page 3-42.

Roads directly destroy habitat and render adjacent habitat less suitable for species and individuals that are displaced by vehicular traffic and other human activities. Roads reduce habitat effectiveness by increasing ecotones (i.e., edge areas between habitats) and can inhibit movement of some species among patches of habitat. –Trail Creek WA, page 3-47.

Please note that the Trail Creek EA indicates that the BLM is considering: (1) Temporary road construction; (2) Landing construction; (3) Gap creation and regeneration logging; and (4) Ground-based yarding activities; all of which will increase (rather than decrease) the hydrological and terrestrial impacts of the equivalent roaded acres in the planning area.

We urge the BLM to propose and implement a vegetation management project that implements the ACS of the Northwest Forest Plan and the findings and recommendations of the BLM's Watershed Analysis by:

- Avoiding and deferring new road construction;
- Minimizing new landing construction; and
- Decommissioning unneeded roads.

Attached to our previously submitted scoping comments was a recent study regarding the long-term impacts of roads and transportation management on sediment production that was not directly addressed in the project EA.

Please note that the proposed road construction would remove 11 acres of spotted owl Nesting Roosting and Foraging (NRF) habitat. Such habitat removal should be considered in light of the decision factor of whether the project will promote development of healthy late-successional forest. (See EA page 10).

Lastly please note that page 63 of the EA indicates that the proposed logging road construction in T32S, R1W, §30 would occur on fragile soils classified as Fragile Mass Movement Potential (FP).

Berry Creek Lands With Wilderness Characteristics

We cannot overstate our concern regarding the proposal to log lands that contain wilderness character in the project area. Such stands are increasingly rare in the Medford BLM District and extremely rare in the checkerboard land ownership pattern present in the Trail Creek Watershed.

The 35 acres proposed for logging in the Berry Creek LWWC are not essential to achieve the purpose and need of the project or the projected sale volume for the District. Authorizing these stands for logging may necessitate completion of an EIS rather than an EA for this project and will ensure needless social and scientific controversy. Given that over 1,000 acres are proposed for logging, these 35 acres could reasonably be managed to maintain, rather than remove, the wilderness characteristics that are so hard to find in the Trail Creek watershed.

Cumulative Impacts

Most of the watershed has been harvested at some time during the past 50 years. During first entry, gentle and moderate slopes as steep as 50% were tractor logged on private lands within the watershed. Soil disturbance, removal of soil surface horizons, compaction and subsequent erosion caused substantial loss of soil productivity...-Trail Creek WA, page 3-24.

Substantial removal of forest vegetation has occurred in riparian areas adjacent to most of the major tributaries in the watershed, particularly at lower elevations and along the main stem of Trail Creek and the West Fork. Deforestation of these riparian areas can be

expected to have major effects on routing of water, sediment, and wood in these streams. –Trail Creek WA, page 3-29.

Human disturbances that have degraded Riparian Reserves include timber harvesting, roads, and grazing within the reserves...Timber harvest within riparian areas was extensive. –Trail Creek WA, page 3-31

The dominant historical influence on wildlife and wildlife habitat in the watershed has been timber extraction. Clearcut and shelterwood harvesting has largely determined the age of forest stands and ecological characteristics. –Trail Creek WA, page 3-46.

We are concerned that the Trail Creek EA fails to provide a thorough cumulative impacts analysis of the proposed logging in combination with other federal logging and private logging activities.

A proper consideration of the cumulative impacts of a project requires “some quantified or detailed information;...[g]eneral statements about some possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.” Neighbors of Cuddy Mountain v. United States Forest Serv., 137 F.3d 1372, 1379-80 (9th Cir. 1998)). The analysis “must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present and future projects.” *Id.*

The pacific fisher, northern spotted owl, long-legged myotis, fringed myotis, Yuma myotis (all bats), western bluebird, pileated woodpecker, goshawks, and del norte salamander may all be affected by reduction of forest stand structure, canopy closure and/or snag density in planning area. Please address and disclose the cumulative impacts of your activities on these species.

The many severe cumulative impacts from timber sale activities, road construction, fire suppression, and ORV use that are identified in the WAs for this planning area must meet the requirements of NEPA such that:

*A proper consideration of the cumulative impacts of a project requires “some quantified or detailed information;...general statements about possible effects and some risk do not constitute a hard look absent a justifications regarding why more definitive information could not be provided.” Ocean Advocates, 361 F.3d at 1128 (quoting Neighbors of Cuddy Mountain v. US Forest Service, 137 F.3d 1372, 1379-80 (9th Cir. 1998)). The analysis “must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects.” *Id.*
-KS Wild v. BLM 387 F 3d. 15269 (9th Cir. 2004).*

As discussed in the Ninth Circuit’s July 24, 2007 decision regarding Medford BLM NEPA analysis:

One of the specific requirements under NEPA is that an agency must consider the effects of the proposed action in the context of all relevant circumstances, such that where

*“several actions have a cumulative...environmental effect, this consequence must be considered in an EIS.” Neighbors of Cutty Mountain v. US Forest Service., 137 F3d 1372, 1378 (9th Cir. 1998) quoting City of Tenakee Springs v. Clough, 915 F.2d 1308, 1312 (9th Cir. 1990)). A cumulative effect is “the impact on the environment which results from the incremental impact of the action when added to other **past**, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or persons undertakes such other actions.” 40 CFR § 1508.7.*

Our cases firmly establish that a cumulative effects analysis “must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects.” Klamath Siskiyou Wildlands Center v. BLM, 387, F.3d 989, 993 (9th Cir. 2004). To this end, we have recently noted two critical features of a cumulative effects analysis. First, it must not only describe related projects but also enumerate the environmental effects of those projects. See Lands Council v. Powell, 395 F.3d 1019, 1028 (9th Cir. 2005) (holding a cumulative effects analysis violated NEPA because it failed to provide adequate data of the time, place, and scale” and did not explain in detail “how different project plans and harvest methods affects the environment”). Second, it must consider the interaction of multiple activities and cannot focus exclusively on the environmental impacts of an individual project. See Klamath Siskiyou Wildlands Center, 387 F 3d at 996 (finding a cumulative effects analysis inadequate when “it only considers the effects of the very project at issue” and does not “take into account the combined effects that can be expected as a result of undertaking” multiple projects).

-Oregon Natural Resources Council et al. v. Brong. 9th Circuit. July 24, 2007.

Given the repeated acknowledgements in the watershed analysis regarding the impacts of past BLM logging and road activities on the hydrological and terrestrial health of the project area, it is vital that the BLM analyze and disclose the cumulative impacts of past activities and its future plans.

Please note that our field visits to the planning area indicate that in addition to the legacy of timber harvest and road construction there are severe cumulative impacts occurring from ORV route creation, trash dumping and the BLM’s failure to close/maintain gates for seasonal road closures. Logging activities (that open up the forest to more ORV use), road construction, yarding corridors, and landing construction will directly contribute to the severe impacts of dumping and ORV that are already occurring.

Pacific Connector Pipeline

Page 42 of the EA indicates that proposed construction of the Pacific Connector Pipeline makes the establishment of a 95’ wide clearcut and significant new road construction a foreseeable cumulative impact to the Trail Creek Timber Sale. The combined and cumulative impacts of these projects likely will result in significant damage to forest

habitat, connectivity, soils and hydrology. The foreseeable cumulative impacts of these two projects necessitate documentation in an EIS rather than an EA.

Northern Spotted Owls

Generally, optimum spotted owl nesting habitat is composed of trees larger than 21 inches in diameter with canopy closure greater than 60 percent. –Trail Creek WA, page 3-49.

It appears that all of the proposed logging action alternatives are likely to adversely affect Northern Spotted Owls (NSO). This is unfortunate and indicates that an inadequate range of action alternatives was developed.

Attached to these comments is recent legal opinion from the Federal District Court in Oregon indicating that logging impacts to NSO that are “likely to adversely affect” species are a significance factor indicating that an Environmental Impact Statement (EIS) should be prepared rather than an Environmental Assessment. Please note that the proposed Riparian Reserve logging and the proposed logging of the Berry Creek Lands with Wilderness Characteristics also involve significance factors that may necessitate completion of an EIS for this timber sale.

The BLM could remedy this issue by developing and implementing a logging alternative that is not likely to adversely affect listed species.

We are particularly concerned that page 85 of the EA indicates that the BLM is proposing to log 24 acres of NSO Nesting Roosting and Foraging (NRF) habitat located in Riparian Reserves. This calls into question the contention (page 49 of the EA) that riparian logging would log stands that have little or no structural complexity. NRF habitat by its very definition contains structural complexity that should not be targeted for logging in the Riparian Reserve land use allocation.

We respectfully ask the BLM to please consider implementing the project such that:

1. The 24 acres of NRF habitat in Riparian Reserves is not logged;
2. The 11 acres of NRF habitat located in proposed logging road locations are not removed;
3. The proposed regeneration of 15 acres of NRF habitat serving as designated NSO critical habitat is not logged; and
4. NRF habitat is not downgraded by logging activities.

Please note that the Watershed Analysis indicates that habitat fragmentation and loss is a significant barrier to owl recovery in this watershed.

Fragile Soils, TPCC Stands, Unstable Lands and Landslides

As was noted in previous sections, soil productivity in this watershed is relatively low for timber production. TPCC further depict extensive timber productivity limitations due to fragile soil and/or moisture limitations. Reforestation problems indicate where factors such as frost pockets, exposure, and/or brush competition limit the ability of the site to achieve minimum stocking levels. –Trail Creek WA, page 3-40.

The project area contains numerous areas with fragile soils, previously damaged and compacted soils, TPCC limited stands, reprod failure, unstable lands and lands prone to landsliding and mass wasting. The impacts of project actions on these soils must be fully disclosed and analyzed and may necessitate completion of and EIS rather than an EA for this project.

Please note that page 155 of the Medford District RMP directs the agency to “avoid” ground-based activities on fragile soils. It is essential that this project implement the requirements of the RMP to avoid ground-based yarding on TPCC fragile soils. Hence we were surprised to see (EA page 63) that the BLM is proposing 166 acres of tractor yarding and 0.13 miles of new logging road construction on designated Fragile Mass Movement Potential (FP) soils.

Northern Goshawks

RMP requires review of all ‘special status’ and ‘sensitive’ species

Northern goshawk is a "special status" species in the RMP (p. 140). The RMP directs the BLM to review “all proposed actions” to determine if special status species occupy or use the affected area or if habitat for such species could be affected, and to conduct field surveys according to current protocol (pp. 51-52). The RMP also states: "Identify impacts of proposed actions, if any, to Bureau-sensitive and assessment species and clearly describe impacts in environmental analyses" (p. 52).

Northern goshawk is a ‘bureau sensitive’ species.

Goshawk is a ‘bureau sensitive’ species. The primary reason for its special status is widespread habitat degradation/removal by logging.

We realize the goshawk protocol says that surveys are discretionary. However, the BLM is still *required* to “identify” and “describe” logging effects on goshawk habitat, including cumulative effects. This is particularly important when, as is the case here, a single agency action may directly alter the range of the species. Please address this concern in an EIS.

The Project Should Include Recovery Actions for Coho Salmon

Trail Creek and its tributaries provide spawning and rearing habitat for both anadromous and resident salmonids. Trail Creek WA page 1-9.

Coho salmon are present in the affected watersheds of this project. Recovery of Coho contributes to BLM forest restoration goals and objectives. New information from the SONNC coho recovery plan (NMFS 2012) indicates that coho salmon are at a higher risk of extinction than previously assumed in the Medford District RMP and Watershed Analyses. The National Marine Fisheries Service (2012: 2-15) state that “the SONCC coho salmon ESU is at high risk of extinction and is not viable” and no coho populations were found to be at low risk of extinction (2012 2-18).

Please see:

NMFS (National Marine Fisheries Service) 2012. Public Draft recovery Plan for Southern Oregon/Northern California Coast Coho Salmon (*Oncorhynchus kisutch*). National Marine Fisheries Service, Arcata, CA.

http://swr.nmfs.noaa.gov/recovery/soncc_draft/SONCC_Coho_DRAFT_Recovery_Plan_January_2012.htm

Passive management will not recover coho salmon. Temporary mitigations to reduce sediment from log haul, although necessary, are not sufficient to recover coho salmon. Recovery of threatened coho salmon by statute is a high priority for BLM. The proposed action must be informed of possible recovery actions through watershed analyses and the coho recovery plan. We recommend the proposed action consider the following to recover coho salmon:

- 1) Permanently disconnect the most egregious sediment producing roads from the stream network through hydrologic obliteration, outsloping, or construction of drainage features (e.g. rolling dips) or structures (cross drain relief culverts) that direct sediment onto vegetated slideslopes and away from ditches or culverts connected to stream network.
- 2) Identify fish migration barriers for both juvenile and adult coho salmon. Collaborate with ODFW, watershed council, and private land-owners to provide passage to historic coho salmon distribution within the planning area.
- 3) Investigate illegal water diversions from BLM lands and take corrective actions.

The EA Does Not Fully Evaluate Cumulative Sediment Impacts to Coho Salmon Both Within and Downstream of the Planning Area

Information from a sediment study in the Applegate watershed confirm other previous studies that have found that sedimentation from logging and road building during the past 60 years is greatly elevated (up to 4 times greater) from any previous natural rates of

sedimentation (i.e. sediment is 2-4 times outside the range on natural variability). Colombaroli and Gavin (2010) state that “[a]fter logging in the 1950s, sediment load was increased fourfold compared with that from the most severe pre-settlement fire” and conclude that “sediment loads resulting from logging and road building have no precedent in earlier fire events [from 2,000 years before present].

This is important because elevated sediment from logging and road building has contributed greatly to the declines of coho salmon causing them to be federally listed. The forthcoming EA cannot evade sediment disclosure by merely claiming “no change” to existing sediment loads. The BLM must fully disclose the serious nature of sediment loads from logging roads and consider appropriate recovery actions.

The Proposed Action Should Consider Active Management to Increase or Maintain Decadence Within Treated Stands

Follow RMP guidelines for tree retention and down woody material development respectively. These measures would be implemented in conjunction with timber harvest activities on BLM-administered lands throughout the watershed. In implementation, consideration should be given to deferring creation of downed woody material to standing tree retention. Whereas it is recognized that both snags and coarse woody material are deficient throughout the watershed, it is recognized that large trees are a limited resource within the watershed... -Trail Creek Watershed Analysis page 4-22.

Passive management of merely retaining existing snags (that are not OSHA hazards, roadside hazards, or located in yarding corridors or log landings) may not be adequate in all units because marking appears to be targeting those trees most likely to die in the future, thus depriving wildlife a steady and sustainable supply of snags and down wood habitat.

We recommend that:

- Marking guidelines be adjusted to include retaining (on average) at least one large (>20 dbh) tree per acre that is likely to die or has decadent deformities.
- The RMP requires additional trees per acre be retained when few snags are in the mature stand.
- Stands be evaluated after all treatments (including underburning) are completed to determine if they have adequate large snags. Active management would then create clumps of snags to meet desired snag densities. Franklin et al. (2007:32) discuss decadence creation with deliberate killing or injuring to induce decline.¹

¹ Franklin, J.F., R. J. Mitchell, B.J. Palik. 2007. Natural Disturbance and Stand Development Principles for Ecological Forestry. USDA Forest Service /Northern Research Station. GTR NRS-19

The EA Must Quantitatively Disclose Future Snag Reductions and How this Will Impact Wildlife, Especially Woodpeckers and Cavity Nesters

Large numbers of mature trees will be removed from proposed logging units. All of these trees would have died and created snags and down wood for wildlife. What is the reduction in large snag/down wood supply over time (beginning with this logging project)? Since many of these trees are 100 years old, the reduced snag supply may persist for at least several hundred years.

How Many Trees of What Diameter Classes Will Be Removed?

Particularly after the old-growth logging debacle at Pilot Joe, it is essential that that public and the Decision Maker know via NEPA the number and size of trees to be logged. This is particularly relevant for trees >30" dbh. Please estimate the number mature trees (20-30" dbh) and the number of "old growth" trees >30" dbh that would be logged from each unit. The most informative way of disclosing this data would be to report the pre-logging number of trees in these size classes and the post-logging number and size of trees in these size classes. We have previously reviewed modeled results of these data for other Medford District timber sales (East West Junction), thus the data is available for NEPA purposes and the BLM is required to disclose for comment and analysis *prior* to issuing the decision to implement the project. The proposed action must demonstrate that this standard is being met for each unit logged.

Neotropical Migratory Birds

The regional decline of migratory birds is a significant issue for this project. Numerous studies have reported local and regional trends in breeding and migratory bird populations throughout North America (e.g., DeGraaf and Rappole 1995, Sauer et al. 2004). These studies suggest geographically widespread population declines that have provoked conservation concern for birds, particularly neotropical migrants (Askins 1993, Terborgh 1989.) The 2005 report from the Klamath Bird Observatory entitled Local and Regional Trends in Breeding and Migratory Bird Populations in the Klamath and Rogue River Valleys: Monitoring Results for 1993-2003 may be viewed at: <http://www.klamathbird.org/Publications/pubs.htm>. This paper indicates that several species on songbirds are suffering declining population trends at the regional level.

The Trail Creek timber sale EA failed to analyze and disclose the potential impacts of conifer thinning operations and brush removal on neotropical bird population trends.

The cumulative effects analysis on migratory birds should not rely exclusively on Wilderness, Riparian Reserves and LSRs to provide for species viability into the future, because many Forest Service and BLM Districts are actively logging those land use allocations, regardless of the effects on migratory birds, despite their reserve status. We refer you to the Biscuit fire salvage timber sale as one (very large) example.

Simply concluding that the scale of the project is small, relative to the size of the nation, hence migratory bird populations will not be affected, will not suffice. As you know, the Spotted Owl was driven into threatened status by lots of “little clearcuts” that individually were insignificant, but cumulatively resulted in extensive habitat loss.

As per DOI BLM instruction memo 2008-50 the BLM must “include migratory bird species of concern in the affect environment [analysis] when any of these species may be affected by the proposed actions...” Further, the agency must “emphasize avoidance or minimizing negative impacts and restoring and enhancing habitat quality...”

Please develop and implement seasonal operational restrictions to avoid project impacts while land birds are nesting in the project area.

New Logging Road Construction

We are extremely concerned about construction of additional logging roads in the planning area. Please note that while the new road construction may described as either “temporary” or “permanent” but that all road construction results in long-term impacts to soil health and productivity. Further, once trees are removed from the roadway, they cannot be put back. Please note that the joint BLM and USFS Biscuit Fire Recovery Project DEIS found that “Creation of temporary logging roads is an irreversible commitment of the soil resource, as such areas rarely regain their former productivity.”

Please note that page 86 of the EA indicates that proposed new road construction would necessitate the removal of 11 acres of NSO NRF habitat while page 63 of the EA reveals that one of the temporary logging roads would be located on fragile soils. These are significant and avoidable project impacts. Implementation of Alternative 4 of the EA would produce 6.7 mmbf of timber volume and a projected \$2.1 million dollars to the federal treasury without the significant impacts associated with the proposed new logging road construction.

Attached to our previous scoping comments was a peer-reviewed article by Trombulack and Frissell (2000) detailing some of the significant negative impacts of road construction and use on Terrestrial and Aquatic ecosystems. It does not appear that the BLM fully addressed and avoided the harmful impacts detailed in this study. The abstract for the article reads as follows:

Roads are a widespread and increasing feature of most landscapes. We reviewed the scientific literature on the ecological effects of roads and found support for the general conclusion that they are associated with negative effects on biotic integrity in both terrestrial and aquatic ecosystems. Roads of all kinds have seven general effects: mortality from road construction, mortality from collision with vehicles, modification of animal behavior, alteration of the physical environment, alternative of the chemical environment, spread of exotics, and increased use of areas by humans. Road construction

kills sessile and slow-moving organisms, injures organisms adjacent to a road, and alters physical conditions beneath a road. Vehicle collisions affect the demography of many species, both vertebrates and invertebrates; mitigation measures to reduce roadkill have been only partly successful. Roads alter animal behavior by causing changes in home ranges, movement, reproductive success, escape response, and physiological state. Roads change soil density, temperature, soil water content, light levels, dust, surface waters, patterns of runoff, and sedimentation, as well as adding heavy metals (especially lead), salts, organic molecules, ozone, and nutrients to roadside environments. Roads promote the dispersal of exotic species by altering habitats, stressing native species, and providing movement corridors. Roads also promote increased hunting, fishing, passive harassment of animals, and landscape modifications. Not all species and ecosystems are equally affected by roads, but overall the presence of roads is highly correlated with changes in species composition, population sizes, and hydrologic and geomorphic processes that shape aquatic and riparian systems. More experimental research is needed to complement post-hoc correlative studies. Our review underscores 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.

-Trombulack, S.C. and C.A. Frissell. 2000. Review of ecological effects of roads on terrestrial and aquatic communities. *Conservation Biology* 14(1): 18-30.

“Various studies (e.g., Ortega and Capen 1999; Marsh and Beckman 2004) show that the negative impacts of roads to wildlife habitat are not limited to the road prism –there is a zone of influence that extends into the adjacent habitat. For example, Marsh and Blackman (2004) found that some terrestrial salamanders decreased in abundance up to 80 meters from the edge of a forest road due to soil dessication for the edge effects. Ortega and Capen (1999) found that ovenbird (a forest-interior species) nesting density was reduced within 150 meters of forest roads. This study suggests that even narrow forest roads fragment habitat and exert negative effects on the quality of habitat for forest-interior species.”

-Deadman’s Palm EA III-110, Ashland Resource Area, Medford BLM.

The Ortega and Capen (1999) and the Marsh and Beckman (2004) articles referenced by the Ashland Resource Area were also attached to our previous comments, yet were not adequately addressed in the Trail Creek EA.

Reduce Illegal Watershed Impacts

The impacts of continuing illegal dumping and firewood cutting may be increased by additional BLM road construction, landing construction and yarding corridors resulting in connected and significant environmental effects. Please consider increasing the law enforcement presence and closing existing dead-end natural surface roads in the planning area.

Logging Riparian Reserves

The effect of stream shade on stream temperatures was evaluated and indicated that almost all of the stream miles in the Trail Creek watershed have a high shade hazard, that is, the existing shade levels are less than that required to maintain stream temperatures below the 64 degrees F Oregon standard. –Trail Creek WA, page 3-63.

Given the finding above how does the BLM justify the proposal (EA page 28) to allow for felling of trees in the Riparian Reserve shade zone in order to facilitate logging activities?

Riparian Reserves may buffer streams from water temperature effects of timber harvest but sediment and turbidity problems can still occur due to timber harvest and road building, even when these activities take place outside of the reserves. Sediment travels farther through Riparian Reserves degraded by roads and timber harvest than through undisturbed reserves because roads and ditches form pathways for sediment to travel down slope that do not exist in roadless reserves. Even in the absence of management activities within a watershed heavy use of existing valley bottom roads by log trucks can substantially increase sediment production.

As acknowledged in the WA, riparian reserves in the project area are degraded now. Without site-specific information about conditions in riparian reserves, the BLM can't rely on them to mitigate sediment delivery. We are particularly concerned about the BLM's proposed logging in Riparian Reserves given that 24 acres of the proposed logging would occur in forest stands that currently provide NSO NRF habitat. This is the type of forest structure that the Reserves are designed to provide. As acknowledged in the EA, for the BLM's purposes late-successional forests start to develop at 80 years of age. So why is the BLM targeting 100 year-old Riparian Reserve stands for logging?

Given the available scientific literature, it's the agency's burden to show that the reserves and other project design features would prevent added sediment delivery.

We are highly skeptical of proposed riparian reserve logging given: (1) the extensive ORV damage that could be exacerbated by opening up riparian reserve stands; (2) the proposal to construct new skid trails and skyline corridors in riparian reserves; (3) the proposal to remove riparian shade trees in order to facilitate skyline yarding activities; (4) the proposal to log Riparian Reserves containing native forests up to 100 years of age (5) the large amount of small-diameter thinning available outside of riparian reserves; and (6) the significant aquatic degradation that has already occurred due to past logging and road building activities.

Information contained in a National Marine Fisheries Service memorandum dated July 23, 2010 indicates that the proposed riparian reserve thinning would not achieve aquatic conservation objectives. All stream channels must receive a minimum 150 ft no cut buffer.

We previously provided a copy of the National Marine Fisheries Service 84 page memo (NMFS 2010) to support our contention that commercial thinning the riparian reserve is not

appropriate and is likely harmful for achieving aquatic conservation objectives. The BLM has not responded to this study in the Trail Creek EA. NMFS 2010 p. 8 states that “In examining forest thinning proposals designed to accelerate the development of late-successional forest conditions and restore instream fish habitat, NMFS is finding that, in many cases, they are likely to do neither. NMFS 2010: 31 states “our results suggest that the thinning regimes proposed by the Siuslaw National Forest will delay the development of key structural elements of forest and stream habitat by more than a century. The delay in stream habitat recovery can be minimized by creating a no cut buffer of 150 feet or more in width between streams and any forest thinning operations.” The NMFS 2010: 4 states that “[t]he tradeoff of getting a few more large standing live trees sooner at the expense of a continuous supply of both large and small trees over the long term period always needs to be considered.”

With regard to “large wood” (EA p. 50), NMFS 2010:9 states that “[a]lthough NMFS included this [24 inch diameter] value in NMFS (1996), and did not advocate changing the value during negotiations on the AP document, we recognize now that (1) it does not provide a target that is based on reference conditions for Westside forests, (2) this target is not sensitive to site-specific conditions (e.g., stream size and power), and (3) use of this target exclusively results in analyses that do not adequately address other sizes of wood that provide important ecological functions in streams” Thus the size standards used for the desired condition are not appropriate because all sizes wood entering small streams would improve channel function. NMFS 2010 p.6 states: “[a]ll wood and other organic material, whether large or small, is important to the proper functioning of streams; none of it is unimportant.” NMFS further states that “[o]f particular note is that large wood that cannot singly form pools will form pools in combination with other pieces of wood and other obstructions by forming “wood jams.” The NMFS 2010:4 state: “[w]hile thinning increases tree diameters, it does not increase tree heights; thus, it will not increase the length of tree boles entering streams.”

Please acknowledge the following recommendations made in NMFS 2010:10

- The USFS and BLM should include all sizes of wood in describing environmental baseline conditions and in analyzing the effects of its proposed actions, not just pieces of wood that are greater than 24 inches in diameter and greater than 50 ft in length.
- The USFS and BLM should adjust their tree diameter targets based on stream size. Database curves are available for both functional-sized and key pieces of wood (e.g., Fox and Bolton 2007).
- The USFS and BLM should leave more thinned trees on the ground in riparian areas, particularly close to streams, on floodplains, and on steep sideslopes where some trees are likely to slide down into streams, than are required to meet wildlife needs.
- In order to better portray environmental baseline conditions and to understand the likely effects of thinning proposals, the USFS and BLM should develop stand data separately for riparian and upland forests.

Please note that the “short term” ACS analysis contained on page 193 of the EA indicates that project “PDFs include no-cut buffers on all streams, lakes, wetlands, ponds, springs, and meadows...” This is not entirely accurate given that the BLM is proposing to remove shade trees adjacent to streams in order to facilitate cable yarding activities in Riparian Reserves. Similarly, the ACS analysis at page 195 relies upon a “no cut buffer” to mitigate the sediment impacts of logging in the Riparian Reserves when in fact trees will be felled in the “no cut buffer” to facilitate yarding through the buffers. Please note that frequently skyline yarding corridors are as wide as 12’ and that all trees within the corridors are generally removed. Pages 196 and 197 of the ACS analysis further rely on the existence of “no cut buffers” in which trees will in fact be cut.

Regeneration Logging, Plantation Establishment and Fire Hazard

“Plantations are extremely flammable because of high crown to trunk ratio and because crowns are very close to the ground.”

-Upper South Fork Trinity River Happy Camp Creek Watershed Analysis, Shasta-Trinity National Forest at page 21.

“While the severity varied throughout the fire area, young timber plantations carried the fire while older stands tended to be more resistant. This is mostly due to young timber plantations having a high density of ground fuels.”

-BLM Douglas Complex Fire 9/5/13 Burned Area Emergency Rehabilitation Plan

Our organizations are extremely concerned that the proposed regeneration logging followed by the establishment of artificial plantations may increase future fire hazard in the planning area. The practice of converting native forest stands into young tree plantations significantly increases fire hazard in the mid- to long-term. Tree plantations are more susceptible to intense fire behavior and severe fire effects than unlogged mature forests, including burned forests (DellaSala et al. 1995, Odion et al. 2004). The increased susceptibility of plantations to severe fire is due to:

- Structural characteristics, such as fine and interlocking branch structures situated low to the ground, which facilitate high heat energy output by fire and rapid fire spread (Sapsis and Brandow 1997).
- Warm, windy and dry microclimates compared to what would exist in an unlogged burned forest that possessed more structural diversity, ground shading and barriers to lateral wind movement (Countryman 1955, van Wagtendonk 1996).
- Accumulations of large volumes of fine logging slash on the ground surface (Weatherspoon and Skinner 1995).

In addition to these direct and indirect effects on the fire environment, the cumulative effects of plantation establishment include the creation of more highly flammable even-aged stands on a landscape already vulnerable to uncharacteristically large and severe fires.

The number and distribution of even-age tree plantations resulting from industrial timber management has altered fire behavior and effects at both stand and landscape scales. (Frost and Sweeny 2000, Hann et al. 1997, Huff et al. 1995). Perry (1995) suggests that the existence of sufficient young tree patches on a forest landscape creates the potential for “a self-reinforcing cycle of catastrophic fires.” Most plantations occur near roads (DellaSala and Frost 2001), which presents an added risk of human-caused ignitions during hot and dry conditions (USDA 2000).

Please note that the BLM BEAR Report for the Douglas Fire Complex acknowledged that “while the [fire] severity varied throughout the fire area, young timber plantations carried the fire while older stands tended to be more resistant. This is mostly due to young timber plantations having a high density of ground fuels.”

Two fires in 2002 on the Umpqua National Forest were evaluated for their effect on the forest. Excerpts from the March 2003 Wildfire Effects Evaluation Project by the Umpqua N.F. are make clear the impact of creating more tree plantations:

"Plantations had a tendency to increase the rate of fire spread and increased the overall area of stand-replacement fire effects by spreading to neighboring stands." Page 4

"Fire burned most plantations with high intensity and spread rapidly through the canopy of these young stands." Page 20.

"Plantation mortality is disproportionately high compared to the total area that plantations occupied within the fire perimeter." Page 26-27.

"Crown fire spreads readily through these young stands: rates of fire spread can be high, and significant areas or mortality can occur in and adjacent to these stands." Page 32.

Finally, the report concludes that the fire behavior in forest that had not been converted to tree farms was normal. "The pattern of mortality in the unmanaged forest resembles historic stand-replacement patch size and shape." Page 64.

We agree with the finding at page 98 of the Trail Creek Timber Sale EA indicating that:

A forest's resiliency to fire can be increased by managing surface fuels to limit the flame length, removing ladder fuels to keep flames from burning into tree crowns...and retaining larger diameter trees that are more fire resistant.

Please note that page 51 of the EA also notes that regeneration logging would be inappropriate and counterproductive because:

On the 75 acres proposed for regeneration in Alternative 2, restoration thinning would be a silviculturally more appropriate treatment because these stands are dominated by smaller diameter trees less than 20" dbh. The smaller trees are suppressed while the dominant and co-dominant trees are generally healthy.

Conclusion

The Trail Creek watershed has been subject to extensive logging and road construction activities over the past decades. Please join with stakeholders and take this opportunity to promote forest health and sustainable wood fiber production by implementing a project that reduces the impacts of the transportation system and retains the large tree component in this planning area while implementing small-diameter thinning activities.

We urge the BLM to implement a thinning prescription that restores (rather than degrades) forest values while avoiding new road construction, Riparian Reserve logging and logging in the Berry Creek LWWC.

Thank you for considering our values and concerns in this planning process.

Best regards,

/s/ George Sexton
Conservation Director
Klamath Siskiyou Wildlands Center
P.O. Box 102
Ashland, OR 97520
(541) 488-5789

Francis Eatherington
Campaign Director
Cascadia Wildlands
P.O. Box 10455
Eugene, OR 97440

Doug Heiken
Oregon Wild
Western Field Representative
PO Box 11648
Eugene, OR 97440

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CASCADIA WILDLANDS
and OREGON WILD,

Case No. 6:12-cv-00804-AA
OPINION AND ORDER

Plaintiffs,

v.

UNITED STATES FOREST SERVICE,
an administrative agency of
the United States Department
of Agriculture,

Defendant,

v.

FRERES LUMBER COMPANY, INC.,
an Oregon corporation, and
SENECA SAWMILL COMPANY, an
Oregon corporation.

Defendant-
Intervenors.

Susan Jane M. Brown
Western Environmental Law Center
4107 NE Couch Street
Portland, Oregon 97232

John R. Mellgren
Western Environmental Law Center
1216 Lincoln Street
Eugene, Oregon 97401
Attorneys for plaintiffs

S. Amanda Marshall
United States Attorney
Sean E. Martin
Assistant United States Attorney
1000 S.W. Third Avenue, Suite 600
Portland, Oregon 97204
Attorneys for defendant

Scott W. Horngren
American Forest Resource Council
5100 S.W. Macadam, Suite 350
Portland, Oregon 97239
Attorney for defendant-intervenors

AIKEN, Chief Judge:

Plaintiffs Cascadia Wildlands and Oregon Wild move for summary judgment pursuant to Fed. R. Civ. P. 56. Defendant United States Forest Service ("Forest Service") and defendant-intervenors Freres Lumber Company, Inc. ("Freres") and Seneca Sawmill Company ("Seneca")¹ each filed cross-motions for summary judgment. For the reasons set forth below, the parties' motions are granted in part and denied in part.

BACKGROUND

This case involves a challenge to the Forest Service's authorization of the Goose Project ("Project") located in the McKenzie Ranger District of the Willamette National Forest ("WNF") near the community of McKenzie Bridge. Administrative Record ("AR") 13433. This region falls under the purview of the Northwest Forest Plan ("NFP"), which coordinates federal efforts to balance environmental concerns with the need for sustainable forest

¹ Defendant-intervenors' arguments in favor of summary judgment are analogous to those asserted by the Forest Service. Accordingly, except where otherwise indicated, the Court will address defendant-intervenors' and the Forest Service's motions together.

products within the range of the northern spotted owl.² See Supplemental Record ("SAR") 001-083. The NFP developed a number of Standards and Guidelines ("SG"), directing the agencies' enactment of the NFP by allocating lands for various uses and providing outcome objectives.³ See SAR 084-237. Included in the SG is the Aquatic Conservation Strategy ("ACS"), which "was developed to restore and maintain the ecological health of watersheds and aquatic ecosystems contained within them on public lands." SAR 109.

Working within this framework, the Forest Service developed the Goose Project. The Forest Service's stated purpose for the Project is threefold: "1) Actively manage stands to improve stand conditions, diversity, density, and structure, 2) Reduce hazardous fuel levels in the McKenzie Bridge Wildland-Urban Interface ("WUI"), and 3) Provide for a sustainable supply of timber products within the Goose Project boundary." AR 13435.

To these ends, the Project would permit commercial harvest of approximately 2,100 acres of public lands in the WNF through commercial thinning (1,255 acres), early seral wildlife thinning

²The NFP Record of Decision was adopted in 1994 and covers 24.5 million acres of land managed by the Forest Service and the Bureau of Land Management in Washington, Oregon, and northern California.

³The goal of the SG is to "maintain a healthy forest ecosystem with habitat that will support populations of native species...including protection for riparian areas and waters; and maintain a sustainable supply of timber and other forest products that will help maintain the stability of local and regional economies on a predictable and long-term basis." SAR 094. The SG allocates the lands under the NFP into one of seven different designations, each with its own authorized uses and practices.

(195 acres), skip and gap creation (598 acres), dominant tree and sugar pine release (11 acres), and regeneration harvest treatments (41 acres).⁴ AR 13438. In addition, the Project authorizes noncommercial hazardous fuels reduction treatments⁵ of approximately 668 acres through noncommercial thinning and natural fuels underburning in the WUI. AR 13437.

At issue with the Project are the loss and downgrade of habitat for the northern spotted owl, regeneration harvests within Riparian Reserves, the loss of potential wilderness from the Lookout Mountain Potential Wilderness Area ("PWA"), and the extent of road construction. Specifically, the Project authorizes 454 acres of removal or downgrade of northern spotted owl habitat. AR 15286. In Riparian Reserves, it includes 362 acres of commercial

⁴The Forest Service noted significant public concern over the "regeneration harvest" and explained:

Regeneration harvest should not be considered synonymous with "clearcuts" as seen on private lands... The regeneration harvest units will leave more than the minimum retention required by the NWFP... The treatments post harvest will be more like a shelterwood or seed harvest with both scattered and clumped residual trees left. This will allow for at least a two aged stand to develop into the future giving the stand more complex habitat structure. The increased habitat structure is an attempt to get a timber commodity out of the stand while still preserving some late successional characteristics that can possibly be utilized by late successional species in the future (>50 years). AR 15238.

⁵The Forest Service has noted the importance of reducing the wildfire fuels in the McKenzie Wildland-Urban Interface ("WUI"). The Forest Service further asserts that the current fuel loadings (downed woody material available as fuel for a wildfire) are "projected to be above" current WNF Land and Resource Management Plan's Standards and Guidelines. AR 13447-48, AR 13549.

thinning and an additional 582 acres slated for fuels treatment.⁶ AR 13478. Also included in the proposed Project are 365 acres of fire-regenerated stands more than 80 years old. AR 15237. The Project authorizes one mile of permanent road construction, eight miles of temporary road construction, and 43 miles of road maintenance. AR 15236. Additionally, the project would result in 680 acres of PWA lost through harvest and fuels reduction and 569 acres lost through fragmentation. AR 13518. In total, the Lookout Mountain PWA would lose 1,249 acres of its 9,684 acres of potential wilderness. Id.

On June 2, 2009, the Forest Service conducted a public field trip in an effort to gather public opinion on potential forest management activities. AR 2404. In August 2009, the Forest Service prepared a Biological Assessment ("BA") to analyze the effects of various proposed federal actions on the northern spotted owl and its habitat. AR 2664-2780. Further, the Forest Service formally consulted with the Fish and Wildlife Service ("FWS") in September 2009 to analyze specific effects of the Project on the spotted owl. AR 4822. The resulting Biological Opinion ("BiOp"), issued by the FWS, determined that while the Project would likely adversely affect specific owls, the Project would not further threaten the species' continued existence. AR 4934-36.

On October 1, 2009, the Forest Service listed the Project in

⁶ The Forest Service's discussion of the fuels treatment in Riparian Reserves states that the "net result would be increased plant species and stand structural diversity, with a closer resemblance to historic stand condition than non-thinned plantations." AR 13479.

the Schedule of Proposed Actions. AR 15234. The Forest Service mailed postcards to the public on November 16, 2009, requesting scoping comments on the project by December 7, 2009. Id.

On June 23, 2010, the Forest Service published an Environmental Assessment ("EA") of the Goose Project. The EA included references to both the BiOp and the BA. See, e.g., AR 13554, 13555. Following a review of the comments received in response to the EA, the Forest Service issued a Decision Notice and Finding of No Significant Impact ("FONSI") on September 13, 2010. AR 15232-86. The decision approved the Project with only minor modifications.⁷

In November 2010, plaintiffs challenged the Project via administrative protest. AR 15435-42. On December 16, 2010, the Forest Service responded to these protests and denied plaintiffs' appeal. AR 15456-64.

After exhausting their administrative remedies, plaintiffs filed a complaint in this Court, alleging that both the 2010 EA and FONSI violate the National Environmental Policy Act ("NEPA"). Plaintiffs maintain that the EA failed to disclose environmental information and consequences of the Goose Project on both the northern spotted owl habitat and the affected Riparian Reserves. Plaintiffs further contend that the proposed actions trigger NEPA's

⁷ The Forest Service noted that all modifications were "within the range of effects analyzed in the EA" and included a no-harvest buffer to protect a maple grove in unit 420, a no-harvest buffer around a "special interest area" in unit 380, and a provision against cutting any tree greater than 36" in diameter within 350 feet of a private residential boundary. AR 15235.

requirement that the Forest Service prepare an Environmental Impact Statement ("EIS").

STANDARD OF REVIEW

A federal agency's compliance with NEPA is reviewed under the Administrative Procedure Act ("APA"). 5 U.S.C. § 706. Under the APA, a final agency action may be set aside if, after reviewing the administrative record, the court determines that the agency's action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Natural Res. Def. Council v. Nat'l Marine Fisheries Serv., 421 F.3d 872, 877 (9th Cir. 2005) (quoting 5 U.S.C. § 706(2)(A)). A decision is not arbitrary or capricious if the federal agency articulated a rational connection between the facts found and the choice made. Nat'l Wildlife Fed'n v. U.S. Army Corps of Eng'rs, 384 F.3d 1163, 1170 (9th Cir. 2004); Marsh v. Or. Natural Res. Council, 490 U.S. 360, 378 (1989) (courts examine "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment").

Review under this standard is narrow, and the court may not substitute its judgment for that of the agency. Morongo Band of Mission Indians v. Fed. Aviation Admin., 161 F.3d 569, 573 (9th Cir. 1988). Nevertheless, while this standard is deferential, the court must "engage in a substantial inquiry, . . . a thorough, probing, in-depth review." Native Ecosys. Council v. U.S. Forest Serv., 418 F.3d 953, 960 (9th Cir. 2005) (citation and internal quotations omitted).

DISCUSSION

Plaintiffs assert that the Forest Service's authorization of the Goose Project violated NEPA's procedural requirements by failing to disclose consequences of the Project and by failing to prepare an EIS for the Project. Initially, plaintiffs argued that the Forest Service violated NEPA in four ways; however, as both parties now concede that a recent ruling from the Ninth Circuit Court of Appeals foreclosed two of those arguments, this Court will not address them here. See Pls.' Reply Mem. in Supp. of Mot. Summ. J. 15, Def.'s Mem. in Supp. of Mot. Summ. 26; Earth Island Inst. v. U.S. Forest Serv., 697 F.3d, 1010, 1020 (9th Cir. 2012) (holding that an agency does not have an obligation to respond directly to opposing scientific viewpoints in the body of an EA).

NEPA is "a procedural statute that does not mandate particular results, but simply provides the necessary process to ensure that federal agencies take a hard look at the environmental consequences of their actions." Sierra Club v. Bosworth ("Sierra Club I"), 510 F.3d 1016, 1018 (9th Cir. 2007) (citation and internal quotations omitted). To accomplish the "hard look" requirement, NEPA requires all agencies to prepare an environmental impact statement ("EIS") for any "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

The agency first prepares an EA to determine whether an action will be significant; if the agency concludes there is no significant effect associated with the proposed action, it may issue a FONSI, "accompanied by a convincing statement of reasons to

explain why a project's impacts are insignificant" in lieu of preparing an EIS. Sierra Club I, 510 F.3d at 1018 (citation and internal quotations omitted); 40 C.F.R. § 1508.9. Thus, an EA "need not be extensive." Grand Canyon Trust v. U.S. Bureau of Reclamation, 623 F. Supp. 2d 1015, 1026 (D. Ariz. 2009).

I. First NEPA Claim: Failure to Disclose Environmental Information

Plaintiffs first contend that the Forest Service violated NEPA by failing to disclose 1) environmental information about the habitat competition between the spotted owl and the barred owl, and 2) consequences of logging in critical Riparian Reserves. Specifically, plaintiffs argue that the limited discussion of the interspecies competition between barred owls and northern spotted owls in the BA and BiOp did not satisfy NEPA's requirements. Further, plaintiffs claim that the Forest Service's analysis of logging in Riparian Reserves failed to demonstrate why it was a necessary part of the Project.

A. EA Requirements

An EA is a "concise public document" that provides an agency's analysis of proposed action. 40 C.F.R. § 1508.9(a). The EA "shall include brief discussions of the need for the proposal, of alternatives [to the proposed action], of the environmental impacts of the proposed action and alternatives, and a listing of the agencies and persons consulted." Id. at § 1508.9(b). Federal regulations authorize the agencies to incorporate additional scientific data and documents by reference into the NEPA documents "when the effect will be to cut down on bulk without impeding

agency and public review of the action." Id. at § 1502.21 (EIS, Incorporation by Reference); 36 C.F.R. § 220.4(h) ("Material may be incorporated by reference into any environmental or decision document. This material must be reasonably available to the public and its contents briefly described...").

B. Analysis

Between 2009 and 2010, the Forest Service evaluated the environmental impacts of the Project resulting in the 2010 EA. AR 13428-557. As a part of its evaluation, the Forest Service consulted with the FWS regarding the spotted owl and the FWS submitted a BiOp; these conclusions and recommendations were included in the Forest Service's EA. AR 13494-98. Further, the Forest Service discusses the effects of the Project, as well as a no action alternative, on the Riparian Reserves within the project area. AR 13477-79.

i. Failure to Disclose Information Regarding Barred Owl/Northern Spotted Owl Habitat Competition

Plaintiffs maintain that the EA failed to discuss or disclose the Project's effect on interspecies competition between the northern spotted owl and the barred owl, and that any discussion of this competition in the BA and BiOp did not satisfy NEPA's disclosure requirement and was not readily available to the public for review. Plaintiffs emphasize NEPA's fundamental purpose of "foster[ing] better decision making and informed public participation for actions that affect the environment." Or. Natural Res. Council Action v. U.S. Forest Serv., 293 F. Supp. 2d 1200, 1204 (D. Or. 2003). They argue that the Forest Service

failed in its duty to the public - and its requirement under NEPA - to operate with transparency in its decision-making process. This argument is without merit.

Contrary to the plaintiff's assertion, the Forest Service clearly referenced and identified the BA and the BiOp, including the dates the BA was submitted and the official BiOp number. See, e.g., AR 13494 (noting that the project-specific effects were addressed in the BA and the Forest Service consulted with the FWS on the BiOp). Both the EA and the FONSI contain sections discussing the effects of the Project on the habitat of the spotted owl. See, e.g., AR 13494-98, AR 15244. Further, the cover page of the EA provided full contact information for Kurt Steele, the Project leader, advising interested parties to contact Mr. Steele for additional information. AR 13427. In its responses to the scoping comments on the EA, the Forest Service noted when more comprehensive information could be found in the BA or BiOp "located in the project file." See, e.g., AR 13554, 13555. This frequent reference to items in the Project file, coupled with access to the Project leader, indicates the Forest Service's willingness to provide additional information. Rather than keeping its analysis from the light of day, as plaintiffs suggest, the record shows the Forest Service's attempt to keep the EA concise, supplying extended analyses on request.

Plaintiffs further assert that these cursory mentions of the BA and BiOp in the EA and FONSI did not take the requisite "hard look" at the specific impact of the Project on habitat competition

between the owls. The bulk of the analysis, plaintiffs contend, took place in the BA and was not included in the EA. Plaintiffs cite Pacific Rivers Council v. U.S. Forest Serv., 689 F.3d 1012 (9th Cir. 2012) to support their position that incorporation by reference is not appropriate in this case. There, the Ninth Circuit found that the Forest Service's EA did not provide any analysis of the environmental consequences to individual fish species resulting from a significant change to an existing forest plan. Instead, the EA incorporated by reference the BAs previously used for the forest plan, without undertaking any new analysis of the substantial change. Id. at 1028. Plaintiffs assert that Pacific Rivers renders incorporation by reference inappropriate where, as here, the BA is meant to "serve as the analysis of the environmental consequences of the proposed action." Id. at 1031, Pls.' Reply Mem. in Supp. of Mot. Summ. J. 8. This Court is not persuaded that this case is analogous.

Unlike Pacific Rivers, the Forest Service here undertook an analysis of the consequences of the Project on the northern spotted owl and relied on a BA that also analyzed the effect of the Project. As required by the Endangered Species Act, the Forest Service further consulted with the FWS to prepare a BiOp to analyze the effects of the Project on the northern spotted owl. 16 U.S.C. § 1531 *et seq.* Both the EA and the FONSI explain project-specific potential consequences and include references to the more detailed BA and BiOp, which discuss the interspecies competition for habitat. The EA notes that the proposed logging would likely

adversely affect individual northern spotted owls, but would not jeopardize the continued existence of the species. AR 13495. The FONSI includes similar information, as well as the mitigation efforts included in the plan and responses to public comments on the potential effects. AR 15244, AR 15251, AR 15260, AR 15272-74.

Moreover, NEPA regulations only "direct the agency to consider the degree of adverse effect on a species, not the impact on individuals of that species." Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv., 451 F.3d 1005, 1010-11 (9th Cir. 2006) (citation omitted). That is precisely what occurred in this case. Further, the FWS reported that the Project would have repercussions on individual nest sites, and the EA and FONSI clearly disclose these findings. AR 13494-98, AR 15244.

Nonetheless, plaintiffs maintain that the EA must include a thorough analysis of how the authorized logging would affect habitat competition between the two owl species, arguing that the Forest Service has chosen to avoid a significant issue with the Project. However, courts are not required to "order the agency to explain every possible scientific uncertainty." Lands Council v. McNair, 537 F.3d 981, 988 (9th Cir. 2008) (en banc).

Moreover, the Forest Service discloses the same uncertainty regarding the interspecies competition, noting in the BA, "[i]t is also clear that, in some portions of the northern spotted owl's range, barred owls are increasing and spotted owls are declining to some degree independently of forest management." AR 2763. In its BiOp, the FWS also discusses the significant amount of uncertainty

regarding the effects of forest management on habitat competition between the owls, ultimately concluding "that the NFP in concert with the guidelines from the Northern Spotted Owl Recovery Plan still provides the backbone of the federal contribution to spotted owl recovery even with the uncertainty surrounding the effect of the barred owls on spotted owls." AR 4861.

Defendants point to NEPA's requirement that documents "concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail." 40 C.F.R. § 1500.1(b). Here, the Forest Service described in detail the potential consequences of the Project to the northern spotted owl and incorporated the BA and BiOp that were prepared to assess the effects of the Project on the threatened species. The EA described the potential harm to three nesting sites due to habitat removal and harassment of one site for two seasons due to helicopter logging and the Forest Service disclosed the uncertainty regarding competition with barred owls. AR 13495-97. This Court finds that the Forest Service adequately disclosed the environmental consequence of the project on the northern spotted owl.

ii. Failure to Disclose Information Regarding Logging in Riparian Reserves

In its FONSI, the Forest Service asserts that "a hard look was taken in deciding whether to commercially thin Riparian Reserves" and noted its reasons for ultimately authorizing the thinning project on 362 acres of Riparian Reserves. AR 15239. The Forest Service's goal of "accelerat[ing] the development of some late successional characteristics" would be "improved with larger tree

sizes and increased structural diversity" within those 362 acres. Id. The Forest Service further noted that conditions of 3,901 acres of Riparian Reserves in the Project area "already met the desired objectives" of the Project, pursuant to the NFP. Id.

It is on the desired objectives of the NFP that the plaintiffs focus. Plaintiffs note that the NFP prohibits logging in Riparian Reserves, except to "apply silvicultural practices for Riparian Reserves to control stocking, reestablish and manage stands, and acquire desired vegetation characteristics needed to attain Aquatic Conservation Strategy Objectives." Pls.' Reply in Supp. of Mot. Summ. J. 10. (quoting SAR 166) (emphasis added). Plaintiffs maintain that the Forest Service failed to disclose information "demonstrating that Riparian Reserve logging is needed to meet ACS Objectives." Pls.' Mem. in Supp. of Mot. Summ. J. 20. Plaintiffs argue that the thinning authorized by the Project actually conflicts with, rather than attains, ACS Objective #8, thus precluding the Forest Service from relying on this exception for logging in Riparian Reserves.⁸

The Forest Service points to a case involving a similar challenge over thinning in Riparian Reserves. See BARK v. U.S.

⁸ ACS Objective #8 requires the agency to:

Maintain and restore the species composition and structural diversity of plant communities in riparian areas and wetlands to provide adequate summer and winter thermal regulation, nutrient filtering, appropriate rates of surface erosion, bank erosion, and channel migration and to supply amounts and distributions of coarse woody debris sufficient to sustain physical complexity and stability. SAR 111.

Bureau of Land Mgmt., 643 F. Supp. 2d 1214 (D. Or. 2009). There, the plaintiffs challenged the BLM's adherence to the ACS Objectives under both the procedural requirements of NEPA and the substantive requirements of the Federal Lands Policy Management Act ("NFMA").⁹ Id. at 1219. The district court nonetheless found that the BLM met its NEPA requirements by adequately summarizing in the EA the consequences of the proposed thinning. Id. at 1231. The Forest Service maintains that BARK compels the same result. The Court agrees.

Here, the Forest Service explained in the EA that "a riparian management strategy ... was specifically developed to accelerate late-successional characteristics." AR 13481. The Forest Service described the characteristics it sought to achieve, including larger diameter trees and large wood to streams, to help provide complex habitat structure. AR 13436. Further, the Project "is designed to leave residual features like live trees, snags, and down woody debris that will add structural diversity and complexity into the future." AR 15238. Addressing the prescribed fuels reduction, the Forest Service added that the "[i]ntroduction of low severity fire... is also anticipated to increase the plant species

⁹ In fact, defendants here contend that plaintiffs' argument regarding compliance with ACS #8 is a substantive claim which should have been brought under the NFMA. As the plaintiffs have not claimed a substantive violation of NFMA, however, this Court need only address whether the Forest Service disclosed the environmental consequences of its proposed actions as required by NEPA. For the reasons more fully explained in this opinion, this Court finds that the Forest Service has met NEPA's disclosure requirement and will not address the ACS Objectives as a substantive claim.

and stand structural diversity. At low burn severities, large wood would not be removed from the Reserves." AR 13479. The Forest Service also outlined in the EA and the FONSI how the Project conformed to all nine of the ACS Objectives. AR 13542-45, 15276-77. For example, the Forest Service maintained that those stands within Riparian Reserves slated for thinning would "encourage development of large wood and late successional stand structure." AR 13545.

The Forest Service concedes that "[i]ncreased stand health will reduce snag and dead wood recruitment in the individual treated stands; however, approximately 9,861 acres of stands that have not received timber management will continue to have environmental stressors influencing their stand development." AR 15239. However, the Forest Service described mitigating measures to reduce the impact on Riparian Reserves, including "[n]o-harvest and no-treatment buffers on all streams... to minimize effects to aquatic species and their habitat." AR 13481-82. "All perennial streams (Class 1, 2, and 3) are provided with at least a 60 foot no-harvest buffer to retain effective stream shade." AR 13472. In addition, trees from within these buffers will continue to contribute to the in-stream habitat. AR 13479.

Thus, this Court finds that the Forest Service has disclosed the effects of the Project on Riparian Reserves as required by NEPA and declines to address any substantive claim based on the Project's adherence to the ACS Objectives.

The foregoing discussion explains that the Forest Service

provided a reasonably thorough analysis, adequately supported by materials in the administrative record, of the effects and consequences of the Project on the northern spotted owl and within Riparian Reserves. Therefore, plaintiffs' motion for summary judgment is denied to the extent that it is based on the Forest Service's failure to follow NEPA's procedural requirements to disclose the environmental consequences of the Project in its EA, and the defendants' and defendant-intervenor's motions are granted in this regard.

II. Second NEPA Claim: An EIS Is Required

Plaintiffs further assert that the Project proposes action that may significantly affect the environment, thus triggering NEPA's requirement that the Forest Service prepare an EIS.

A. EIS Requirement

NEPA requires all government agencies to prepare an EIS when a proposed federal action may "significantly affect[] the quality of the human environment." 42 U.S.C. § 4332(2)(C). Importantly, the significant effect need not actually occur; it is sufficient to trigger the preparation of an EIS if a substantial question is raised "whether a project may have a significant effect on the environment." Blue Mountains Biodiversity Proj. v. Blackwood, 161 F.3d 1208, 1212 (9th Cir. 1998). If an agency moves forward without issuing an EIS, the agency must provide a "convincing statement of reasons" to support why the proposed project is not significant; this explanation is critical in demonstrating that the agency took the requisite "hard look" at the potential effects of

a project. Id.

B. Analysis

The Forest Service evaluated the potential effects of the Project and concluded that it would not have a significant effect on the human environment; therefore, the Forest Service argues an EIS for the Project is not required by NEPA.

In assessing a project's significance, both its context and intensity are evaluated. 40 C.F.R. § 1508.27. The context varies depending on the scope of the project. Id. The intensity, or the "severity of the impact" of the proposed action, should be evaluated based on a number "significance" factors.¹⁰ See 40 C.F.R. § 1508.27(b)(1)-(10). A court may find a substantial risk of a significant effect based on just one of these factors. Ocean

¹⁰The following factors are considered in evaluating intensity:

- (1) Impacts that may be both beneficial and adverse.
- (2) The degree to which the proposed action affects public health or safety.
- (3) Unique characteristics... such as proximity to ... park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- (4) The degree to which the effects... are likely to be highly controversial.
- (5) The degree to which the possible effects... are highly uncertain or involve unique or unknown risks.
- (6) The degree to which the action may establish a precedent for future actions.
- (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.
- (8) The degree to which the action may adversely affect [places/structures] listed in or eligible for listing in the National Register of Historic Places.
- (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat.
- (10) Whether the action threatens a violation of Federal, State, or local law. 40 C.F.R. § 1508.27

Advocates v. U.S. Army Corps of Eng'rs, 402 F.3d 846, 865 (9th Cir. 2004). Plaintiffs argue that several of these significance factors weigh in favor of the preparation of an EIS for the Project.

First, plaintiffs point to the "unique characteristic" of the Project area and its proximity to the "ecologically critical areas" of potential wilderness and Riparian Reserves. 40 C.F.R. § 1508.27(b)(3). The administrative record shows, and the defendants do not dispute, that the Project would reduce the 9,664 acre Lookout Mountain PWA by 1,249 acres; 680 acres would be harvested and an additional 569 acres would be fragmented from the rest of the PWA. AR 13518. "Visible evidence of the management actions would not substantially alter the PWA but would be evident to the casual observer walking through or adjacent to the units for approximately fifty to sixty years." Id.

In addition to the number of acres being logged, the Project authorizes construction of eight miles of temporary road and one mile of permanent road. The Forest Service, in its FONSI, notes that the road would be built in part to help minimize costs of the harvest activity and to provide fire access to the area, adding that the road would be gated and closed to the public after its use. AR 15240.

Plaintiffs argue that the Ninth Circuit has found logging in roadless areas "environmentally significant" for two reasons: 1) "their potential for designation as wilderness areas"; and 2) the nature of the roadless area itself. Lands Council v. Martin, 529 F.3d 1219, 1230 (9th Cir. 2008). "Those attributes, such as water

resources, soils, wildlife habitat, and recreation opportunities possess independent environmental significance." Id. Further, Forest Service regulations provide examples of actions that substantially alter the "undeveloped character" of PWA that would normally trigger the EIS requirement, including "[c]onstructing roads and harvesting timber in an inventoried roadless area where the proposed road and harvest units impact a substantial part of the inventoried roadless area." 36 C.F.R. § 220.5(a)(2)(I).

Defendants rebut the contention that Lands Council is applicable; even after the proposed thinning, the Lookout Mountain PWA would still total 8,435 acres, well above the 5,000 acre threshold for wilderness designation. Defendants also argue that a roadless area slated for some harvest does not trigger the EIS requirement per se, relying on Smith v. U.S. Forest Serv., 33 F.3d 1072, 1079 (9th Cir. 1994).

The Smith court, however, ultimately found that the Forest Service had failed to consider the environmental effects of logging in a 5,000 acre roadless area. Id. The court further noted that "the decision to harvest timber on a previously undeveloped tract of land is an 'irreversible and irretrievable decision' which could have 'serious environmental consequences.'" Id. at 1078 (citation and internal quotations omitted). While this Court agrees that an EIS is not per se required when logging is proposed in PWA, it is persuaded that the substantial decrease in overall acreage of the PWA, coupled with the construction of the permanent road, may have significant consequences to the PWA's unique attributes.

Second, plaintiffs argue that the Project proposes actions that may produce highly uncertain or highly controversial effects. 40 C.F.R. § 1508.27(b)(4), (b)(5). "The purpose of an EIS is to obviate the need for speculation by insuring that available data are gathered and analyzed prior to the implementation of the proposed action." Nat'l Parks & Conservation Ass'n v. Babbitt, 241 F.3d 722, 731 (9th Cir. 2001) (citations and internal quotations omitted). Here, plaintiffs argue more data is required regarding both the habitat competition between the barred and northern spotted owls and the need for logging in Riparian Reserves, themselves "ecologically critical areas."

In support of this argument, plaintiffs point to the administrative record where the Forest Service acknowledges uncertainties of the Project's effects.¹¹ The Forest Service notes in its BA that "[f]ew empirical studies exist to confirm that habitat fragmentation contributes to increased levels of predation on spotted owls." AR 2754. The Forest Service goes on to add that "[b]ecause there has been no research to quantitatively evaluate the strength of different types of competitive interactions... the particular mechanism by which the two owl species may be competing is unknown." AR 2755.

Plaintiffs maintain that there is significant controversy

¹¹ In addition, plaintiffs cite to the FWS's Revised Recovery Plan for the Northern Spotted Owl and its 2012 Draft EIS on the "Experimental Removal of Barred Owls to Benefit Northern Spotted Owls" in which the agency acknowledges the current uncertainties and the need for ongoing research regarding interspecies competition between the owls. Pls.' Reply Mem. in Supp. of Mot. Summ. J. 21-22; AR 16348, AR 16350, AR 16424, AR 16593-17025.

regarding the benefits of logging in Riparian Reserves. Highlighting both the pros (development of larger trees and increased stand diversity) and cons (immediate decrease in coarse woody debris, increase to overall stand health), plaintiffs argue that "[t]his is just the type of scientific dispute regarding the effects of the proposed action that should have been addressed through additional research and data collection." Pls.' Reply Mem. in Supp. of Mot. Summ. J. 27.

Defendants counter that NEPA does not require an EIS every time there is *some* uncertainty regarding the potential effects, but only when the effects are "highly" uncertain. Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv. ("EPIC"), 451 F.3d 1005, 1011 (9th Cir. 2006). At issue in EPIC was a 578-acre timber sale that would result in the downgrade or removal of 65 acres of spotted owl habitat. Id. at 1010. The court there held that the analysis of the environmental consequences of the project, when considered with the mitigation measures in place and the ongoing monitoring provisions included in the project, met the "hard look" requirement and did not require an EIS. Id. at 1016. The Project here, however, has a much greater scope: 2,100 acres are authorized for logging and almost 500 acres of spotted owl habitat would be downgraded or removed as a result. Further, the FWS recognizes the significant uncertainty regarding the interspecies competition and acknowledged the uncertainty in its BiOp. See, e.g., AR 4852 ("The degree to which predation and competition might pose a threat to the spotted owl was unknown in more provinces than any of the other

threats, indicating a need for additional information.”).

Third, plaintiffs argue that an EIS is triggered by the significance factor considering the “degree to which [an action] may adversely affect an endangered or threatened species or its habitat.” 40 C.F.R. § 1508.27(b)(9). Here, the FWS concluded in its BiOp that the Project would adversely affect the northern spotted owl, although it would not threaten the continued existence of the species. However, “[a] project need not jeopardize the continued existence of a threatened or endangered species to have a ‘significant’ effect on the environment.” Klamath-Siskiyou Wildlands Ctr. v. U.S. Forest Serv., 373 F. Supp. 2d 1069, 1080 (E.D. Ca. 2004) (citation and internal quotations omitted).

In Klamath-Siskiyou, the Forest Service determined that the proposed project would result in the loss of 500 acres of “high and moderate quality nesting/roosting habitat,” id. at 1082, and would result in the incidental take of three known northern spotted owl pairs. Id. at 1077. The district court held that the Forest Service’s determination that the proposed project was likely to adversely affect the northern spotted owl was, “at a minimum,” significant and supported the need for an EIS. Id. at 1081. In combination with other significance factors such as the degree of uncertainty about the potential effects of the project, the district court held the Forest Service in violation of its NEPA duty to prepare an EIS. Id. at 1089.

Here, too, the Forest Service concluded that the Project will likely adversely affect the northern spotted owl. The Project

would "downgrade 406 acres and remove 82 acres of existing suitable spotted owl habitat, which consists of nesting, roosting, and foraging habitat." AR 13494. Further, the FWS determined that the Project would cause the "incidental take of two northern spotted owl nest pairs and one resident owl." Id. Similar to Klamath-Siskiyou, the adverse effect on a threatened species, combined with the uncertainty of the actual effects, contribute to this Court's finding that the Project may have a significant effect on the environment.

Finally, plaintiffs argue that the proposed thinning in Riparian Reserves threatens a violation of ACS Objective 8, therefore qualifying the potential effects of the Project significant. Plaintiffs argue that the proposed thinning would, in fact, "retard recruitment of woody debris for proper aquatic function," in direct conflict with the NFP and the ACS Objectives contained within the NFP's SG. Pls.' Mem. in Supp. of Mot. Summ. J. 34.

Defendants maintain that a substantive claim based on the Forest Service's analysis of Riparian Reserve effects should have been brought under NFMA and not the procedural requirements of NEPA. Defendants argue that in order to assert a threatened violation of the ACS Objectives as a "significance" factor warranting an EIS under NEPA, plaintiffs must allege a substantive claim that the Forest Service's EA violates the NFP and NFMA.

As discussed above, this Court found that the Forest Service adequately disclosed the effects of the Project within Riparian

Reserves. However, the fact that the Forest Service disclosed such effects does not necessarily render them insignificant. As previously noted, logging in Riparian Reserves is generally prohibited by the NFP, with limited exceptions. The Forest Service relies on the exception that silvicultural practices may be applied when they are "needed to attain Aquatic Conservation Strategy objectives." SAR 166. Plaintiffs counter the Forest Service's analysis, arguing that logging will delay the build-up of coarse woody debris, which is "a key component of the Aquatic Conservation Strategy." Pls.' Reply Mem. in Supp. of Mot. Summ. J. 24; AR 13654-65, AR 13670-82.

The Forest Service does not analyze this precise issue in its EA and fails to support the need for logging in Riparian Reserves as necessary to achieve ACS Objective 8. AR 13544-45 (describing the Project goals of achieving late successional characteristics, but not why those goals are necessary to "supply amounts and distribution of coarse woody debris" to achieve ACS Objective 8). Given the scope of the Project and the potential effects within ecologically critical Riparian Reserves, this Court may weigh the potential violation of the ACS Objectives as a "significance" factor, among others, in deciding whether an EIS is required.

The Court recognizes the deference afforded to an agency, and when considered individually, none of these significance factors might require an EIS. However, when considered collectively, they do. The Project authorizes logging that would reduce the Lookout Mountain PWA by 1,249 acres and includes the construction of a

permanent road, both of which may significantly affect the unique attributes of the PWA. There is uncertainty surrounding the effects of the downgrade and removal of 454 acres of spotted owl habitat authorized by the Project. There is a dispute regarding the efficacy of thinning within Riparian Reserves to achieve ACS Objectives. The Project will likely have an adverse effect on a threatened species and its habitat, even though it is not likely to threaten the continued existence of the species. Finally, the Project may actually prevent the recruitment of coarse woody debris, running counter to the NFP's ACS Objective 8.

When viewed together, this Court is compelled to find that these "significance" factors raise a substantial question as to whether the Goose Project may significantly affect the environment. Accordingly, NEPA requires that the Forest Service prepare an EIS.

CONCLUSION

The Forest Service's and defendant-intervenors' motions for summary judgment (docs. 25, 30) are GRANTED as to plaintiffs' NEPA claim that the Forest Service failed to disclose information regarding the Goose Project's effects on the northern spotted owl and Riparian Reserves, and DENIED in all other respects. Plaintiffs' motion for summary judgment (doc. 23) is GRANTED as to their NEPA claim regarding the Forest Service's failure to prepare an EIS in light of the potentially significant effect of the Goose Project on the environment, and DENIED in all other respects.

Accordingly, the Forest Service is enjoined from going forward with the Goose Project until an EIS has been prepared. IT IS SO

ORDERED.

Dated this 21st of March 2013.

A handwritten signature in cursive script, appearing to read "Ann Aiken".

Ann Aiken
United States District Judge