



## **BARK**

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April 18, 2012

Michelle Lombardo  
Mt. Hood National Forest  
16400 Champion Way  
Sandy, Oregon 97055  
Email: mlombardo@fs.fed.us

RE: Freedom of Information Act Request for BMP Implementation Monitoring reports

Dear Michelle:

This is a formal Freedom of Information Act (5 U.S.C § 552) request for BMP implementation monitoring reports.

**This includes, but is not limited to:**

- 1. All documents related to the 2010 Implementation Monitoring road decommissioning projects in Little Sandy, Still Creek, Lower Salmon River, Clear Creek and Clear Fork (Sandy), including field notes and specialists reports;**
- 2. All documents associated implementation monitoring of the 2010 Eastside Zone Road Decommissioning Project;**
- 3. Any BMP implementation monitoring reports for Forest Service timber sales.**

note: the first two documents were referred to on page 75 of the 2010 Mt. Hood Monitoring Report.

This request is not meant to be exclusive of any other records that, although not specially requested, have a reasonable relationship to the subject matter of this request. If you or your office have destroyed or determines to withhold any documents that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Bark's stated purpose is to preserve and protect the Mt Hood National Forest and surrounding public lands. We are requesting the information listed above to help in that effort. We are expressly stating our interest in this project as required by 36 C.F.R. § 215.11(a)(2). Bark will use the requested documents in non-commercial forest monitoring projects, media campaigns, and public education efforts that benefit the general public. We are not aware of any FOIA exemptions that would preclude you from providing us with the requested project file.

## **FEE-WAIVER REQUEST**

Additionally, I request that you waive all copy, clerical and other fees associated with providing information responsive to this request. The FOIA requires the federal government to furnish documents to public interest groups free of charge, or at a reduced rate, “if disclosure of the information is in the public interest.” 5 U.S.C. § 552(a)(4)(A)(iii). Such disclosure is in the public interest if “it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *Id.* While a FOIA requester bears the initial burden of making a prima facie showing of entitlement to a fee waiver, *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284-85 (9th Cir.1987), once that threshold has been satisfied, the burden shifts back to the agency to substantiate denial of a waiver request. The prima facie test is not intended to be a difficult one to satisfy, as the Ninth Circuit has held a requester meets this burden in situations in which “[t]hey identified why they wanted the [requested information], what they intended to do with it, to whom they planned on distributing it. . .” *Friends of the Coast Fork v. BLM*, 110 F.3d 53, 55 (9th Cir.1997).

Bark is a local forest conservation non-profit organization that works with land managers and educates local communities to preserve and protect the Mt. Hood National Forest and surrounding public lands. Bark volunteers and members participate extensively in Forest Service decision-making activities and have demonstrated ability to use requested information in commentary to agencies and in public education and outreach through, among other means, our regular monthly hikes, trainings, e-mail alerts, and website. <sup>1</sup> Bark has a demonstrated ability to use requested information in commentary to agencies and in public education and outreach through, among other means, our regular e-mail alert, website, and educational materials presented at public events. Bark uses requested information in litigation to ensure agency compliance with statutes such as the Endangered Species Act, NEPA, FLPMA, and the Clean Water Act, as well as using it to assess cumulative impacts of projects. Please send the following information to our office at the address listed above.

Bark is a 501(c)(3) non-profit corporation. Bark will use the requested documents in a non-commercial public interest monitoring project that benefits the general public by: 1) ensuring that the Best Management Practices are implemented according to design; 2) increase understanding of implementation monitoring protocols; and 3) improving the management of Oregon’s federal public forests.

For over ten years now, Bark has maintained an online database of all proposed logging project pertaining to the Mt. Hood area. This database is accessible to all for viewing and accessible to nearly all of our core volunteers for updating and managing information. We post all electronic materials and many scanned hard copy documentation. People rely on this organized, easy to access information for staying engaged in public lands decision where their drinking water, clean air and recreation opportunity is at jeopardy.

As well, Bark is notorious for our “binder” shelves. We have well-organized data from agency, volunteer monitoring, scientific specialist study and images for each project proposed in the Mt. Hood area. This comprehensive data management picks up where our online database is missing hard copy documentation and is made available to any citizen during our open office hours.

## **CONCLUSION**

We urge you to follow the direction President Obama announced in his first memorandum as President of the United States on January 21, 2009, “[t]he Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.” Since none of the statutory exceptions from the FOIA’s mandatory disclosure provisions apply, access to the requested records should be granted within twenty (20) working days from the date of your receipt of this request. If you are not able to provide the requested documents or grant the fee waiver, please contact me before processing

Thank you in advance for your prompt reply and for your time and cooperation.

Sincerely,

A handwritten signature in black ink that reads "Brenna Bell". The signature is written in a cursive style with a large, looping "B" at the beginning and a circular flourish at the end.

Brenna Bell, Esq.  
Staff Attorney & NEPA Coordinator