

APPELLANT'S CONTACT INFORMATION

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CERTIFICATION OF FILING

This appeal was filed by electronic transmission to:
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Regional Forester
Appeal Deciding Officer
USDA Forest Service
P.O. Box 3623
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A handwritten signature in black ink that reads "Lori Ann Burd". The signature is written in a cursive, flowing style.

Lori Ann Burd
Dated this 27th day of December, 2010

APPEAL TO THE REGIONAL FORESTER
OF THE UNITED STATES FOREST SERVICE
REGION 6

APPELLANT'S NOTICE OF APPEAL, REQUESTED RELIEF, AND STATEMENT OF REASONS

Dated this 12/27/10

NOTICE OF APPEAL

Dear Regional Forester,

In accordance with 36 CFR 215, Bark hereby appeals the Environmental Assessment ("EA") and Decision Notice ("DN" or "Decision") for the Bear Springs Plantation Thinning ("Bear Springs").

Decision Document: Bear Springs Plantation Thinning Decision Notice and Finding of No Significant Impact

Decision Date: November 16, 2010

Responsible Official: Gary Larsen, Forest Supervisor, MHNH

Appeal Period End Date: January 2, 2011

Description of the Project: This project would log 1,629 acres with a post thinning underburn treatment on approximately 579 of those acres.

Location: The planning area is more than 41,000 acres and falls in both the Barlow and Hood River Districts. The proposed units are in the White River Tier 2 Key Watershed in Wasco County, OR.

Appellant's Interests:

Bark has a specific interest in this project and project area, and that interest will be adversely affected by this project. We have previously expressed our interest in this specific project, and have standing to appeal this decision according to 36 CFR § 215.13. Bark is a non-profit organization based in Portland, Oregon and has worked to protect the MHNH since 1999. Staff, members, volunteers, supporters, and board members of Bark live in the communities surrounding the MHNH and use and enjoy the Forest extensively for recreation, drinking water, hunting, fishing, general aesthetic enjoyment, family gatherings, viewing flora and fauna, gathering forest products, and other purposes. Specifically, Bark's people have used the area for hiking, camping, bird watching, mushroom harvesting, photography, and family gatherings. The value of the activities engaged in by Bark members and staff will be irreparably damaged by improper implementation of this project. We have a long-standing interest in the sound management of this area and the right to request agency compliance with applicable environmental laws.

Request for Stay

Although an automatic stay is in effect for this sale as per 36 CFR 215.10(b), we formally request a stay of all action on this timber sale, including sale preparation, layout, road planning, any advertising, offering for bids, auctioning, logging, road construction, or other site preparation by a purchaser pending the final decision on this appeal.

A full stay is essential to prevent unnecessary expenditure of taxpayers' money and to prevent irreversible environmental damage. Without a stay, the federal government may waste taxpayer money preparing a sale that may later be canceled. Because we intend to pursue our legal challenge to this sale with or without this stay, offering this timber sale may unnecessarily expose the government to liability and the purchaser to financial losses.

Requested Relief

In recognition that this project is substantially flawed and that the EA describes conditions which differ from the facts on the ground, please withdraw this decision and remove this project from the SOPA immediately.

If you decide not to withdraw this decision, then please remand it back to the District Rangers with instructions to release a supplemental EA and new DN/FONSI, in accordance with the procedures described in F.S.H. 1909.15 §18.4, which includes the considerations and requests listed below.

1. Include disclosure of specific past and future timber management plans for the project area and their cumulative environmental impacts;
2. Remove all units that require new temporary roadbuilding and significant upgrades to existing roadbeds;
3. Include a cumulative impacts analysis reviewing the effects of the upcoming Increment 3 White River Aquatic Restoration and Road Decommissioning;
4. Include a monitoring plan in the supplemental EA that will track this project through implementation and for a stated period of time post-action.

Statement of Reasons

We submit this appeal for the following reasons:

1. THE PUBLIC WAS NOT ABLE TO ADEQUATELY VISIT THE PLANNING AREA

We have significant concerns with the time frame for public involvement in this project. Bear Springs first appeared in the SOPA in January, 2010. A scoping process to request public input for this project was announced through a letter mailing on March 12, 2010. Both of these notifications were released when the area was completely under snow and impossible to field check. As well, proposed units were not field marked (and remain unmarked) and neither of these initial notifications were accompanied by useful maps.

If the Forest Service continues to include a preliminary assessment in the public comment process, we request that the Forest Service open an additional 30 day comment period when a final EA is issued for the project(s), to allow the public to offer comments on the agency's analysis of the environmental effects and possible mitigation for the proposed action. This would allow the public time to determine whether the mistakes in the PA have been corrected. It would also help create a transparent proposal so the public can have a meaningful say in their public lands, and the agency can help foster trust with the public.

The 9th Circuit is clear that any EA process must foster "informed public participation." *Ctr. for Biol. Diversity v. Nat'l Hwy. Traffic Safety Admin.*, 538 F.3d 1172, 1194 (9th Cir. 2008). Informed public participation thus fosters "informed decision-making." *Id.* Informed public participation is impossible when the project area is covered in snow during the comment period.

2. THE SCOPE OF THIS PROJECT HAS PROHIBITED THE PUBLIC FROM MEANINGFUL ENGAGEMENT

This decision was rendered in an arbitrary and capricious manner in violation of the Administrative Procedures Act. 5 U.S.C. §§ 551–559, 701–706, 1305, 3105, 3344 (1994 & Supp. III 1997). This project is too large for meaningful public involvement in the decision-making process, as required by NEPA (National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4370d (1994 & Supp. III 1997); 40 C.F.R. § 1500–1508.28 (1998)). Informed public participation is a "touchstone" of NEPA. *Or. Natural Desert Ass'n v. BLM*, 625 F.3d 1092, 1122 (9th Cir. 2010). The immensity of this project prohibits an adequate site review; the ecological diversity of the logging units prohibits an adequate analysis of the environmental impacts.

In its response to Bark's comments on the size of the project (Appendix B-4), the Forest Service refers to the Council on Environmental Quality (CEQ) definition of "scope of the project" not including actual size of the project. The Forest Service is missing the point of Bark's concerns. Our concern lies in the opportunity for meaningful public engagement of the project. The size of the project happens to be one of the drivers of our concern around meaningful engagement, coupled with the initial scoping comment period occurring while the project was under snow and other factors that are laid out in this appeal.

Our concerns about the size of this project go to the very purpose of NEPA. "Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." 40 C.F.R. 1500.1(b). A project of this size makes it extremely challenging for the agency to provide accurate scientific analysis. This is evidenced in the evolution of this project and its associated NEPA documents. The agency was unaware of key landscape features such as ditches and wetlands within the units, likely because the size of this project made it impossible for staff to field check it in its entirety. Expert agencies and we the public find themselves in a similar bind when a project area is as large as Bear Springs. Accurate scientific analysis, expert agency comments, and public scrutiny are substantially hindered where a project area is under snow during the comment period or so large that no one is able to give an accurate account of the features

on the ground and the potential impacts of the project. NEPA demands public involvement, but this project was so large that despite Bark's best efforts, we were unable to ground truth all the units and provide you with adequate scrutiny or feedback. The size of this project effectively precluded the public scrutiny required in 40 C.F.R. 1500.1(b).

3. THE AGENCY HAS FAILED TO ADEQUATELY ASSESS CUMULATIVE IMPACTS

The existence of several projects in the same watershed has given rise to a range of *cumulative impacts*, which are defined as "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions" (40 C.F.R. § 1508.7). The cumulative impacts analysis of the Bear Springs Timber Sale is inadequate and fails to meet NEPA's requirement for high quality scientific analysis that would satisfy the "hard look" standard.

Where "serious questions" exist about whether an EA adequately addressed cumulative impacts, it can be found inadequate. *See League of Wilderness Defenders-Blue Mountains Biodiversity Project v. Zielinski*, 187 F. Supp. 2d 1263, 1271 (D. Or. 2002). This EA is inadequate because of its failure to address cumulative impacts.

While the PA lists many of the current actions planned or ongoing in the project area (e.g. OHV use, grazing, the potential construction of the Palomar liquefied natural gas pipeline), past logging projects are not adequately addressed. Furthermore the effects of past, present and reasonably foreseeable future events are not adequately analyzed with regard to species, soil and aquatic resources either within the planning area and at a landscape level.

As recently as 1980, this landscape was dominated by 300+ year old Douglas-fir and associated species. The portion of this planning area which overlapped the Broodtree planning area included old growth stands that "support some of the largest volumes per acre found in this district" and comprising "1134 acres, or 68% of the planning area" (Broodtree EA 3). Accelerated clear-cutting through the 1980s and 1990s, as well as commercial "thinning" through the past decade, have decimated most of the old-growth habitat and turned these ancient forests into a patchwork of tree farms.

The Bear Springs timber sale, combined with other recent logging projects in the planning area, such as the adjacent Osprey, Diablo, Bearknoll and Hilyn sales, will contribute to the degradation of at least 5,105 acres. Over 2800 additional acres in the western half of the Bear Springs planning area were "treated" in the last twenty years (BearKnoll EA 47), and the PA reminds us of the legacy of logging in this watershed since 1950: approximately 20,000 acres have been logged, the majority of that through clear-cutting. (PA 29-30). With all these actions occurring in the same planning area, we believe the Forest Service is obligated to perform better analysis in the EA to assess the cumulative effects of all these proposals on the larger landscape.

Cumulative Impacts on Patch size and Diversity

It is not sufficient to rely on "current environmental conditions as a proxy for the impacts of past actions" (PA 27). While Bark does not expect the agency to catalog the last 100

years of timber sales to-date, sales adjacent to the proposed units do need to be specifically analyzed. Forest fragmentation and patch size are critical issues to consider, especially for considering impacts to flora and fauna, and the PA ignores these concepts altogether. This project, and all future actions, should work to increase patch size, especially in areas with sensitive or endangered species present, such as spotted owl core areas.

One example of the ecological diversity present in the planning area was found during a visit to units 24 and 25. The units themselves contain a tree community dominated by Douglas fir and true fir (*Abies* spp.), with a dense understory of snowberry. Across the road to the west, where the area was previously clear-cut, the forest transitions to the sandy soils of *Pinus* spp., Larch, chinquapin, ceanothus, and various grasses dominate this portion of the landscape. 100 yards further, the area transitions into a nice old-growth forest dominated by Western Hemlock and a very diverse understory more reminiscent of middle-elevation forests west of the Cascade Crest. This patchwork of different ecological values is typical throughout the planning area. Because of this, the agency needs to analyze, on a site-by-site basis, how the forest would change through different prescriptions.

MONITORING

The current system of conducting a “crosswalk” between the NEPA decisions and the contract, followed by specialist visits on an arbitrary timetable or at the request of the commercial logging contractor, has resulted in multiple failures over the years. Bark is concerned that the inadequacy of current monitoring efforts has increased simultaneously as the size of projects has increased.

STAND CONDITIONS

The PA states that one of the purposes of the project is to enhance diversity. The PA claims that the units do not have adequate diversity of tree species, tree size and spacing, lack suitably diverse vertical and horizontal structure, lack adequate sunlight on the forest floor, and lack adequate forage plants (PA 6). Yet in 12 of the 32 units we visited, we noted stand conditions that directly contradict the PA, including healthy conifer diversity, variable tree spacing and structure, and canopy closure that appears much lower than the “current canopy closure” listed in the PA (15). In several of the units we visited, Desired Future Conditions have been met, or the forest is well-aligned with DFC goals already. These forest stands have low levels of disease, insect or storm damage, are healthy and vigorous with adequate tree spacing for future growth, contain quality DWD, excellent forage and thermal cover and a highly diverse understory.

If the restoration of species diversity within these forests is a stated purpose and the Forest Service is still intending to log in these plantation forests in the coming decades, than is this actually an appropriate need to associate with his action? Wouldn't the purpose and need of thinning these forests be exclusively for forest products? In the Forest Service response to our comments about DFCs, they acknowledge that “the plantations were planted with the expectation that they would be thinned at a future date. By

decreasing the density of trees, these second-growth plantations would experience an increase in growth and a reduction in disease.” (Appendix, B-8) The Forest Service does not appear to be divorcing this action from the original intent of the plantation to be thinned. From a silvicultural perspective, the thinning would be intended to increase growth and eradicate native pathogens or fire presence to be able to regenerate log (or clear-cut) in the next round of logging actions. By never actually acknowledging that the Forest Service no longer intends to be following these practices, the purpose of restoration becomes a convenient cover for discussing the foreseeable future impacts.

In their response to comments, the Forest Service has missed Bark’s actual concerns. The Forest Service has failed to look at cumulative impacts caused by past logging projects adjacent to the units of the proposed logging project. The Forest Service responded that are relying “on current environmental conditions as a proxy for the impacts of past actions.” (Appendix B-13) This may be an adequate starting point for assessing the impacts of more than 5,000 acres of logging in the area UP TO NOW. However, the Forest Service has not adequately assessed the cumulative impacts caused by these projects existing in time and place with the Bear Springs Timber Sale into the reasonably foreseeable future. Loss of wildlife habitat and foraging opportunity will be exacerbated, invasive weed dispersal will increase and the reestablishment of roads that were closed after past logging will have increased impacts on sedimentation and hydrologic recovery. Yes, the damage has been done from the past. However, cumulative effects analysis can and should take those past projects, by name, and assess their unique prescriptive silvicultural history and reflect the future impacts.

The prescription for this sale does not adequately describe how logging will meet the purpose and need objectives for this project. How will the Forest Service ensure that units are not simply high-graded to achieve target canopy cover percentages? What tree size classes will be cut to provide the targeted canopy cover in each unit? How will leave trees be marked? As well, several of the units contain large, natural gaps and clearings. How will you recognize these natural openings in your prescriptions? Will these be counted as gaps? How will you ensure that areas of “heavy thinning” are sited to meet the purpose and need as well as the DFC objectives of this project? Also, please define heavy thinning, and describe how much of this practice will be used on a unit-by-unit basis. We assume that average tree diameter in each unit would increase immediately as a result of this project; however, we could find nothing specific to this effect.

In our comments on the Preliminary Assessment, Bark raised concerns about the use of adaptive management leaving too liberal an element of choice for the implementing contractor. (Bark Comments, 3) This was brought up with particular concern because of the conspicuous lack of monitoring, which remains a central tenet to successful adaptive management.

In the Forest Service’s response to Bark’s comments, 36 CFR 215.6 (1)(iv) of NEPA is cited as a reason not to extend the comment period for an environmental assessment. (Appendix B- 6) However, with regards to our concerns about the use of adaptive management in the Preliminary Assessment, the Forest Service simply states, “This portion of the EA has been removed. The proposed action would be implemented as discussed in section 3.2

(Alternative B –Proposed Action) and the DN/FONSI. Any changes to the proposed action would be subject to additional analysis as required by NEPA.” (Appendix B-7) In plain speak, the Preliminary Assessment relied on the “exact treatment details” to be adjusted at the time of implementation (PA 26) and later the EA provides those exact treatment details, but you have effectively precluded us from being able to comment on them.

ROADS

The roads that lead to Units 1 and 2 have been successfully decommissioned, yet they listed as open roads and treated as such in your analysis. These roads feature berms and are partially grown over with small trees and shrubs. The Forest Service’s response to our findings on this was that these road alignments show up in the National Forest System. (Appendix B-19). We understand this to mean that these roads appear in the database tracking the forest road system, INFRA. This database is not always entirely accurate, and it is possible that agency staff may have failed to update it when these roads were decommissioned. In addition, at least a few roads are incorrectly mapped, such as road 4850018 leading to units 102 and 103. Roads into units 52, 53, and 54 are described as temporary roads despite the fact that they are essentially obliterated.

We were not arguing about the presence of roads in the database, but we are pointing at the actual conditions on the ground. Failures to keep INFRA updated may have led to this situation, but INFRA failures do not excuse NEPA failures. NEPA requires the agency to take a hard look at the effects its actions have on the environment. Here the EA does not properly disclose the effects of agency actions on roads because it did not include accurate information in the first place. The failure to properly consider the road related environmental impacts, such as where roads are decommissioned and will require reopening, has meant that the effects are not analyzed in the EA, a serious flaw in the document.

Road density throughout the project area already exceeds 3.0 miles per square mile (PA 54) and reducing road density in the White River watershed is a stated priority of the Forest Service. The latest figures on open road density in the White River Watershed show the road density is 5.13 miles per square mile, which is over two times higher than the threshold set forth by the Mt. Hood Land and Resource Management Plan (LRMP). We agree that “road decommissioning will have a positive effect” on endangered and sensitive species (and wildlife in general), stream health and water quality, reduction of noxious weeds, reduction of illegal OHV activities, and many other forest values. We are pleased that the Forest Service is prioritizing road decommissioning efforts, and look forward to the implementation of Increment 3 in this planning area. However, we are concerned that this project will create new roads and will make decommissioning of existing roads more difficult and costly, especially as you wait for logging to be completed in a battered economy. This project ultimately weakens the promise of prioritizing road decommissioning.

Our field visits indicated that several sections of these “passively or lightly decommissioned” road segments are either non-existent or fully out of service and reopening them clearly will entail new road construction. In addition, many of the road

segments listed as primary haul routes, and requiring only “brushing, blading, drainage and surface repair” (PA 13), are actually passively decommissioned roads which will require more work to reuse. Several of these haul route segments do not appear to exist at all. Given that these are the facts on the ground, how will you ensure that there is, indeed, “no net increase of new roads in this key watershed” (PA 60, 70)?

Road density as a human disturbance indicator does not hinge on the types of roads that are being built and left in the forest. The Forest Service has successfully used the idea of a temporary road to describe roads that we know will not be successfully removed from the landscape after the action has been taken. This issue should have been given a hard look in the EA.