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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

CASCADIA WILDLANDS; and OREGON  
WILD,

Plaintiffs,

vs.

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

Defendant.

Civ. Case No.

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

(Violation of Administrative Procedure Act,  
National Environmental Policy Act, and  
National Forest Management Act)

## INTRODUCTION

1. This is a civil action for declaratory and injunctive relief, arising under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*, and alleging violations of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, and the National Forest Management Act (NFMA), 16 U.S.C. §§ 1600 *et seq.*
2. Plaintiffs Cascadia Wildlands and Oregon Wild (Plaintiffs) seek a declaration that Defendant the United States Forest Service's authorization of the Loafer Timber Sale Project (Loafer) is unlawful and otherwise arbitrary and capricious.
3. Plaintiffs additionally seek injunctive relief to redress the injuries caused by this violation of the law.
4. By initiating this action, Plaintiffs seek to: (1) obtain a declaration that the Forest Service's failure to disclose and discuss the environmental effects surrounding the proposed logging of the Loafer Timber Sale Project violates NEPA; (2) compel the Forest Service to prepare an environmental impact statement for the Loafer Timber Sale Project; (3) obtain a declaration that the Forest Service's failure to properly implement the survey and manage program violates NFMA; (4) vacate the Decision Notice for the Loafer Timber Sale Project; and (5) enjoin the Forest Service and its contractors, assigns, and other agents from proceeding with the proposed Loafer Timber Sale Project, or any portion thereof, unless and until this Court determines that the violations of law set forth herein have been corrected.
5. Should Plaintiffs prevail, Plaintiffs will seek an award of costs and attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

## JURISDICTION

6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (federal question), 1346 (United States as a defendant), 2201 (injunctive relief), and 2202 (declaratory relief). The

current cause of action arises under the laws of the United States, including the APA, NFMA, and NEPA. An actual, justiciable controversy exists between Plaintiffs and Defendants. The requested relief is proper under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.

#### **VENUE**

7. Venue in this Court is proper under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district. The Forest Service official who authorized the decision is headquartered in Roseburg, Oregon, and that office is located within this district. Additionally, Plaintiffs have offices within this district.

8. This case is properly filed in Eugene, Oregon, pursuant to Local Rule 3.2 because the Loafer Timber Sale Project is located in Douglas County, Oregon.

9. If Plaintiffs prevail, Plaintiffs will seek an award of costs and fees, including attorneys' fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

#### **PARTIES**

10. Plaintiff CASCADIA WILDLANDS is an Oregon non-profit corporation with approximately 10,000 members and supporters throughout the United States. Cascadia Wildlands educates, agitates, and inspires a movement to protect and restore Cascadia's wild ecosystems. Cascadia Wildlands envisions vast old-growth forests, rivers full of salmon, wolves howling in the backcountry, and vibrant communities sustained by the unique landscapes of the Cascadia Bioregion. Cascadia Wildlands' members use the Loafer Timber Sale Project area for hiking, recreation, observing wildlife, bird watching, solitude, nature appreciation, and other recreational and professional pursuits. The interests of Cascadia Wildlands' members will be irreparably impaired if the Loafer Timber Sale Project is allowed to proceed without compliance with our federal environmental laws.

11. Plaintiff OREGON WILD is a non-profit corporation with approximately 10,000 members and supporters throughout the state of Oregon and the Pacific Northwest. Oregon Wild and its members are dedicated to protecting and restoring Oregon's wildlands, wildlife, and waters as an enduring legacy. Oregon Wild members use the Loafer Timber Sale Project area for hiking, recreation, observing wildlife, bird watching, solitude, nature appreciation, and other pursuits. The interests of Oregon Wild and its members will be irreparably impaired if the Loafer Timber Sale Project is allowed to proceed without compliance with our federal environmental laws.

12. The aesthetic, recreational, scientific, educational, and other interests of Plaintiffs and their members have been and will continue to be adversely affected and irreparably injured if Defendant continues to act and fails to act as alleged, and affirmatively implements the action that Plaintiffs challenge with this litigation. These are actual, concrete, particularized injuries caused by Defendant's failure to comply with mandatory duties under the APA, NEPA, and NFMA. These injuries would be redressed by the relief sought.

13. Defendant UNITED STATES FOREST SERVICE is an agency of the United States and is a division of the Department of Agriculture. The Forest Service is charged with managing the lands and resources within the Umpqua National Forest in accordance and compliance with NEPA and other federal laws and regulations.

### **FACTUAL BACKGROUND**

#### **The Northern Spotted Owl (*Strix occidentalis caurina*)**

14. According to the United States Fish and Wildlife Service (FWS), the northern spotted owl (*Strix occidentalis caurina*) (spotted owl) is "a medium-sized, dark brown owl with a barred tail, white spots on the head and breast, and dark brown eyes surrounded by prominent facial

disks.” The spotted owl occupies late-successional and old-growth forest habitat from southern British Columbia through Washington, Oregon, and California as far south as Marin County.

15. Spotted owls rely on older forest habitats because such habitats generally contain the structures and characteristics required for the owl’s essential biological functions of nesting, roosting, foraging, and dispersal. These structures include: a multi-layered and multi-species tree canopy dominated by large overstory trees; moderate to high canopy closure; a high incidence of trees with large cavities and other types of deformities; numerous large snags; an abundance of large, dead wood on the ground; and open space within and below the upper canopy for owls to fly. Forested stands with high canopy closure also provide thermal cover as well as protection from predation.

16. Due to concerns over its widespread habitat loss and habitat modification, and the lack of regulatory mechanisms to protect the species, the FWS listed the northern spotted owl as a threatened species under the Endangered Species Act on June 26, 1990. 16 U.S.C. § 1533(a); *Determination of Threatened Status for the Northern Spotted Owl*, 55 Fed. Reg. 26,114 (June 26, 1990) (*codified at* 50 C.F.R. § 17.11(h)).

17. Since the owl was listed in 1990, its population continues to decline on a range-wide basis. The latest demographic data shows a three percent decline in the overall spotted owl population every year. The HJ Andrews Central Cascades Demography Study Area is located just north of the Loafer Timber Sale Project area. In the HJ Andrews Central Cascades Demography Study Area, the spotted owl population declined 20 to 30 percent between 1988 and 2008. The South Cascades Demographic Study Area is located just south of the Loafer Timber Sale Project area. In the South Cascades Demographic Study Area, the spotted owl population showed substantial declines throughout the decade preceding 2011.

18. Critical habitat was designated for the species in 1992 and revised in 2008. *Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Northern Spotted Owl; Final Rule*, 73 Fed. Reg. 47,325 (Aug. 13, 2008). In response to litigation, a second revision of northern spotted owl critical habitat was prepared and finalized in 2012. *Endangered and Threatened Wildlife and Plants; Designation of Revised Critical habitat for the Northern Spotted owl; Final Rule*, 77 Fed. Reg. 71,876 (Dec. 4, 2012).

19. In April 1992, the FWS issued a draft recovery plan for the northern spotted owl. In 2008, the FWS issued a revised final recovery plan. That recovery plan was challenged in court, and the FWS subsequently published a final revised recovery plan for the owl on July 1, 2011. *Endangered and Threatened Wildlife and Plants; Revised Recovery Plan for the Northern Spotted Owl (Strix occidentalis caurina)*, 76 Fed. Reg. 38,575 (July 1, 2011).

20. The northern spotted owl revised recovery plan identifies several activities as being the most pressing threats to the northern spotted owl including: competition with barred owls, ongoing loss of spotted owl habitat as a result of timber harvest, loss or modification of habitat from uncharacteristic wildfire, and loss of amount and distribution of spotted owl habitat as a result of past activities and disturbances.

21. The Umpqua National Forest Land and Resource Management Plan (LRMP) requires that sites occupied by species listed as threatened or endangered comply with endangered species recovery plans. The spotted owl recovery plan recommends conservation of high-quality spotted owl habitat as stated in Recovery Actions 32 and 10.

22. Recovery Action 32 states: “Because spotted owl recovery requires well distributed, older and more structurally complex multi-layered conifer forests on Federal and non-federal lands across its range, land managers should work with the Service as described below to maintain and

restore such habitat while allowing for other threats, such as fire and insects, to be addressed by restoration management actions. These high-quality spotted owl habitat stands are characterized as having large diameter trees, high amounts of canopy cover, and decadence components such as broken-topped live trees, mistletoe, cavities, large snags, and fallen trees.”

23. Recovery Action 10 instructs the Forest Service to “conserve spotted owl sites and high value spotted owl habitat to provide additional demographic support to the spotted owl population.”

### **The Loafer Timber Sale Project**

24. The Loafer Timber Sale Project is located in the Diamond Lake Ranger District of the Umpqua National Forest.

25. On March 1, 2012, the Forest issued a notice describing the Loafer Timber Sale Project and soliciting scoping comments on the proposed action.

26. On May 24, 2012, the Forest Service conducted a public field tour of the Loafer Timber Sale Project area.

27. On June 16, 2012, the Forest Service submitted a Biological Assessment related to the Loafer Timber Sale Project to the FWS.

28. On July 11, 2012, the Forest Service submitted a request for initiation of formal consultation and conferencing to the FWS.

29. On August 22, 2013, the FWS released a Biological Opinion on the effects of the Loafer Timber Sale Project. The Biological Opinion concluded that the Loafer Timber Sale Project was likely to adversely affect the northern spotted owl and its proposed revised critical habitat. The proposed revised critical habitat referenced in the Biological Opinion was designated as revised critical habitat on December 4, 2012. The Biological Opinion concluded that the Loafer Timber

Sale Project would not jeopardize the continued existence of the northern spotted owl, nor would it destroy or adversely modify the northern spotted owl's proposed revised critical habitat.

30. The Incidental Take Statement in the Biological Opinion for the Loafer Timber Sale Project allows for the take of one pair and two juvenile northern spotted owls during the implementation of the Loafer Timber Sale Project.

31. On March 12, 2013, the Forest Service announced the availability of an Environmental Assessment (EA) related to the Loafer Timber Sale Project and the commencement of a thirty-day public review and comment period.

32. The Forest Service published a final EA for the Loafer Timber Sale Project on May 8, 2013.

33. The Forest Service issued a Decision Notice and Finding of No Significant Impact (DN/FONSI) approving the Loafer Timber Sale Project on May 10, 2013.

34. The Loafer Timber Sale Project Planning area encompasses approximately 22,614 acres located on the Diamond Lake District of the Umpqua National Forest.

35. The DN/FONSI authorizes logging, road construction, fuels-treatment work, and prescribed burning within the Loafer Timber Sale Project Planning area. The DN/FONSI authorizes logging on approximately 835 acres of the Umpqua National Forest.

36. According to the EA, the Loafer Timber Sale Project would result in the removal of up to 908 acres of nesting, roosting, and foraging habitat for the northern spotted owl. According to the EA, the Loafer Timber Sale Project would degrade 522 acres of nesting, roosting, and foraging habitat for the northern spotted owl. According to the EA, the Loafer Timber Sale Project would remove 563 acres of dispersal habitat for the northern spotted owl.

37. The logging authorized by the DN/FONSI would be conducted in designated critical habitat for the northern spotted owl. The Forest Service did not conduct surveys for the northern spotted owl for the Loafer Timber Sale Project.

38. The Loafer Timber Sale Project DN/FONSI authorizes thinning in fifty-four acres of riparian reserves along perennial non-fish bearing and intermittent streams outside no-cut buffers. The fifty-four acres of thinning in riparian reserves will take place in native, never-before-logged mature forests.

39. A purpose and need for the Loafer Timber Sale Project is to restore the species and structural composition consistent with natural disturbance regimes. This purpose and need includes the creation of meadow habitat. Evidence to support the presence of historic meadow habitat in the Loafer Timber Sale Project area is based on aerial photographs taken of the project area in 1933 and 1936. The project area was burned by ranchers for grazing purposes in 1928 and 1932. The consideration of anthropogenic, or human-caused, fire as a natural fire regime and as a natural forest dynamic process is controversial. Some of the historic meadows have been recolonized by conifers and now provide suitable habitat for the threatened northern spotted owl. The Loafer Project proposes to restore meadow conditions by removing most of the trees that currently provide owl habitat.

40. According to the EA, the Loafer Timber Sale Project Planning area contains 625 acres of wolverine seclusion habitat. According to the EA, the Loafer Timber Sale Project Planning area contains potential wolverine habitat.

41. The FWS has issued a proposed rule to list the wolverine (*gulo gulo*) as threatened under the Endangered Species Act. 78 Fed. Reg. 7864 (Feb. 4, 2013).

42. According to the EA, the Loafer Timber Sale Project Planning area may contain Oregon spotted frog (*rana pretiosa*) habitat. The Loafer timber sale may affect the Oregon spotted frog.

43. The FWS has issued a proposed rule to list the Oregon spotted frog as threatened under the Endangered Species Act. 78 Fed. Reg. 53582 (Aug. 29, 2013). The FWS has proposed critical habitat for the Oregon spotted frog. 78 Fed. Reg. 53538 (Aug. 29, 2013).

44. The Loafer Timber Sale Project DN/FONSI authorizes the construction of 2.7 miles of temporary roads. The Loafer Timber Sale Project DN/FONSI authorizes the reconstruction of 2.5 miles of temporary roads.

45. The Loafer Timber Sale Project contains areas that are a part of the citizen wilderness proposal known as the Crater Lake Wilderness Proposal.

46. According to the EA, the Loafer Timber Sale Project Planning area contains 14,176 acres of undeveloped areas, that is, areas that have received little or no previous management such as roads and logging. According to the EA, the Loafer Timber Sale Project would decrease the total amount of undeveloped area in the project area by 1,077 acres.

47. According to the EA, the Loafer Timber Sale Project Planning area contains two undeveloped areas that will be subject to treatments: the Dread and Terror undeveloped area and the Thorn Prairie undeveloped area. Both of these areas meet the criteria for designation as wilderness under the Wilderness Act. Undeveloped areas that are treated as part of the Loafer Timber Sale Project will likely no longer eligible for wilderness designation.

48. According to the EA, the Loafer Timber Sale Project will reduce the Dread and Terror undeveloped area by 432 acres. The Loafer Timber Sale Project will reduce the size of the Dread and Terror undeveloped area from 1,906 acres to 1,474 acres.

49. According to the EA, the Loafer Timber Sale Project will reduce the Thorn Prairie undeveloped area by 66 acres. The Loafer Timber Sale Project will reduce the size of the Thorn Prairie undeveloped area from 1,063 acres to 997 acres.

50. According to the EA, the Loafer Timber Sale Project involves logging in and around mature forest with patches of old growth and large remnant trees.

**The Red Tree Vole, Survey and Manage, and the Loafer Timber Sale Project**

51. The red tree vole (*Arborimus longicaudus*) is among the most arboreal mammals in the Pacific Northwest. As an arboreal mammal, the red tree vole lives most of its life in the forest canopy, rarely venturing down to ground level. Red tree voles are endemic to the moist coniferous forests of western Oregon and extreme northwest California. Red tree voles depend on conifer tree canopies for nesting and foraging. Voles also use conifer tree canopies as travel routes and escape cover, and the canopy cover provides moisture for the species. Red tree voles are closely associated with old-growth forest habitat and are highly vulnerable to local extirpations from habitat fragmentation or loss. Additionally, the red tree vole is an important prey for the threatened northern spotted owl and other predators.

52. The Umpqua National Forest is required to manage forestland under its jurisdiction according to the terms and requirements of the Umpqua LRMP as amended by the Northwest Forest Plan (NFP). The NFP includes a mitigation measure called the “survey and manage” program. The survey and manage program is designed to mitigate the effects that logging and other ground-disturbing activities have on local populations of sensitive species.

53. The red tree vole is among the species that are protected by the survey and manage program. The survey and manage program requires the Forest Service to conduct pre-disturbance surveys for red tree voles and to manage all known sites within high priority areas.

54. Because of the red tree vole's vulnerability to logging, and because of its natural role as prey for the threatened northern spotted owl, when red tree vole nests are found in a forest stand, the interagency red tree vole management recommendations require a ten acre minimum habitat area and a minimum buffer of one hundred meters around active red tree vole nest sites. The size of a habitat area increases with the number of nests found in that forest stand. The Forest Service is generally prohibited from logging within habitat areas in order to maintain the canopy conditions that support red tree voles.

55. Surveys must be conducted pursuant to approved survey protocols for each species. The BLM and Forest Service have jointly developed a survey protocol for the red tree vole. For the Loafer Timber Sale Project, the Forest Service relied upon version 2.1 of the Survey Protocol for the Red Tree Vole. The survey protocol provides three criteria for determining the need for pre-disturbance surveys: (1) the project is within the geographic range of the species; (2) there is suitable habitat that may potentially contribute to a reasonable assurance of species persistence within the project area; and (3) the proposed project has the potential to negatively impact this habitat.

56. If these three criteria are met, the pre-disturbance surveys are conducted following one of two methods: the individual tree survey method, usually appropriate for smaller scale snag creation or individual tree removal projects, or the Modified Line Transect Survey Method used for most timber sales.

57. Pursuant to the Modified Line Transect Survey Method, a surveyor walks a transect line to visually search the canopy for potential nest structures. These "potential" nest structures could include a red tree vole nest, a bird nest, or an accumulation of litter fall.

58. The Forest Service is required to inspect these possible nest structures at a closer range to classify them as either: (1) confirmed active red tree vole nest; (2) confirmed inactive red tree vole nest; (3) confirmed red tree vole; (4) confirmed to a species other than a red tree vole; (5) unconfirmed species nest. The survey protocol suggests that to determine vole nest activity status, the Forest Service can elect to examine the ground under the nest tree for vole signs and can use cameras or mirrors on extension poles to attempt to look into the nest. The Forest Service must utilize tree climbing if these ground observation methods are not feasible or successful in analyzing and classifying the nest structure. Unconfirmed nest species must be assumed to be an active red tree vole nest until further evaluation and additional surveys are conducted.

59. If any type of red tree vole nest is detected, the agency must survey within 330 feet (100 meters) around the nest to look for additional nests and determine the spatial extent of the site.

60. The red tree vole survey protocol contains additional survey guidelines for old-growth conifer stands that provide more optimal habitat for red tree voles and present difficulties for ground-based surveys. Tree climbing is required in old-growth forest areas over two acres in size. As an alternative to tree climbing, the agency can assume red tree voles are present.

61. The Loafer Timber Sale Project is geographically located within the range of the red tree vole. Portions of the Loafer project area contain habitat characteristics that triggered red tree vole surveys pursuant to the red tree vole survey protocol. The Loafer Timber Sale Project proposes logging prescriptions that have the potential to cause significant negative effects on vole habitat or vole persistence within the project area. Known red tree vole nests have been found in the analysis area for the project.

62. A known red tree vole nest site was found by citizen survey efforts in the Loafer Timber Sale Project area. Citizen survey efforts for red tree voles are permissible and common throughout Oregon. The climbing provides recreational opportunities for the public, and the volunteer surveying helps supplement agency survey efforts, which even when conducted to protocol, only cover 68% of the project area.

63. The Forest Service elected to conduct surveys for tree voles pursuant to the Modified Line Transect Survey Method. These surveys resulted in the observation of arboreal nest structures. The Forest Service detected possible nest structures while conducting the transect line surveys.

64. The Forest Service did not further evaluate these potential nest structures. The Forest Service did not classify these nest structures as either: (1) confirmed active red tree vole nest; (2) confirmed inactive red tree vole nest; (3) confirmed red tree vole; (4) confirmed to a species other than a red tree vole; (5) unconfirmed species nest. The Forest Service did not conduct further evaluation or additional surveys on nests that were unconfirmed to a species.

65. The Forest Service did not inspect these possible nest structures from a closer range to determine if they were a red tree vole nest. The Forest Service did not use cameras or mirrors mounted on extension poles to examine these nests. The Forest Service did not determine if these nests were red tree vole nests. The Forest Service did not confirm the activity status of these nests. The Forest Service did not climb any trees to survey for red tree voles. It is impossible to determine the activity status of a nest without climbing to the nest and dissecting or probing it for voles.

66. The Forest Service assumed that these nests did not belong to red tree voles because it concluded that the analysis area is either above or beyond the principle distribution zone for the

red tree vole. The Loafer Timber Sale Project area is within the Mesic Forest Distribution Zone for the red tree vole. The Loafer Timber Sale Project's analysis area is within the known or suspected range of the Oregon red tree vole. Habitat types or vegetation communities associated with the red tree vole are located at elevations below 5,500 feet. All of the Loafer Timber Sale Project units are at elevations below 5,500 feet.

67. The Loafer Timber Sale Project contains old-growth forest areas larger than two acres in size. These old-growth forest areas larger than two acres in size were not surveyed for red tree voles using the Tree Climbing Method. The Forest Service did not disclose the size of the old-growth areas within the Loafer Timber Sale Project area in the EA or related analysis documents.

68. The Forest Service treated the vole site identified by citizen survey efforts as an active vole site. The Forest Service buffered this site, pursuant to the red tree vole's management recommendations. The Forest Service did not survey around this nest to determine the extent of the vole site.

69. On March 14, 2012 and May 28, 2012, Cascadia Wildlands submitted scoping comments on the Loafer Timber Sale Project Timber Sale.

70. On March 30, 2012, Oregon Wild submitted scoping comments on the Loafer Timber Sale Project Timber Sale.

71. On April 18, 2013 and April 25, 2013, Cascadia Wildlands and Oregon Wild submitted joint comments on the Loafer Timber Sale Project Environmental Assessment. On April 18, 2013, Oregon Wild submitted additional comments on the Loafer Timber Sale Project Environmental Assessment.

72. On June 24, 2013, Cascadia Wildlands and Oregon Wild filed a joint administrative appeal of the DN/FONSI.

73. On August 1, 2013, the Forest Service denied Plaintiffs' administrative appeal.

**FIRST CLAIM FOR RELIEF  
(NEPA VIOLATION)**

**Failure to Disclose Environmental Information  
and Consequences of the Proposed Action**

74. Plaintiffs incorporate by reference all preceding paragraphs.

75. The regulations implementing NEPA require the Forest Service to disclose and analyze the environmental effects of the proposed action. 40 C.F.R. § 1500.1(b). Specifically, the regulation explains that "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." *Id.*

76. In order to adequately consider the environmental consequences of a proposed action, the Forest Service must consider the direct, indirect, and cumulative effects of the proposed action. 40 C.F.R. §§ 1502.16, 1508.7, 1508.8, 1508.25.

77. The Loafer Timber Sale Project EA and DN/FONSI fail to disclose a number of key pieces of information, which makes assessment of the environmental consequences of the proposed project impossible. For example (but not limited to):

- A. The EA and DN/FONSI fail to disclose important information about the existing condition of units proposed for treatment by the Loafer Timber Sale Project Timber Sale, including, but not limited to, stand age, number of trees per acre over thirty inches diameter at breast height (DBH), size of old-growth forest areas, age of riparian reserves, whether riparian reserves are native forests or

plantations, what aspects of the riparian reserves are degraded and therefore require treatment, and the methods and results of red tree vole surveys; and

- B. The EA and DN/FONSI fail to disclose information regarding the use of explosives to remove boulders during road construction in Unit 302, the effect of logging in Unit 302 on the hydrology of the area, including the area below Unit 302, and the effects of logging in Unit 302 on the North Umpqua Trail.

78. The Forest Service has failed to disclose environmental information and consequences as required by NEPA, which is arbitrary, capricious, and not in accordance with the APA. 5 U.S.C. § 706(2)(A). Disclosure of this environmental information and environmental effects helps satisfy 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).

79. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

**SECOND CLAIM FOR RELIEF  
(NEPA VIOLATION)**

**An Environmental Impact Statement is Required**

80. Plaintiffs incorporate by reference all preceding paragraphs.

81. NEPA requires the Defendant to prepare an Environmental Impact Statement (EIS) when a proposed major federal action may significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C).

82. In determining whether a proposed action may “significantly” impact the environment, both the context and the intensity of the action must be considered. 40 C.F.R. § 1508.27.

83. In evaluating intensity, the agency must consider numerous “significance” factors, including impacts that may be both beneficial and adverse; the unique characteristics of the geographic area such as proximity to ecologically critical areas; the degree to which the effects on the quality of the human environment are likely to be highly controversial; the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks; the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration; the degree to which the action may adversely affect an endangered or threatened species or its habitat; and whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. 40 C.F.R. § 1508.27(b).

84. If the agency’s action may be environmentally significant according to any of the criteria, the agency must prepare an EIS.

85. The Loafer Timber Sale Project EA and DN/FONSI authorize logging that would irreversibly degrade undeveloped areas, reducing the size of the ecologically critical Dread and Terror and Thorn Prairie undeveloped areas, and likely preclude their future designation as wilderness areas, a decision that is likely to be highly controversial. 40 C.F.R. § 1508.27(b)(4).

86. The Loafer Timber Sale Project EA and DN/FONSI propose fifty-four acres of logging within Riparian Reserves, which are ecologically critical areas for water quality, aquatic ecosystems, wildlife habitat, and recreation. These riparian reserves are forests with little or no prior management. 40 C.F.R. § 1508.27(b)(3).

87. The Loafer Timber Sale Project EA and DN/FONSI authorize logging in Riparian Reserves, an activity that is highly controversial scientifically, may have highly uncertain effects, or involves unique or unknown risks. 40 C.F.R. § 1508.27(b)(4), (b)(5).

88. Authorizing logging in Riparian Reserves is an agency decision that may establish a precedent for future actions with significant effect or represent a decision in principle about a future consideration (i.e., Riparian Reserve logging). 40 C.F.R. § 1508.27(b)(6).

89. The Loafer Timber Sale Project EA and DN/FONSI authorize logging in Riparian Reserves that is likely to retard recruitment of wood needed to meet ACS objectives, and without demonstrating that the logging is “needed to attain Aquatic Conservation Strategy Objectives.” Consequently, the proposed action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. 40 C.F.R. § 1508.27(b)(10).

90. The Loafer Timber Sale Project EA and DN/FONSI authorize logging in designated critical habitat for the northern spotted owl, a species listed as threatened under the Endangered Species Act. Logging in designated critical habitat for the northern spotted owl will adversely affect this threatened species. Because the revised critical habitat designation was finalized during the planning period for the Loafer Timber Sale Project, the DN/FONSI could set a precedent for future forest management in the newly designated critical habitat. 40 C.F.R. § 1508.27(b)(6).

91. The Loafer Timber Sale Project EA and DN/FONSI authorize logging that would remove and degrade nesting, roosting, and foraging habitat for the northern spotted owl, and remove dispersal habitat for the northern spotted owl. Logging in suitable nesting, roosting, and foraging habitat for the northern spotted owl within the Loafer Timber Sale Project area may affect interspecies competition between the barred and northern spotted owl, and would have effects that are controversial scientifically, may have highly uncertain effects, or involve unique or unknown risks. 40 C.F.R. § 1508.27(b)(4), (b)(5), (b)(9).

92. The Loafer Timber Sale Project EA and DN/FONSI will adversely affect nesting, roosting, and foraging habitat for the northern spotted owl, which will adversely affect this threatened species. 40 C.F.R. § 1508.27(b)(9).

93. The Loafer Timber Sale Project EA and DN/FONSI will adversely affect critical habitat for the northern spotted owl, and is aimed at maintaining parts of the project area in a meadow state, which will preclude them from ever again providing suitable nesting, roosting, and foraging habitat for the northern spotted owl.

94. The Incidental Take Statement in the Biological Opinion associated with the Loafer Timber Sale Project authorizes the take of up to four northern spotted owls, which will adversely affect this threatened species. 40 C.F.R. § 1508.27(b)(9).

95. The Loafer Timber Sale Project EA and DN/FONSI authorize logging in potential wolverine habitat, a species proposed for listing as threatened under the Endangered Species Act.

96. The Loafer Timber Sale Project EA and DN/FONSI authorize logging and a prescribed burn in potential habitat for the Oregon spotted frog, a species proposed for listing as threatened under the Endangered Species Act.

97. The Loafer Timber Sale Project EA and DN/FONSI authorize logging in red tree vole habitat.

98. The Loafer Timber Sale Project EA and DN/FONSI authorize logging in mature forest stands containing old growth. The logging of mature forest stands that contain old growth is highly controversial. 40 C.F.R. § 1508.27(b)(4).

99. A purpose and need for the Loafer timber sale is to create naturally historic conditions. The Forest Service claims parts of the project area are naturally historic meadow habitat. The meadow habitat in the project area documented by aerial photographs from the 1930s was

created by humans. According to the Forest Service, the consideration of anthropogenic fire regimes as part of the “natural disturbance regime” is highly controversial. 40 C.F.R. § 1508.27(b)(4).

100. Finally, the Loafer Timber Sale Project EA and DN/FONSI authorize logging in an area near and immediately above the popular North Umpqua Trail and Umpqua Hot Springs. Logging near these areas, and its effects on hydrology and aesthetics, are likely to be highly controversial. 40 C.F.R. § 1508.27(b)(3), (b)(4).

101. The Forest Service has failed to prepare an EIS for the Loafer Timber Sale Project, despite the presence of several significance factors. The Forest Service’s decision to implement and proceed with the proposed action without first preparing an EIS is arbitrary, capricious, and not in compliance with NEPA. 5 U.S.C. § 706(2)(A).

102. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act. 28 U.S.C. § 2412.

### **THIRD CLAIM FOR RELIEF (NFMA VIOLATION)**

#### **Failure to Comply with the Survey and Manage Program of the Northwest Forest Plan**

103. Plaintiffs incorporate by reference all preceding paragraphs.

104. The National Forest Management Act (NFMA) requires the Forest Service to develop a Forest Plan for each unit of the National Forest System. 16 U.S.C. § 1604(a). All site-specific projects and activities on national forests must be consistent with the applicable Forest Plan. 16 U.S.C. § 1604(i).

105. The Northwest Forest Plan (NFP) is incorporated into the Umpqua National Forest Land and Resource Management Plan. The NFP’s survey and manage program is incorporated into the Umpqua National Forest Land and Resource Management Plan. The Umpqua National

Forest is required to comply with the requirements of the survey and manage program before implementing the Loafer Timber Sale Project. The Umpqua National Forest is required to follow the red tree vole survey protocol before implementing the Loafer Timber Sale Project. The Umpqua National Forest did not follow the requirements of the red tree vole survey protocol before approving the Loafer Timber Sale Project.

106. The Forest Service failed to confirm the status of potential red tree vole nests identified during ground-based surveys, failed to identify old-growth areas larger than 2 acres and climb trees within these areas for nests, and failed to search 100 meters around the known site discovered by citizen surveyors to determine the extent of the site.

107. The Forest Service's failure to implement and follow the requirements of the red tree vole survey protocol violates the requirements of the survey and manage program, the Umpqua National Forest Land and Resource Management Plan, and the NFP. The Forest Service's failure to implement and follow the requirements of the red tree vole survey protocol is a violation of NFMA. The Forest Service's failure to implement and follow the requirements of the red tree vole survey protocol is arbitrary and capricious. 5 U.S.C. § 706(2)(A).

108. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act. 28 U.S.C. § 2412.

#### **PLAINTIFFS' PRAYER FOR RELIEF**

Plaintiffs respectfully request that this Court:

1. Declare that the Forest Service violated the National Environmental Policy Act, the National Forest Management Act, the Administrative Procedure Act, and their implementing regulations in designing, analyzing, and implementing the Loafer Timber

Sale Project Environmental Assessment and Decision Notice/Finding of No Significant Impact (DN/FONSI);

2. Vacate the Loafer Timber Sale Project Environmental Assessment and DN/FONSI;
3. Order the Forest Service to withdraw the Loafer Timber Sale Project Environmental Assessment and DN/FONSI until such time as the agency demonstrates to this Court that it has adequately complied with the law;
4. Enjoin the Forest Service and its agents from proceeding with the Loafer Timber Sale Project, or any portion thereof, unless and until the violations of federal law set forth herein have been corrected to the satisfaction of this Court;
5. Award Plaintiffs their costs of suit and attorneys fees; and
6. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

Respectfully submitted and dated this 3rd day of December, 2013.

/s/ John R. Mellgren

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Attorney for Plaintiffs

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to FRCP 7.1, Plaintiffs state that they have not issued shares to the public and have no affiliates, parent companies, or subsidiaries issuing shares to the public.

Respectfully submitted and dated this 3rd day of December, 2013.

/s/ John R. Mellgren

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