

**Memorandum of Understanding and Settlement Agreement  
Regarding Logging Projects  
Malheur National Forest**

This Memorandum of Understanding and Settlement Agreement (“Agreement”) is entered into and made effective on May 22, 2008 by and between the Sierra Club, Oregon Wild, the Blue Mountains Biodiversity Project and the Cascadia Wildlands Project (collectively, “Conservation Groups”); Prairie Wood Products, and the American Forest Resources Council (collectively, “AFRC”); and the Malheur Lumber Company.

**Recitals**

WHEREAS, the Conservation Groups have filed appeals that contest the legality of the Thorn Post-Fire Logging Project (the “Thorn Project.”) In particular, the Conservation Groups object to the site-specific amendment of the Eastside Screens that permits the logging of large live large trees that are 21 inches or greater diameter at breast height. The Conservation Groups have disputed the accuracy and reliability of the guidelines that the Forest Service has chosen to employ.

WHEREAS, the Conservation Groups have expressed concerns over the proposal to log within the Egley Fire Complex and engaged in discussions with local timber interests and the Forest Service.

WHEREAS, the Conservation Groups seek to protect the live old-growth resources that survived the fire and other sensitive areas, including roadless areas 1,000 acres or greater that are eligible for inclusion in the National Wilderness Preservation System.

WHEREAS, while the Conservation Groups are generally opposed to post-fire (salvage) logging operations, they are prepared to forego their appeal if the Forest Service modifies the Thorn Project as set forth herein.

WHEREAS, AFRC has filed an appeal that contests the legality of the Thorn Project. In particular, AFRC objects to the failure of the Forest Service to amend the forest plan to impose greater snag retention requirements for the project than the existing forest plan standards, the relocation of old growth without considering the impacts of the restrictions on suitable forest land to produce timber, and the preimplementation of potential wilderness before a forest plan revision is completed.

WHEREAS, AFRC is concerned that the mills and their employees will be harmed if timber is not sold to allow operations to continue.

WHEREAS, AFRC believes retention of viable mills in eastern Oregon is essential for forest health since the mills provide a market to accomplish cost effective fuel reduction that would not otherwise occur if forest health projects had to be funded from the federal budget.

WHEREAS, the Parties acknowledge that anyone can bid on any of the timber sales discussed in this Agreement and the Agreement is not meant to restrain competition for any timber.

WHEREAS, AFRC is extremely concerned that the limitations on the harvest of trees contained in paragraph 1.B are so restrictive that the Forest Service may not be able to prepare an economically viable timber sale from the Thorn Project that will be purchased by any prospective bidders.

### **Agreement**

For good and valuable consideration, the parties hereby agree as follows:

#### Thorn Project

1. The Parties agree to withdraw their pending administrative appeals of the Thorn Project on the condition that implementation of Alternative 3 of the Record of Decision (“ROD”) is modified by the Forest Supervisor in the following ways:

A. The following units will be deleted from the Thorn Project: 1, 2, 3, 4, 5, 47, 49, 50. The boundaries of the following units will be modified to match the boundaries of Alternative Four: 6, 13, 36, 40, 44, 45, 46, 48.

B. The Forest Service will not mark any ponderosa pine trees of any size or condition except when determined to be a safety hazard. The ROD’s amendment to the Eastside Screens to define live trees will only apply to the non-ponderosa pine trees with green needles that have a low probability of survival according to the latest version of the Scott Guidelines (Amendment No. 2).

C. Any approved plan of operations shall provide the Parties and the timber purchaser with five working days to review the marking or non-marking of all green trees 21 inches DBH and greater following the completion of marking in one or more units.

D. The ROD Forest Plan amendment regarding relaxation of goshawk seasonal hauling restrictions will apply only to the following main haul roads: Road 21, Road 2140, and Road 2150. The Forest Service will use best efforts to complete the final goshawk surveys by May 30. If a goshawk nest is found, hauling will be prohibited along any secondary road that is within one-quarter mile of the goshawk nest. The restriction of hauling on the secondary road will remain in effect until it is determined that the goshawks have fledged or have otherwise abandoned the nest site. This determination shall be made using the least intrusive methods provided by standard survey protocol. The goshawk hauling restriction will not limit the yarding of logs to build decks at landings for later removal when the hauling restriction expires, so long as the yarding itself complies with the existing goshawk restrictions.

E. The Forest Service shall, in a timely manner, initiate a collaborative process that results in an environmental analysis under the National Environmental Policy Act for a shaded fuel break along the boundary of the Forest Service lands and the private land of Widows Creek Ranch. The prescription for the shaded fuel break will draw from previous Forest Service shaded fuel breaks.

#### Crawford Project

2. The Parties agree as follows with regard to the Crawford Project:

A. That Alternative 2 of the Crawford Project will be modified prior to implementation so that all mature and yellow-orange bark ponderosa pine and western larch, regardless of diameter of the mature tree, will be retained in the 119 acres of units that are proposed for shelterwood harvest.

B. If the ROD for the Crawford Timber sale includes the shelterwood harvest as designed in paragraph A, then the Parties agree they will not administratively appeal or litigate the ROD.

C. The Forest Service will hold the auction for the Crawford Timber Sale no later than July 30, 2008.

#### Healthy Forest Restoration (“HFRA”) Project

3. Concurrent with and contingent upon the agreed-upon modification of the Thorn Project, the Conservation Groups and AFRC agree to work with the Forest Service to analyze a project pursuant to the Healthy Forest Restoration Act (“HFRA”) collaborative process.

A. Specifically, the Conservation Groups agree to work with the Forest Service and AFRC to participate in and complete the collaborative process for the Starr WUI HFRA Project (the “Starr Project”), or Seneca Wildlands Urban Interface HFRA Project (the “Seneca Project”). If the collaborative process for the Starr Project is successful, then no further collaboration under this paragraph is required. The Parties agree to complete the collaborative process for the Starr project within 45 days beginning August 1, 2008 and ending September 15, 2008. If the Forest Service does not initiate the collaborative process by August 1, 2008, then the 45-day period will begin when the Forest Service actually initiates the collaborative process. The Conservation Groups and AFRC agree to engage in the collaborative process in good faith, facilitated by the Forest Service. The Parties agree to give good faith consideration to the criteria developed by the Dad’s Creek collaborative group provided that nothing in this Agreement compels the Parties to apply the results from the Dad’s Creek collaboration. The Forest Service will work in good faith to fully disclose all information requested by the Conservation Groups and AFRC during the collaborative process to understand the scope and environmental impacts of the proposed project.

B. Each party retains the right to administratively appeal or litigate any of the two projects in this paragraph.

#### Egley Project

4. For the Egley Project, the parties agree that the Forest Service will prepare a draft and final environmental assessment in compliance with the National Environmental Policy Act, the National Forest Management Act, the Malheur National Forest Plan and all applicable federal and state laws that analyzes the potential environmental impacts of a proposal to conduct post-fire logging of hazard trees along roadways within the Egley Complex Fire (the “Egley Project”) as follows:

A. Per the April 10, 2008 scoping letter, the Egley Project will propose action that is limited to the logging of hazard trees along roads, fences and/or trails that are within 200 feet of existing roads, campgrounds, guzzlers, structures and other improvements. Where fence lines and trails are not within 200 feet of existing roads, any and all felled hazard trees shall be left on site.

B. The logging of hazard trees in the Egley Project is limited to dead trees and severely damaged trees that have a low probability of survival that pose a hazard to human life according to the Forest Service guidelines for hazard trees.

C. The Egley Project will prohibit all ground disturbing activities or entry into any roadless areas (inventoried or uninventoried) that are 1,000 acres or greater in size according to the map attached hereto as Exhibit 1.

D. Per the April 10, 2008 scoping letter, the Egley Project will prohibit skidding on slopes greater than 35%

E. Per the April 10, 2008 Egley Project scoping letter, "Danger trees in Riparian Habitat Conservation Areas ("RHCA's") associated with streams would be cut down but left on site, unless they are located on the uphill side of a road and can be removed without equipment leaving the road prism.

F. Per the April 10, 2008 Egley Project scoping letter, the Egley Project shall prohibit the construction of any new roads (whether temporary or permanent) and shall require that all roads that were proposed to be closed and decommissioned shall be closed and decommissioned concurrent with the implementation of the project.

G. The Egley Project shall provide for the creation of sufficient down wood from dead trees by felling these trees and leaving them on the ground to deter OHV use within the units proposed as part of the Egley Project.

H. The parties to this Agreement may file comments on the draft Environmental Assessment or the final Environmental Assessment for the Egley Project to register their concerns about the project, provided, however, that, if the environmental analysis prepared for the Egley Project is consistent with the terms set forth in paragraph 4 of this Agreement, then the parties agree to not file an Administrative Appeal on the Egley Project.

#### Miscellaneous

5. The Parties agree to work in good faith to obtain the implementation of the terms of this Agreement, even if this Agreement or the Federal actions contemplated in it are challenged by a third party; however, nothing in this paragraph creates an affirmative obligation for any party to take particular legal action to counter a third-party challenge. Prior to commencing any legal action to enforce this Settlement Agreement, the Parties agree to notify the allegedly offending Party in writing, and wait thirty days from the date of notification prior to initiating suit. The Parties will have the thirty-day notice period to resolve the alleged breach informally. Parties agree that, in the event of an alleged breach of this Agreement, declaratory relief and injunctive relief are the only available remedies and in no case are money damages available. In the event the alleged breach relates to the filing of an administrative appeal of a timber project by a person

either acting or claiming to act on behalf of any party to this agreement, withdrawal of the appeal constitutes a full cure of the breach.

6. Oregon Wild, the Sierra Club, the Blue Mountains Biodiversity Project and the Cascadia Wildlands Project have been and are currently involved in litigation challenging post-fire logging projects in Oregon and Washington. For example, Oregon Wild, the Sierra Club and other organizations are challenging a site-specific amendment of the Eastside Screens to allow post-fire logging of live green trees that are 21 inches in diameter at breast height which are alleged to be dying. This Agreement contains a compromise by the Conservation Groups that permits the logging of live green hazard trees that have a low probability of survival according to marking guidelines developed by the Forest Service and limitations on ground disturbing activities in sensitive areas. This project-specific compromise does not change the Conservation Groups' overarching and ongoing concerns about the negative ecological effects of post-fire logging or the removal of large-diameter mature and old-growth trees. The Conservation Groups intend to continue to advocate for the protection and restoration of the large tree and large snag components that contribute to healthy eastside forests as well as for the protection of all roadless areas 1,000 acres or greater.

7. AFRC also is involved in the litigation filed by the Conservation Groups discussed in the preceding paragraphs and concurs that this Agreement contains a compromise regarding the application of marking guidelines developed by the Forest Service regarding the survival of trees following a catastrophic wildfire. AFRC believes the marking guidelines as applied under this Agreement are extremely conservative and that an excess of dead trees will be left uncut even many that appear live with some green needles today. AFRC believes it is environmentally preferable to promptly remove dead and dying trees within one year of a wildfire to minimize multiple later entries as trees continue to die, to conduct logging before seedlings are well established, and to capture the value of rapidly deteriorating wood to provide funds for restoration. The attached map (Exhibit 1 of this Agreement) does not represent AFRC's general position as to the size, location, or value of any uninventoried roadless area, and the attached map has not been adopted by AFRC for any reason other than that which is expressly stated in paragraph 4 of this Agreement.

8. The Parties agree that this Agreement was negotiated in good faith and that it constitutes a settlement of claims that were vigorously contested, denied and disputed by the Parties. By entering into this Agreement, the Parties do not waive any claim or defense on any grounds.

9. Nothing in this Agreement shall be construed to limit or modify the discretion afforded to the Forest Service under federal law or by general principles of administrative law.

10. The terms of this Agreement constitute the entire agreement of the Parties, and no statement, agreement or understanding, oral or written, which is not contained herein, shall be recognized or enforced.

11. The Parties agree that the terms of this Agreement shall be admissible in court in any litigation challenging the legality of any of the Federal actions mentioned in this Agreement.

12. The withdrawal of the administrative appeals by the Conservation Groups shall not create, support or constitute a defense to any claims the Conservation Groups may have against any other project other than the Thorn Project.

13. The Parties agree that each party to this Agreement shall bear its own attorneys' fees, costs and expenses and that no party may seek reimbursement or an award of attorneys' fees, costs, and expenses for the creation or enforcement of this Agreement.

14. Each undersigned representative of the Parties hereto certifies that he or she is fully authorized to enter into and execute the terms and conditions of this Agreement. The provisions and obligations of this Agreement shall become binding and effective as set forth herein on the date set forth on this Agreement and when this Agreement has been signed by all the Parties hereto.

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American Forest Resources Council

By: Tom Partin

Its: President

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Prairie Wood Products

By: Valerie Johnson

Its: President

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Malheur Lumber Company

By: Mike Billman

Its: \_\_\_\_\_

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Oregon Wild

By: Tim Lillebo

Its: Eastern Oregon Wildlands Advocate

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Blue Mountains Biodiversity Project

By: Karen Coulter

Its: Executive Director

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Cascadia Wildland Project

By: Dan Kruse

Its: Legal Director

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Sierra Club

By: Asante Riverwind

Its: Eastern Oregon Forest Organizer

**Settlement Agreement**