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Paper copy hand delivered to Grants Pass Interagency Office

**ADMINISTRATIVE PROTEST OF THE DECISION RECORD #3 FOR THE POOR WINDY FOREST  
MANAGEMENT PROJECT AND FINDING OF NO SIGNIFICANT IMPACT**

DOI-BLM-ORWA-M070-2018-0010-EA

<https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=99604&dctmId=0b0003e88109b3e8>

Mr. Dean:

Pursuant to 43 CFR 5003, The Klamath Siskiyou Wildlands Center (KS Wild), Cascadia Wildlands, and Oregon Wild hereby formally protest the Decision Record #3 authorizing the Blown Fortune timber sale and Finding of No Significant Impact (DR3/FONSI) for the Poor Windy Forest Management Project.

Our organizations provided timely substantive comments regarding the Poor Environmental Assessment (EA) on July 15, 2019 and thus have standing to administratively protest this March 23, 2020 DR3 and the September 12, 2019 FONSI. This protest is timely because it is submitted in signed hardcopy to the BLM interagency office in Grants Pass within 15 calendar days of publication of the "Blown Fortune" timber sale legal notice that appeared in the Medford Mail Tribune newspaper on March 27, 2020.

The Poor Windy project and the Blown Fortune timber sale are located on BLM-administered lands in the Grants Pass Resource Area, Douglas County, Oregon.

The March 24, 2020 Decision Record #3 (DR#3) would implement Alternative 2 on portions of the project area that were analyzed in the September 2019 Revised Environmental Assessment for the project.

- 216 acres of Harvest Land Base Uneven-Aged Timber Area selection harvest and modified group selects
- 34 acres of Harvest Land Base Low-Intensity Timber Area commercial thinning,
- 116 acres of Late-Successional Reserve-Dry selection harvest,
- 1 acre of District Designated Reserve-Timber Production Capability Classification commercial thinning,
- 63 acres of Outer and Middle Riparian Zone commercial thinning,
- 8 acres of roadside management,
- 438 acres of activity fuels treatments,
- 0.74 miles of new permanent road construction,
- 1.83 miles of new temporary road construction,
- 0.12 miles of existing temporary road reconstruction,
- 20.28 miles of haul road maintenance, and
- Dry condition operations

This administrative protest concerns all timber sale activities involved in the Blown Fortune timber sale legal notice associated with DR #3. The protest does not concern pre-commercial thinning and/or hazardous fuels reduction activities that are not associated with the Blown Fortune commercial timber sale.

## **STATEMENT OF REASONS**

Our organizations are supportive of young tree thinning projects, and we remain steadfastly opposed to significant canopy removal in fire-resistant mature/old growth forest stands. We believe the BLM can best meet its timber production and forest resilience objectives by implementing a project that addresses fire hazard and degraded watershed conditions while maintaining those components of the watershed with the best hydrological and ecological conditions: the remaining mature forests.

In past years the Grants Pass Resource Area demonstrated significant success in producing timber volume while increasing forest resiliency through implementing the dry forest restoration principles of forest ecologists Jerry Franklin and Norm Johnson (Franklin et al.2012). These ecological restoration thinning projects brought stakeholders together and sold at auction for considerably more than their appraised value, while avoiding protests and litigation (e.g. Jumping Bean timber sale, Williams IVM plantation timber sale). Grants Pass silviculturists enthusiastically promoted Jerry Franklin's ecological forestry principles in the Cold Elk timber sale planning process.

Biologists, recreation planners, and those who look after fish and water quality have been told to stay home while the BLM timber staff reports to work to continue to hand over public land old-growth forests to the timber industry. Governor Kate Brown asked Oregonians to stay at home to curve a global pandemic, while agency officials of the BLM are asking the public and timber purchasers to violate that order and leave their homes to “participate” in the archaic BLM old-growth timber sale process.

While the timber industry is seeking an “essential” status, the truth remains - democracy and the health and safety of the global population are undoubtedly essential.

Our organizations hope to partake in a collaborative and successful ecological forestry restoration paradigm opposed to the controversial logging that removes and downgrades NSO nesting roosting foraging habitat and even goes so far as to remove RA 32 structurally diverse stands, the highest quality NSO habitat remaining on BLM lands as planned in this document.

### **1. Decision Record #3 Violates the National Environmental Policy Act Such That an EIS Should Be Prepared.**

The September 12, 2019 Finding of No Significant Impact (FONSI) for the Poor Windy Forest Management Project Revised EA and Decision Record #3 is in error. Effects caused by the proposed project are significant and an EIS must be prepared.

#### **A. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.**

Substantial cumulative impacts from the proposed project warrant a full EIS that complies with Northern Spotted Owl (NSO) recovery actions and critical habitat protections with effective measures to address cumulative effects on recovery and jeopardy of the species. When viewed cumulatively, the impacts of the Poor Windy project and the implementation of DR #3 have a significant impact on the environment that necessitates an EIS to be prepared.

The BLM must prepare an EIS to conduct a detailed analysis for possible significant impacts that have not been fully analyzed or disclosed in detail.

Due to the large acreage and high intensity basal area removal prescriptions, the selected Poor Windy Alternative 2 has much greater negative impact to the wildlife, land, and people of Southwestern Oregon than most previous Medford District timber projects, including some that have been analyzed in an EIS. The project is 6 times larger than many recent timber sale projects and merits an EIS. The cursory EA is clearly inadequate to disclose and analyze the significant impacts associated with the site specific and cumulative significant impacts from this major federal action.

The Revised EA lacks detailed analysis for 23 issues listed in appendix C (Sept EA,120).

#### **A. 1: Site Specific Impacts to Sensitive Soils Were Not Considered or Analyzed.**

We indicate that the Poor Windy Timber Sale NEPA analysis must consider the reforestation problems in the Timber Production Capability Classification (TPCC) determination for the project area. We asked that the BLM disclose the agency's methodology for logging on TPCC lands and how this interacts with the agency's interpretation of O&C Act and its guidance regarding "annual sustained yield capacity." We also asked if the agency holds that lands subject to log landing establishment will be managed to ensure sustainable timber production or if they will be managed as areas in which conifers are not present and hence not producing timber volume or providing habitat values. The Revised EA fails to include a detailed soils analysis or soils specialist report that would have included analysis regarding potential soil instability for new roads, cumulative compaction data for each unit and field review of slope stability issues for logging units. The omission of a soils section and supporting specialist report ignores significant site-specific adverse impacts to the project area, and is unprecedented and controversial.

Up until now large BLM timber sale EAs contain a soils section supported by a specialist's soils report. For example, the Grants Pass Field Office's Picket West project EA in 2017 had an eight-page soils section produced by a qualified soil scientist. Further, the work of BLM soils scientists resulted in the dropping of several units in the Elk Camel project due to the potential for soil damage and reduced slope stability from proposed logging. Failure of soils reporting in the EA regarding site-specific soils and slope reviews means that EA conclusory assertions of "negligible" soil erosion is supported by data or analysis.

Many Poor Windy units are located on 50-100% slopes where there is high risk for erosion and or landsliding but there is no detailed unit specific analysis in the EA or supporting soils reports on the project website. (see REA maps p.187-195).

Landsliding is specifically mentioned as a concern for **FGNW** soils by "A Synopsis and Updated Guide of the Standard Operational Practices for Upland Soil Productivity in Western Oregon", the document listed on Eplanning for this project in reference to guiding the "soils analysis". The DR#3 fails to describe the type of TPCC soils included in the proposed logging unit, or the site-specific condition of the stand. Please note that the EA and Revised EA for this project did not contain the information necessary for the public to provide informed comments on the substance of this BLM proposal or for the BLM to make an informed decision concerning whether or not to authorize logging activities on TPCC soils. The BLM disclosed no information regarding the physical and biological characteristics of the TPCC land in which logging will occur within withdrawn stands. See BLM Handbook 5251 D.6:

"Policy. To classify the forest land, and to define and delineate relative suitability or non-suitability for the production of timber on a sustained-yield basis. Partitioning is site specific based upon physical and biological characteristics and not economic or multiple-use consideration."

There has been no plan maintenance documentation that discloses the rationale for the decision to site specifically change TPCC land designations in order to harvest timber off of them. Further, the BLM has not disclosed if during the planning of TPCC logging the agency



discovered site specific conditions that would add more land to the TPCC designations. We suspect that the BLM only takes actions to decrease, rather than increase, protections for soils during site-specific timber sale planning. The BLM has not disclosed how logging and yarding activities “would not exacerbate soil productivity issues” as required by the SWORMP. Removing living trees and snags, especially within the footprint of the MP 97 fire, from TPCC lands does not “emulate ecological conditions produced by historic fire regimes”.

The DR3 and the Revised EA fail to analyze the effects of road construction and yarding on TPCC soils and the forest stands they support. The SOP for Upland Soil Productivity indicates that “[h]arvest or road construction activities are likely to accelerate mass soil movement, surface erosion and/or debris avalanches and flows significantly beyond what would occur naturally in time and space even when appropriate BMPs and SOPs are applied.”

Detailed soils analysis and field review must ensure that significant soils impacts are unlikely to result from BLM management actions. The FONSI, the Revised EA and the DR#3 cannot assure that significant damage to soils will not occur due to management actions.

The Decision arbitrarily changed existing TPCC designations and authorized logging on lands previously withdrawn from the harvest land base.

The need for action within the District-Designated Reserve – Timber Production Capability Classification has not been analyzed or informed by site specific conditions and analysis. The DR3 does not analyze or disclose the site-specific stand structure of the DDR-TPCC unit inclusion as the following “need” quote from the REA suggests, “There are areas classified as District-Designated Reserve – Timber Production Capability Classification (DDR-TPCC) land use allocation that no longer emulate historic fire regimes. These areas have vegetation under and overstory densities that exceed the community-level characteristic densities and/or have encroaching Douglas-fir and madrone that do not align with desired species composition.” (REA,10)

The DR#3 and Revised EA failed to produce a soils report, consider or analyze impacts from DDR-TPCC or TPCC proposed logging, or include a qualified soils scientist on the ID team to field check the DDR-TPCC or TPCC and thus the redesignations are arbitrary and capricious.

#### **A.2: Effects Caused by Proposed Actions Are Significantly Adverse to Northern Spotted Owls (NSO) and an EIS Should be Prepared.**

Due to the BLM’s refusal to implement Recovery Action 10 and Recovery Action 32 of the Northern Spotted Owl Recovery Plan when implementing the Poor Windy Project and Blown Fortune timber sale, it is possible that the project will likely adversely affect the recovery of the species.

It appears that the BLM refuses to follow:

- The direction (RMP ROD page 23) to: Apply the concepts of Ecological Forestry and consistently with the owl recovery plan and the designation of critical habitat for the northern spotted owl. Among the Ecological Forestry approaches of the Proposed RMP are: Protection of larger and older trees within harvested areas.
- The Management Objectives (RMP ROD page 74) that encourage the BLM to enable forests to: (1) recover from past management measures, (2) respond positively to climate-driven stresses, wildfire and other disturbance with resilience, (3) ensure positive or neutral ecological impacts from wildfire, and (4) contribute to northern spotted owl recovery.
- The direction (RMP ROD page 115) to conserve and recover species that are ESA-listed, proposed, or candidates, and the ecosystems on which they depend

The RMP clearly advises BLM management direction to recover from past management impacts, to respond positively to climate-driven stresses, and to ensure positive or neutral ecological impacts from wildfire. This does not encourage logging of large diameter trees or the practice of converting native forest stands into young tree plantations. Rather, these practices (management directions) significantly increase fire hazard in the mid- to long-term time frame and do not contribute to NSO recovery and do not conserve or recover ecosystems in which ESA listed species depends.

The BLM's proposal to increase fire hazard, exacerbate Barred owl conflict through NSO habitat removal, by downgrading and removing NSO critical habitat while ignoring RA 10 and RA 32 represents an extreme, controversial and unfortunate vision for public lands management.

The NSO impacts proposed by this project are admittedly averse to the recovery of this listed threatened species. The degree to which project impacts the designated critical habitat for this species is significant and an EIS must be prepared to fully analyze impacts.

It is arbitrary and capricious to assume that commercial thinning in occupied home ranges will maintain the function of NRF and dispersal habitat, or that logging in home ranges is compatible with retaining resident spotted owls, especially when the existing proposed treatment areas are currently below recommended thresholds for their habitat stand structure.

The USFWS Biological Opinion concedes that NSOs at 83 sites would likely be adversely affected by the proposed action. It goes on to state that none of the NSO sites were impacted by fires in 2018, and 5 of the 61 NSO sites were impacted by the (2019) Milepost 97 Fire, with 3 of the sites having nest patch and core areas within the perimeter, and 2 sites having a portion of the home range within the fire perimeter. Neither the REA nor the DR3 which contains commercial treatments within the project area that overlaps with the Milepost 97 Fire of 2019 analyze the impacts to the 5 NSO sites, disclose what their land use allocation is, or how treatments might be modified by the significant new information of site-specific impacts caused by the fire. This

failure to analyze site specific adverse impacts to an ESA listed species is arbitrary and capricious and an EIS must be prepared.

The Revised EA acknowledges, “Occupied NSO sites would be negatively affected by nesting, foraging, or dispersal habitat removal from road and landing constructions that support Harvest Land Base and Late-Successional Reserve-Dry treatments that maintain or downgrade habitat to improve long-term development of habitat conditions and stand resiliency. Occupied owl sites are below habitat thresholds, and minimal habitat removal combined with stand-level treatments may exacerbate low or poor habitat conditions in core areas. Harvest Land Base NRF habitat removal within the home range of occupied sites below habitat thresholds reduces the likelihood of spotted owl occupancy and survival and reproduction may be reduced.” (REA, 33)

The following conclusion is arbitrary and capricious given the information in the previous Revised EA quote. “Occupied NSO sites would continue to be managed contributing to demographic support, and Harvest Land Base ecological retention features (skips, riparian reserves, relative thinning retention, large tree retention) provide foraging, roosting, and potential nesting opportunities as temporary refugia, supporting NSO movement across the project area.” (REA, 34)

The Low Intensity Timber Areas (LITA) which are located within occupied northern spotted owl stands are proposed for commercial logging. (REA, 15) Logging in occupied NSO stands could amount to take, especially given the history of overharvest on the Resource Area, and requires reconsultation with the USFWS. Failure to reconsult is a violation of the ESA. While “taking” of NSOs is a violation of the 2016 SWORMP being that a barred owl management program is not in place.

Treatments in core-use areas that “are likely to adversely affect spotted owl occupying these sites” is a violation of the ESA and necessitates completion of an EIS.

### **A. 3: LSR Proposed Treatments are Significantly Averse and Violate the SWORMP Direction to Not Preclude or Delay Habitat Development by More Than 20 Years.**

The alleged “need” for LSR treatments in the Revised EA is arbitrary and capricious. The purpose of the reserve system established in the 2016 RMP when the BLM withdrew from the Northwest Forest Plan was to provide habitat blocks to support old-growth dependent species. The BLM arbitrarily claims that there exists a “need to treat LSRs” because data collection occurred on LSR LUAs in the project area indicating that the reserves must be logged to save the stands from themselves. Data collected in LSRs can be used for a number of purposes and does not unilaterally require logging. “The Late-Successional Reserve-Dry units received the same extensive data collection described above for the Harvest Land Base. This data collection and surveys reflect a substantial investment in the project, which would be lost by not planning a commercially viable and operationally feasible project within the selected Late-Successional Reserve-Dry units. Non-commercial treatments do not contribute to the decadal acres target.” (REA,9).

The SWORMP at 72, attempts to minimize adverse logging prescriptions in the LSR LUAs by precluding treatments that delay development of NSO habitat by more than 20 years. “In stands that are not northern spotted owl nesting-roosting habitat, apply silvicultural treatments **to speed** the development of northern spotted owl nesting-roosting habitat or improve the quality of northern spotted owl nesting-roosting habitat in the stand or in the adjacent stand in the long term. **Limit such silvicultural treatments (other than forest pathogen treatments) to those that do not preclude or delay by 20 years or more the development of northern spotted owl nesting-roosting habitat in the stand and in adjacent stands, as compared to development without treatment.**”

The BLM Revised EA for Poor Windy authorizes logging prescriptions in the LSR-DRY land use allocation that admittedly delay or preclude development of NSO habitat for more than 20 years as compared to the no action alternative.

REA at Table 3-6 acknowledges that 9 acres of nesting habitat in the LSR-DRY is to be **removed**. The REA at 38 continues to describe the timeline for NRF habitat recovery: “Where nesting/roosting habitat removal would occur (1,395 acres), NSOs would no longer use these areas for nesting/roosting, or foraging until overstory trees are dominated by approximately 21 inches and greater DBH, and the canopy cover returns to at least 60% and **may take approximately 30 to 80 years**, transient with and depending on relative density tree retention levels and gap size.” Even at the low end of the scale, the BLM’s prescription is a violation of the forest management direction for this land allocation. Further, the BLM failed to consider a reasonable range of alternatives by considering an alternative where the 9 acres of LSR-DRY nesting removal was retained rather than removed.

In addition to the 9 acres of Nesting habitat removal in the LSR, the REA goes on to state that other LSR prescriptions would take more than 20 years to develop into habitat. As follows, the BLM speaks about the timeline for recovery of proposed Foraging downgrades. The LSR DRY allocation in the project area has 1419 acres of this type of proposed treatment:

“Nesting Roosting/Foraging Habitat Downgraded: Silvicultural commercial prescriptions that would **downgrade current nesting or foraging habitat function, would retain at least 40% canopy cover, ( 1419 ac in LSR DRY)** some snags and most large coarse wood, and would promote a variable distribution of tree sizes, species, and spacing, emphasizing retaining larger and dominant trees, and resilient tree species which would increase structural complexity and stand resiliency over time and continue to function as dispersal-only habitat. **Stand growth may take approximately 20-50 years to develop into improved foraging or nesting habitat.** Treated stands dominated with younger trees (30-60 years old) may develop canopy approximately up to 2% per year, and older stands with slower growth, approximately up to 1.5% per year, with growth rates transient to relative density retention and basal area reduction (Puettmann et al 2016).” (REA, 36)

Further, Dispersal habitat maintenance is proposed on 746 acres of LSR Dry allocation. The BLM admits this treatment could take more than 20 years to redevelop. “Proposed treatments on approximately 1,686 acres are within stands that currently would maintain the function of dispersal habitat. Where dispersal habitat would be maintained, canopy cover would be retained 40% to 60% canopy, and may develop into foraging habitat with 60% canopy cover in **approximately 20 to 30 years or less, but may take longer depending on the level of tree retention and tree structure, slope and aspect position present within the stand.**” (REA, 36)

“Where nesting/roosting habitat removal would occur (1,395 acres), NSOs would no longer use these areas for nesting/roosting, or foraging until overstory trees are dominated by approximately 21 inches and greater DBH, and the canopy cover returns to at least 60% and **may take approximately 30 to 80 years, transient with and depending on relative density tree retention levels and gap size.**” (REA, 38)

In the original June EA submitted for the project, the timeline of recovery for these habitat types differs and the BLM anticipated even longer recovery timelines. Now the BLM has changed its conclusions, but not its data or its analysis or its prescriptions. The BLM has provided no justification for concluding that treatments would not delay NR habitat by more than 20 years in the Revised EA. The agency has not modified its prescriptions in the Revised EA and the original June EA says recovery to NR habitat could take up to 50-80 years, the analysis and conclusions in the REA are arbitrary and capricious and without supportive substance. The adverse impacts for NSO and their habitat are significant such that an EIS must be prepared.

**(B) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.**

**B.1: The Poor Windy Project Area is Unique in that it is Located Within the Ecologically Critical Habitat for the Federally Threatened Northern Spotted Owl, *Fritillaria Gentneri*, and within the range of Southern Oregon Northern California Coasts (SONCC) and Oregon Coast Coho salmon.**

This project is within the K LW-1, KLE-2, and KLE-3 critical habitat subunits for the Northern spotted owl. The K LW-1, KLE-2, and KLE-3 subunits require special considerations and to address threats to the essential physical or biological features from current and past timber harvest, losses due to wildfire and the effects on vegetation from fire exclusion, and competition with barred owls. These subunits are expected to function for demographic support to the overall population and for north-south and east-west connectivity between subunits and critical habitat units. ***These subunits sit at the western edge of an important connectivity corridor between coastal Oregon and the western Cascades.*** The USFWS has determined that all of the unoccupied and likely occupied areas in these subunits are essential for the conservation of the species to meet the recovery criterion that calls for the continued maintenance and recruitment of Northern spotted owl habitat (USFWS 2011, p. ix). The increase and enhancement of northern spotted owl habitat is necessary to provide for viable

populations of northern spotted owls over the long term by providing for population growth, successful dispersal, and buffering from competition with the barred owl.

*Fritillaria gentneri* (Gentner's fritillary) was listed as an endangered species on December 10, 1999 (U.S. Fish and Wildlife Service [USFWS] 1999). *Fritillaria gentneri* occurs within a broad array of plant associations but often occupies grassland and chaparral habitats within, or on the edges of, dry, open, mixed-species woodlands at elevations below 1,544 meters (5,064 feet). The species is threatened by a variety of factors including habitat loss associated with rapidly expanding residential and agricultural development, alteration of habitat by invasive weeds and successional encroachment by trees and shrubs, habitat disturbance from timber harvest and recreational activities, and vulnerability associated with extremely small population sizes. This plant's recovery priority number is a 2 on a scale of 1 (highest) to 18 (lowest), reflecting its taxonomic status as a full species with a high degree of threat and a high potential for recovery. **Because populations elsewhere on public land continue to experience loss and degradation of habitat, each agency involved in land ownership or management in association with a *Fritillaria* management area should take appropriate steps to ensure the long-term conservation of this species.** Please see reference on page 69 of this protest describing the abundance of noxious weeds in the project area. Please incorporate meaningful PDFs and BMPs to reduce the spread of noxious weeds within the range of the *Fritillaria Gentneri*.

The Poor Windy project is within the Rogue Basin which is in the range of the federally threatened Southern Oregon Northern California Coasts (SONCC) and Oregon Coast Coho salmon. Consultation for the Endangered Species Act and Essential Fish Habitat for the Magnuson-Stevens Fishery Conservation and Management Act with the National Marine Fisheries Service is covered under the Endangered Species Act Section 7(a) (2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management and Management Act Essential Fish Habitat for the Programmatic Forest Management Program for Western Oregon. (WCR-2018)

**(C) The degree to which the effects on the quality of the human environment are likely to be highly controversial.**

#### **C.1: Downgrading and Removing Occupied Critical Habitat for NSOs Is Controversial.**

The BLM claims that no effects to individual owls in occupied sites, because logging in those sites will be delayed until the BLM has logged the surrounding landscape such that they are no longer occupied. BLM waiting for federally threatened owls to blink out before destroying the stands that supported them and could support owl recovery in the future is very much a controversial and unprecedented federal action. Logging and road/yarding construction within occupied NSO sites, removing canopy cover in Late Successional Reserves to a similar basal area target as the Harvest Land base is significantly controversial to the scientific community. The agency's decision to completely walk away from the Dry Forest Restoration principles implemented in its successful pilot projects is controversial even within the BLM.

## **C.2: The Removal of Mature Old Growth Forests Is Controversial.**

Science has found that humans have a biological need for nature experiences for a variety of reasons. It's not just recreational hiking as is commonly assumed. 43 CFR part 1508.14 "Human Environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment." The biophilia hypothesis asserts the existence of a biologically based, innate human need to affiliate with life and lifelike processes (Wilson 1984), hence, the human need for nature. The types of biophilia values are utilitarian (e.g logging), naturalistic, ecologicistic-scientific, aesthetic, symbolic, humanistic, moralistic, dominionistic, and negativistic. We assert that managing for Nesting Roosting Foraging habitat for spotted owls would provide for many of these human values as well as BLM legal mandates. Managing forests for < 40-60% canopy habitat with removal of NSO habitat as anticipated in the proposed action would not provide for these values. More to the point, our members value forests with high canopy cover provided by large trees (scoping photos 1, 2a, 3a). For most citizens, public forests are the only forests they have for realizing their nature centered values because of the close proximity of these public forests to where we live. The superlative forest in unit 23-09 is very close to Grants Pass and easily accessed to provide nature experiences needed by humans (e.g. protestor's staff and members). There are fundamental differences between what a silviculturists' values as a forester and what our members value as humans. The Revised EA fails to evaluate the value of forests to humans. How logging and road building affects human values of the forest is a controversial issue.

## **C3: Conduction Timber Sales and Protest Periods in Contravention of EO 20-12 is Highly Controversial**

Most land managers are following Executive Order 20-12 and encouraging the public to honor Governor Brown's "Stay Home" directive. Crater Lake National Park is Closed. Table Rocks are closed. Both Medford BLM offices are closed to all staff and the public other than timber sale planners and timber bidders who are welcome to continue offering controversial old-growth projects during the national crisis. The BLM's decision to ignore public health and safety protocols when they conflict with its old-growth logging agenda is controversial in the extreme.

**(D) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.**

### **D.1: Northern Spotted Owl Treatments Result in Unknown Risks.**

Repeatedly throughout the Revised EA for this project the BLM admits that there are consequences of their proposed action that are uncertain or involve unique or unknown risks.

NSO take is uncertain due to large scale removal/downgrading of NSO habitat. Impacts to NSO due to habitat loss and increased barred owl competition are uncertain due to lack of analysis of NSO habitat fragmentation over the vast planning area.

“In 5 out of 61 recently occupied (2017-2018) core areas, approximately 5 acres of foraging habitat from road and landing construction and commercial harvesting, and ½ acre of nesting habitat from road and landing construction would reduce habitat levels slightly, but the **actual effects from small and narrow disturbance areas within each core area is uncertain**, but habitat removal locations occur in areas known or likely to have low frequency use within the core area such upper slopes or ridges. **The amounts of proposed removal and downgrade within these recently occupied owl sites could result in adverse effects to the owls to the extent that incidental Take could occur, which would be determined by the USFWS.** To avoid incidental Take, harvesting would be deferred as removal or downgrade within a site, unless protocol surveys have determined the site is unoccupied. Protocol surveys must be completed and continue prior to harvesting as recommended in the protocol, with the results indicating the site is unoccupied based on the current spotted owl protocol.” (REA, 39)

In reference to recovery of stands “Developing Nesting and Roosting Habitat” the BLM states,

“It is difficult to model how long the stands proposed for treatment would take to finally achieve NSO nesting-roosting habitat conditions because of various outside biotic and abiotic influences that could occur in the future (i.e. soil type, slope, aspect, annual rainfall, elevation, mortality from insects/disease, fire, windthrow, or new land management policies). It is also difficult to assume that no additional treatments would occur in these stands in the future, especially beyond 30 years.”(REA 48/49)

The BLM acknowledges uncertainty regarding impacts to a federally listed threatened species and such uncertainty necessitates an EIS.

Further uncertain risks include,

- An unknown amount lands proposed in the Roseburg BLM Shively-Clark timber sale, an unknown amount of lands within the Road Maintenance and Pump Chance Categorical Exclusion are included within the Poor Windy planning and analysis area;
- Irreversible soil impacts due to absent field review of units and roads resulting in site specific recommendations to mitigate soil loss;
- Summer low flow depletions uncertainty because lack of analysis of cumulative effects and analysis at appropriate scales.

## **D.2: Sediment Effects to Coho Salmon are Uncertain and Likely Significant.**

The Revised EA failed to conduct surveys and provide spatially explicit mapping of unstable areas within or adjacent to stream channels that would need to be left untreated to prevent logging related erosion. There were no soils or geotechnical unit surveys identified to detect unstable areas that would be included as riparian reserves and not logged and therefore effects are unknown. The SWORMP at 77 says to “include unstable areas that are likely to deliver material such as sediment and logs to the stream if the unstable are fails.”



**Table 6. Riparian Reserve distance by water feature.**

<b>Feature</b>	<b>Riparian Reserve Distance*</b>
Fish-bearing streams and perennial streams	One site-potential tree height distance from the ordinary high water line or from the outer edge of the channel migration zone for low-gradient alluvial shifting channels, whichever is greatest, on each side of a stream
Intermittent, non-fish-bearing streams	Class I and II subwatersheds: One site-potential tree height distance from the ordinary high water line on each side of a stream
	Class III subwatersheds: 50 feet from the ordinary high water line on each side of a stream
Unstable areas that are above or adjacent to stream channels and are likely to deliver material such as sediment and logs to the stream if the unstable area fails	The extent of the unstable area; where there is a stable area between such an unstable area and a stream, and the unstable area has the potential to deliver material such as sediment and logs to the stream, extend the Riparian Reserve from the stream to include the intervening stable area as well as the unstable area
Lakes, natural ponds and reservoirs > 1 acre, and wetlands > 1 acre	100 feet extending from the ordinary high water line
Natural ponds < 1 acre, wetlands < 1 acre (including seeps and springs), and constructed water impoundments (e.g., canal ditches and pump chances) of any size	25 feet extending from the ordinary high water line

\* Reported distances are measured as slope distance

Revised EA slope maps p. 187-196, show that many units are located on slopes 50%-100% where unstable areas are certain to be found above or adjacent streams (e.g. headwalls, inner gorges). Revised EA riparian maps p.197-206, illustrate inner and outer riparian zones but fail to illustrate that any riparian reserves have been extended to include unstable areas. We assert that there are numerous unstable areas adjacent to stream channels on intermittent streams on very steep slopes that are outside the no cut riparian reserves (generally 50ft for intermittent stream channels). The SWORMP requires that these unstable areas be identified and managed so as to prevent erosion. The Revised EA failed to include analysis by soil scientists, geologists or other qualified professionals to identify unstable areas and fragile soils with field reviews of each unit, LIDAR or other methods to determine features with instability. Geology maps may show areas as being old landslides that need field review. The Revised EA failed to provide field reviews of units to detect and protect unstable areas that could be used to modify or drop units and proposed roads.

The Revised EA contains no systematic review of proposed new road construction within, across or adjacent to streams. The Revised EA failed to provide analysis of each new road segment to determine if the road location is appropriate due to possible unstable areas or erosive soils on steep slopes. The Revised EA failed to indicate if any prospective roads or units were dropped due to soil or stability issues. The Revised EA must disclose if any of the units or stream crossings are at risk for debris flows. The Revised EA provides no indication that qualified road engineers field checked each proposed road and made specific recommendations about application of BMPs such as critical dips, outsloping and cross drains. Our concern remains that road construction will be put into contracts and implemented with no review by qualified road engineers.

**(E) 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.**

**E.1: Seeking to achieve a decadal target under one EA or project area is unprecedented.**

By seeking to produce the decadal target for the LSR LUA through a single 75 page EA covering the course of multiple years, within one confined project area is unprecedented, controversial, and significant such that an EIS should be prepared.

**E.2: Multiple aspects of the Poor Windy project qualify as having a substantial dispute as to its size, nature, or effect, to the degree that the proposed action may establish precedent for future projects.**

The following are significant actions as reflected in our scoping comment our organizations requested the BLM fully analyze:

1. The potential for the project to increase fire risk,
2. The project's potential significant impacts to NSO, competition between barred owls and NSO;
3. Impacts on climate change, carbon storage and habitat refugia in warming conditions;
4. Implementing HLB prescriptions and associated ground disturbing actions on soils that were intentionally withdrawn from sustained-yield timber harvest;
5. Old growth logging;
6. The EA states that it will maintain trees greater  $\geq 45$  inch-dbh but never states how many of those trees actually occur in the project area nor why BLM used 45 inches as the cut-off instead of the more conventional and scientifically defensible  $>20$ -inch dbh standard used.

The REA analysis was conducted primarily to support a pre-ordained outcome rather than to informing BLM actions and decision making. The public commenting period was simply a paper exercise in futility. BLM timber planners and decision makers do not care about public comments, science, or environmental effects that might impact their logging agenda. Indeed the BLM contends that it has written itself a management plan that specifically precludes environmental analysis or public involvement that might influence project layout of public lands projects.

**(F) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.**

**F.1: An Agency is Required Under NEPA to Provide A Useful Analysis of Cumulative Impacts.**

“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 F.3d 1372, 1378 (9<sup>th</sup> Cir. 1998) quoting *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9<sup>th</sup> 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.

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 (9<sup>th</sup> 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 (9<sup>th</sup> 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*, 492 F.3d 1120 (9<sup>th</sup> Cir. 2007).

We require that an EA fully address cumulative environmental effects or “cumulative impacts.” See, e.g., *Kern v. BLM*, 284 F.3d 1062, 1076 (9<sup>th</sup> Cir. 2002) (“Given that so many more EAs are prepared than EISs, adequate consideration of cumulative effects requires that EAs address them fully.” (quoting Council on Environmental Quality, *Considering Cumulative Effects Under the National Environmental Policy Act* 4 (Jan. 1997), (emphasis added))).

EAs which lead to a FONSI are subject to the same requirements as an EIS. *Idaho Sporting Congress v. Alexander*, 222 F.3d 562, 565 n.2 (9<sup>th</sup> Cir. 2000); *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1152 (9<sup>th</sup> Cir. 1998), *Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1247 (9<sup>th</sup> Cir. 1984); *Southern Oregon Citizens Against Toxic Sprays v. Clark*, 720 F.2d 1475, 1480 (9<sup>th</sup> Cir. 1983) (stating that “[t]he label of the [NEPA] document is unimportant. We review the sufficiency of the environmental analysis as a whole”). *Sierra Nevada Forest Protection Campaign v. Weingardt*, 376 F.Supp.2d 984, 991 (E.D. Cal. 2005) (“To be adequate, an EA, like an EIS, must analyze cumulative impacts and respond to public comments concerning the project”).

In a relevant April 2020 9<sup>th</sup> Circuit unpublished opinion, environmental Plaintiffs successfully halted the Crystal-Clear timber sale on the Mt. Hood National Forest for failure to prepare an Environmental Impact Statement. “The effects of the Project are highly controversial and uncertain, thus mandating the creation of an EIS. See 40 C.F.R. § 1508.27(b)(4) & (5) (listing relevant factors for whether an EIS is required, including if the project’s effects are “highly

controversial” and “highly uncertain”). The stated primary purpose of the CCR Project is to reduce the risk of wildfires and promote safe fire-suppression activities, but Appellants identify scientific evidence showing that variable density thinning will not achieve this purpose. Considering both context and intensity, as required by 40 C.F.R. § 1508.27, this evidence raises substantial questions about the Project’s environmental impact, and an EIS is required. See, e.g., *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (holding that an EIS is required when an environmental assessment raises

“substantial questions” about whether an agency’s action will have a significant effect on the quality of the human environment); see also *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1238–39 (9th Cir. 2005).” Through substantive commenting environmental organizations pointed to numerous scientific studies ignored by the FS regarding the impacts of variable density thinning and increases in fire hazards. The court concluded that “[t]he effects analysis in the EA did not engage with the considerable contrary scientific and expert opinion; it instead drew general conclusions such as that “[t]here are no negative effects to fuels from the Proposed Action treatments.” Appellants thus have shown a substantial dispute about the effect of variable density thinning on fire suppression.” *Bark, et. al, v. Forest Service*, 3:18-cv-01645-MO (9th Cir. 2020).

Hence the BLM must consider science provided by our organizations in our scoping comments, EA comments, and respective protests of the Decision Records released under the Poor Windy Revised EA.

## **F.2: Cumulative Northern Spotted Owl Habitat Reduction is Significant.**

Substantial cumulative impacts warrant a full EIS that complies with NSO recovery actions and critical habitat protections with more effective measures to address cumulative effects. When viewed cumulatively, the impacts of the Poor Windy project have a significant impact on the environment that necessitates an EIS. The project involves 4,531 ac of NRF habitat logging. According to the BiOp for this project, these treatments “would remove large trees that could serve as spotted owl nest structure, reduce the overall average canopy cover within the affected stand to near or below approximately 40 percent, diminish the existing multi-canopy (layers), and other key habitat features, rendering the affected stands non-functional as spotted owl nesting habitat. These treatments, primarily large tree removal, are expected to result in mostly unusable NRF habitat within the affected stands for decades post-treatment.” (BiOp, 62).

The scale of logging of NRF habitat within designated critical habitat is inconsistent with the no adverse modification conclusion. “The District and the Service agree the removal of 2,060 acres of NRF habitat may affect, and would likely adversely affect (LAA) spotted owl critical habitat because it would result in a measurable removal of an essential physical or biological feature.” (BiOp, 100). This is inconsistent with the conclusion that “no adverse impacts are expected at the scale of spotted owl critical habitat units, as only minimal adverse effects are expected at the sub-unit scale. No adverse impacts are expected at the scale of spotted owl network, as

only minimal adverse effects are expected at the unit scale. For these reasons, adverse modification to critical habitat is not expected." (BiOp, 104)

It is arbitrary and capricious to assume that commercial logging in occupied home ranges will maintain the function of NRF and dispersal habitat, or that thinning in home ranges designated in riparian zones "can be compatible with retaining resident spotted owls." (BiOp, 19, 22, 87).

Treatments within NSO core-use areas that "are likely to adversely affect spotted owl occupying these sites" are cumulatively significant.

The BLM failed to analyze or support its conclusion that the proposed logging will not have significant effects in the 43 spotted owl site centers outside of the action area with a portion of their home range overlapping the action area.

The BLM failed to consider how the downgrade of NRF habitat impacts likelihood of successful dispersal. However, the BiOp concedes that "forests greater than 80 years old ... provides better dispersal conditions due to stand structure and available prey." (BiOp, 58)

Given the repeated acknowledgements in the BLM's watershed analysis regarding the significant 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 and current plans.

Acknowledged in Appendix F of the Revised EA, 181, "within the project area boundary, within an affected watershed, or are within the Klamath East subunit 2 and 3 (KLE 2 and 3), 2,344 acres of Private and State Land clearcutting, 93,000 of treatments planned in RRSNF's Shasta Agness, an unknown amount of the Roseburg BLM Shively-Clark timber sale, an unknown amount of the Road Maintenance and Pump Chance Categorical Exclusion", are cumulatively effecting the habitat baseline for the NSO.

In a recently published April 3, 2020, 9th Circuit Opinion, in a challenge to a Forest Service Project that Plaintiff Appellants asserted didn't analyze cumulative effects of the project, the court held

"The EA ostensibly analyzed the cumulative effects of the CCR Project, and included a table of other projects that were "considered in the cumulative effects analyses." The cumulative impact analysis is insufficient because there is no meaningful analysis of any of the identified projects. The table gave no information about any of the projects listed; it merely named them. The section of the EA actually analyzing the cumulative effects on vegetation resources did not refer to any of these other projects. Nor are there any specific factual findings that would allow for informed decision-making. The EA simply concluded that "there are no direct or indirect effects that would cumulate from other projects due to the minimal amount of connectivity with past treatments" and that the Project "would have a beneficial effect on the stands by moving them toward a more resilient condition that would allow fire to play a vital role in maintaining stand health,

composition and structure.” These are the kind of conclusory statements, based on “vague and uncertain analysis,” that are insufficient to satisfy NEPA’s requirements. Ocean Advocates, 402 F.3d at 869.” *Bark, et. al, v. Forest Service*, 3:18-cv-01645-MO (9th Cir. 2020).

In the Poor Windy Project Revised EA Appendix F Cumulative Impacts Section, the BLM does no more than merely name the projects that are within “within the project area boundary, within an affected watershed, or are within the Klamath East subunit 2 and 3 (KLE 2 and 3)”. BLM acknowledges in the table that there is more than one project with an “unknown” amount of acreage relevant to the Poor Windy Action area. This fails to constitute a hard look at cumulative impacts and BLM is in violation of NEPA.

Further, the BLM acknowledges that 401 acres of foraging habitat downgrade and removal would occur within 9 recently occupied owl sites. The Revised EA fails to analyze and disclose cumulative impacts concerning whether any of those sites overlap with the 6 acres to be impacted by nesting removal, and if the actions are likely to result in incidental take. Further, BLM intends to remove 5 acres of foraging habitat from road construction and 0.5 acres of nesting habitat within 5 recently occupied core areas. Again, the Revised EA failed to analyze the removal and downgrade of all of these areas cumulatively. The Revised EA failed to disclose site specific locations allowing the public may provide informed comments. The BLM claims that these significant impacts need not be mitigated or fully analyzed because habitat removal locations occur in areas known or likely to have low frequency use within the core area such as upper slopes or ridges. The BLM provides no cite or data to support this conclusion.

Elsewhere in the REA the BLM states, “Roseburg BLM’s Shively Clark EA would treat approximately 63 acres of young-stand plantation dispersal-only habitat on Harvest Land Base and CHU KLV-1, resulting in the removal of dispersal habitat within the home range and outside of the core area of one currently active owl site, below nesting and foraging habitat thresholds, and preclude or delay the habitat from developing into foraging habitat. Watershed NRF and dispersal habitat levels would be at 63%, providing adequate dispersal conditions (Thomas, et al., 1990; Lint, et al., 2005; Davis et al., 2011). **This site is also impacted by Poor Windy treatments that maintain forage and dispersal habitat, and remove dispersal and foraging habitat for road and landing construction. Therefore, the cumulative effects from removal of dispersal and foraging habitat and maintain treatments are expected to negatively impact the site habitat fitness to support occupancy or reproduction.**” (REA, 41) Due to the BLM’s own admissions of negative and adverse impacts to the NSO caused by the proposed action, other BLM projects, the historic land checkerboard of resource extraction, habitat fragmentation, and barred owl encroachment an EIS should be prepared.

### **F.3: Significant and cumulative impacts caused by the Milepost 97 fire**

Cumulative effects of private/proposed logging, MP97 fire and future fires will exacerbate habitat fragmentation and increase barred owl competition over the vast planning area. NSO take is probable and should be analyzed cumulatively.

Cumulative sediment impacts from public/private roads, exacerbated by the MP 97 fire, may adversely affect coho salmon eggs.

**(G) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.**

**G.1: The Proposed Project Adversely Effects NSOs, their Critical Habitat, and their Ability to Recover.**

The Revised EA incorrectly assumes that project activities will have no effects on the 43 owl home ranges just outside the assessed area as those NSO sites are on adjacent private lands where cumulative effects are mounting (direct, indirect, nearby and within the project area). Habitat fragmentation through additional logging will exacerbate barred owl competition and cause NSO to decline at a more rapid rate than no action.

The Revised EA at 37 incorrectly assumes proposed commercial logging in active spotted owl home ranges would modify stand structure but maintain the function of NRF and dispersal-only habitat. This assumption lacks an empirical foundation and is inconsistent with habitat simulation models.

The Revised EA “proposes commercial thinning in NSO and a 24 in dbh limit on hardwoods and at least 10% treatment retained in untreated “skips” to provide “structural complexity and refugia.” The alleged effectiveness of these actions are arbitrary and capricious.

The Revised EA failed to adequately discuss how logging to 40% canopy or less, creating 4 acre openings, and regeneration harvest would fragment existing continuous blocks of NSO habitat by converting closed canopy to an open canopy and increasing edge effects (Techniques using GIS mapping are available to analyze this impact). Existing evidence suggests barred owls compete with NSOs for habitat and prey with near total niche overlap. Interference competition (Dugger et al. 2011; Van Lanen et al. 2011) would result in increased NSO site abandonment, reduced colonization rates, and likely reduced reproduction (Dugger et al. 2011; Forsman et al. 2011; Wiens et al. 2014), ultimately resulting in probable range-wide population reductions (Forsman et al. 2011). Barred owl effects on NSO survival and colonization appear to be substantial and additive to effects of reduction and fragmentation of habitat in NSO home ranges. The magnitude of the barred owl effect may increase somewhat as habitat quantity decreases and fragmentation increases (Dugger et al. 2011). The REA failed to analyze in detail that the proposed action would contribute to ongoing cumulative reduction and fragmentation of NSO habitat (i.e. private land plus public lands fragmentation, habitat loss) that would increase competition between NSO and barred owls and likely result in further NSO reductions in the planning area.

The Revised EA ignored fragmentation effects from proposed logging and implied that fragmentation is only occurring on private lands via clear-cutting when the BLM is proposing 4 acre openings and converting currently closed canopy forests to “open grown forests” with significant canopy reductions. The downgrading and removal of large areas of NSO habitat, along with new road construction and landing establishment, clearly establishes that the habitat is being fragmented.

The Revised EA failed to adequately discuss how the proposed action alternatives would fragment and/or remove barred owl/spotted owl habitat as compared to no action. Reducing canopy to 40% or less and creating 4-acre openings will contribute to the significant cumulative effect of increasing barred owl competition with Northern spotted owls while increasing the risk of barred owls replacing NSO in the planning area. Removing large fire resilient trees is counter to the alleged purpose and need of the project to reduce large catastrophic wildlife events.

The BLM response to this comment (p.3) incorrectly states that “[t]he EA took a hard look at barred owl and spotted owl interaction (September EA, pp. 32, 35, 47, 158-160).”

The Revised EA (p 32) states that “NSO protocol surveys are not designed to locate barred owls, however, barred owls have been detected in 49 of the 60 [NSO] sites within Poor Windy project area, and in areas outside of known sites.” The Revised EA fails to take a “hard look” at the relevance of high detection rates of barred owls at NSO sites and what this means with each action alternative for the planning area. Our organizations agree with the BLM’s acknowledgement of the importance of Barred Owls on NSO recovery at pg. 32 of the Revised EA, “The 2016 data indicates that competition with barred owls may now be the primary cause of NSO population declines across their range. Although habitat loss due to timber harvest and wildfire remains an important long-term threat to the spotted owl, the USFWS now believes this threat is secondary in importance to the conservation of the spotted owl.” However, even given this acknowledgement the Revised EA nevertheless fails to discuss how each alternative would affect future detection rates of barred owls within NSO sites.

The Revised EA (p. 48) states that “[i]ncreasing barred owl populations, barred owl competition and interaction negatively impacting spotted owls, and decreasing spotted owl occupancy or reproduction is expected to occur following recent decreasing population trends (Davis et al., 2011; Forsman et al., 2011; Dugger et al., 2106; USDI/USFWS 2016), with barred owl removal and developing large blocks of older forest providing the best NSO population response (USDI/BLM 2016e, pp. 948, 962, and 973).” This summary of published literature provides no context or comparative relevance to the Poor Windy alternatives. Merely repeating some known science without applying its conclusions to the project is not a “hard look”.

The Revised EA (p.35) states that

“Harvesting [in alternative 2] would negatively affect the capability of Harvest Land Base to support NSO occupancy, foraging, breeding, sheltering and dispersal, and refuge from



barred owls.”... “Where nesting/roosting habitat removal would occur (1397 acres), NSOs would no longer use these areas for nesting/roosting, or foraging until overstory trees are dominated by approximately 21 inches and greater DBH, and the canopy cover returns to at least 60% and may take approximately 30 to 80 years, depending on relative density tree retention levels. Where foraging habitat removal would occur (2482 acres), NSOs would no longer use these areas for foraging until the overstory tree layer is dominated by trees approximately 16 inches and greater DBH, and the canopy cover returns to at least 60%, and may take 30 to 50 years, depending on relative density retention levels. Where dispersal habitat removal would occur (1531 acres), NSOs would no longer use these areas for dispersal until trees average approximately 11 inches DBH and greater and the canopy cover returns to at least 40%, and young stands may reach this structure typically about 40 years of age”

The Revised EA fails to take a hard look at the negative impact of alternative 2 on the capability of the Harvest Land Base to support “refuge from barred owls” as compared to the more benign alternative 3. The Revised EA provides no analysis to support the false assumption that alternative 2 and alternative 3 would have the same degree of negative effect on the capability of the Harvest Land Base to support “refuge from barred owls.” Furthermore, there is no science that suggests that existing stands support “refuge from barred owls”. The Revised EA (p. 158) contradicts the assertion of forest stands providing “refuge from barred owls” by stating “current research provides no evidence that the BLM can manage individual forest stands to provide northern spotted owls with a competitive advantage over barred owls (Dugger *et al.*, 2011; Wiens *et al.*, 2014). **Instead, research reaffirms the importance of older forest conditions and managing for large blocks of unfragmented older forest** (Dugger *et al.*, 2011; p. 2463; Wiens *et al.*, 2014; pp. 36– 38). (USDI/BLM 2016e, p. 948).” (emphasis added). Neither the Revised EA nor response to comments addresses the cumulative effect of alternative 2 fragmentation of NSO habitat, especially in the HLB. Alternative 2 fragmentation of NSO habitat is certain to increase barred owl competition.

The Revised EA (p. 159) states: “This indicates that, within the scope of the alternatives and the RMP, the northern spotted owl population response is determined by the effect of barred owl encounter rates on northern spotted owl survival. (USDI/BLM 2016e, p. 961).”

Fragmentation of NSO habitat as proposed in alternative 2 would likely increase barred owl encounter rates with NSO and this impact could be significant. The EA is clearly in error by dismissing barred owl competition/forest fragmentations as an **“Issue Considered but Not Analyzed in Further Detail”** (see Appendix C; p.114). Cumulative impacts of fragmentation (public and private lands) of NSO habitat needs to be fully analyzed in an EIS with spatially explicit analysis to identify alternatives and specific units that are causing measurable fragmentation.

## **G.2: The Revised EA Failed to Analyze Impacts to the Proposed Listed Species Pacific Fisher and Their Habitat in the Project Area.**

Though surveys conducted by the BLM did not detect fishers or marten within the project area, the agency did not conduct a survey this year, and the BLM fails to analyze and disclose whether the project area is suitable for fisher habitation, what potential effect removal or degradation of habitat may have on the species' viability, its potential recovery, and the BLM's plan for future monitoring throughout the project.

### **G.3: The Revised EA Failed to Use a Relevant Scale of Watershed When Analyzing Impacts to Coho.**

The Revised EA (at 49) utilizes 5<sup>th</sup> field watersheds for cumulative impacts. This scale is too large for analysis relevant to adverse impacts to coho salmon spawning and rearing. Coho often spawn and rear in 6<sup>th</sup> and 7<sup>th</sup> field watersheds where impacts would be concentrated and significant.

The Revised EA (at 48) inappropriately limits cumulative impact analysis to relatively large 5<sup>th</sup> field watersheds in order to justify dismissing sediment and water quantity impacts. At the 5<sup>th</sup> field scale proposed action logging and road building sediment would only affect a relatively small proportion of 5<sup>th</sup> field watersheds. The project boundaries do not appear to use 5<sup>th</sup> field watershed boundaries making analysis problematic. At 6<sup>th</sup> and 7<sup>th</sup> field watersheds the sediment impacts would be more concentrated and likely having an effect on water quality/quantity and coho salmon. The 6<sup>th</sup> and 7<sup>th</sup> field watersheds would be completely within the project area. Similarly, analysis of decreased summer low flows (Perry and Jones 2017) could be predicted with modeling for 7<sup>th</sup> field catchments but not likely at 5<sup>th</sup> field watersheds. To summarize, analysis is necessary at the 5<sup>th</sup> field scale but it is not sufficient to predict impacts to coho salmon that spawn and rear in 6<sup>th</sup> and 7<sup>th</sup> field watersheds. At a minimum, cumulative sediment effects analysis would have to include watersheds for all fish bearing streams in Table 3-20 p. 3-4 of Fisheries and Aquatic Habitat Report since many of these streams are affected by multiple road crossings (Table 3-29, REA 64) and crossings of undocumented intermittent channels where sediment would enter the stream channel from roads.

### **G.4: Contrary to statements in the Revised EA, the proposed action would result in significant additions of coho killing sediment to already severely sedimented streams due to connectivity of 321 miles of haul roads to 141 perennial streams and connectivity to hundreds more intermittent streams not identified.**

The Revised EA fails to identify any site specific BMP/PDF for any specific stream crossing to reduce sediment laden water from the road entering the stream system and increasing stream bed fine sediment. The Revised EA fails to disclose substantial coho take due to additions of fine sediment to coho spawning streams that already exceed or are close to exceeding the 15% fine sediment standard.

### **Degraded Baseline Stream Conditions**

The Fisheries Report p. 10 states: "During incubation of eggs and alevins, survival and emergence rates can be reduced when sediment exceeds 15 percent of the area (Bjornn & Reiser, 1991)." The 15% [fine] sediment standard is equaled or exceeded on Fortune Branch, Panther Creek, McCullough Creek, Bear Creek, Lawson Creek, Woodford Creek, Windy Creek, Coyote Creek, , Board Tree Reach, Wolf Creek, Tom East Creek, Grave Creek, McKnabe Creek, Poorman Creek, and Butte Creek. These elevated sediment levels are consistent with findings reported by Anlauf et al. 2011. Coho spawning areas have been degraded in the planning area largely due to road related sediment. The NMFS BiOp says 90% of logging sediment comes from logging roads (logging roads connected to the stream system).

#### Cumulative Sediment Impacts

The Revised EA (at 54) states "[s]ome short-term direct and indirect effects to water quality were identified due to pulses in sediment and turbidity from road work, generally during the first significant storm event of the wet season. While these effects from sediment could potentially occur, they would still remain within acceptable water quality limits for turbidity, and sediment loads would occur during peak flows and would be difficult to distinguish from background levels."

These sediment pulses are significant because some would occur during coho spawning and egg incubation. The turbid water entering stream systems from roads would eventually settle out as fine sediment that would exacerbate reduced egg-to-fry survival, especially in spawning areas that exceed 15% fine sediment. The coho spawning areas have no buffering capacity for any additional road sediment. A large (not small) road related pulse would occur during the first large rainfall event in November that would mobilize the fine sediment created by log haul during the dry season. Subsequent pulses would occur as wet season log haul is authorized during dry periods. Each time log haul is suspended due to rainfall exceeding 0.5 inches there would be a pulse of coho killing sediment from accumulated log haul road fines. Small but chronic sediment pulses from roads over multiple logging operations is how the coho spawning areas have become degraded with fine sediment and will continue to be degraded with the thousands of log haul trips from the proposed action.

The Revised EA (at 54) states:

"For this project, it was determined that little to no sediment loads would be produced from individual units, landings, or crossings along haul routes. No treatment buffers, BMPs, and specific associated PDFs identified in Appendix B would result in no direct or long-term sediment inputs to streams above background levels. In other words, no measurable sedimentation downstream would occur above levels described for the No Action Alternative. Therefore, water quality and aquatic habitat downstream would not be negatively affected by actions proposed in Alternative 2. No changes to current slope stability, the risk of slope failure or the risk of periodic slope failures beyond ranges of natural variability are expected."

The generic statements above are biased, speculative, and not supported by data, publications, or factual information about the proposed action or scientific evaluations of the effectiveness of BMPs for reducing sediment. Sediment denial contained in the Revised EA does not make coho killing sediment from proposed logging, road building and log haul magically disappear. Compliance with programmatic NMFS BiOp for critical habitat (as asserted in Fisheries Report) does not mean there will be no sediment impacts to coho which must be disclosed accurately and without bias in the Revised EA.

The Hydrology Report at 25 states: “Haul routes have been evaluated to determine which road segments may be hydrologically connected to perennial streams (Table B-20 EA: 108). Of the proposed haul routes, there are 141 perennial stream crossings that are hydrologically connected.” ***The Hydrology Report contains no recommendations for site specific BMPs at any of these 141 perennial stream crossings or hundreds of undocumented intermittent stream crossings.*** All of these stream crossings can and will receive sediment laden water subsequent to log haul. Since no specific BMPs such as R26 are identified in the decision document or REA for specific locations the cumulative sediment analysis cannot conclude that presumptive BMPs will prevent log haul sediment from reaching coho spawning beds. Applying BMP R26 to disconnect streams from 321 miles of haul route would be a major undertaking which the BLM has not budgeted for.

For example, the Hydrology Report at 26 states: “Maintenance activities may include adding cross-drains to inside road ditches to divert surface flow to stable soils and vegetation to re-infiltrate. In some locations, sediment basins may be installed to settle out sediment before important stream crossings.”

We want to emphasize the word “may”. Since the hydrology report and timber sale fail to identify any specific locations for cross drains or sediment basin the effectiveness of these BMPs cannot be identified in the assertion of “log haul sediment being reduced to “no action” levels”. Again, we want to reiterate that a science-based road inventory of connected road segments to streams in the project area would reveal a need for a huge amount of road work not identified in the Revised EA or supporting documents. For example, the Hydrology Report fails to report the percent of the haul road system that is connected to streams both perennial and intermittent. Significantly reducing “percent log haul connected” would take a lot of road maintenance, re-contouring to outsloping, critical dips, large berms, reverse grades, and a large number of cross drains, replacing failing culverts. None of which are identified in the proposed action with site specificity indicating a commitment.

The Revised EA failed to assess the effectiveness of BMPs and PDFs as they relate to “minimizing” sediment impacts to coho salmon. The REA failed to take a hard look at effectiveness of barriers in preventing sedimentation of streams.

Forest Service researchers have compiled a literature review titled: “Effectiveness of Best Management Practices that have Application to Forest Roads: A Literature Synthesis” available

at <<https://www.nrs.fs.fed.us/pubs/53428>>. The literature synthesis by Edwards et al. 2016:96 states:

“Larger particles, particularly sands, dominate the settling process because settling velocities of smaller particles (silts and clays) are too low for deposition to occur during the time that water is ponded (Barrett et al. 1998a, Keener et al. 2007). Clays also are affected by Brownian forces that can keep them in suspension almost indefinitely (Smith 1920); thus, particles less than 0.02-mm diameter (i.e., medium-sized silt and smaller particles) are not removed effectively by ponding or by filtering/clogging with nonreactive barriers (Kouwen 1990). To illustrate, silt fence materials tend to remove 80 to 99 percent of sands compared to 50 to 80 percent of silt loams, and only up to 20 percent of silty clay loams (U.S. Environmental Protection Agency [EPA] 1993). Consequently, as the percentage of smaller particles in runoff increases, the trapping efficiency of nonreactive barriers decreases (Wishowski et al. 1998).” Emphasis added.”

Edwards et al. 2016 analysis (cited above) means that sediment barriers such as hay bales and fabric rolls staked into connected ditches are least effective at trapping finest that are the most detrimental to coho salmon spawning habitat. The Revised EA failed disclose the inefficiency of barriers to retain fine sediment which will make its way past them and adversely affect coho critical habitat. We anticipate the BLM may implement temporary sediment barriers adjacent critical habitat. Even if these barriers are temporarily effective, much of the sediment they retain will eventually make it to the stream when the barrier is removed or is overwhelmed with sediment. Stream crossing upstream of critical habitat will send pulses of sediment downstream to affect critical habitat. Distances to critical habitat identified in the Revised EA only provides an index of the delay period for road haul sediment to reach critical habitat. Once the sediment gets in headwater streams it will eventually wend its way down to critical habitat as fast moving suspended sediment or slower moving bedload.

The Revised EA and Hydrology Report identified connected perennial streams at road crossings but failed to provide a table that identifies intermittent streams and units that are hydrologically connected to specific streams. The REA contains no site specific BMPs to address these site-specific sources of sediment to stream systems.

The Revised EA and Hydrology report failed to disclose that with wet season log haul during “dry conditions” hydrologic connectivity and sediment impacts would be greatly increased because intermittent streams may be flowing during and shortly after log haul is suspended during >0.5 inches of rain. The “dry condition” restriction on wet season log haul is mostly to protect the road from damage and has only partial effectiveness to prevent sedimentation from connected roads at both perennial and intermittent crossings.

The Revised EA (at 53) deceptively states that “proper road maintenance, BMPs, PDFs (Appendix B), and good project maintenance should reduce the risk of [hydrologically

connected disturbance from roads, landings and logging corridors] sources being above background conditions for sediment delivery to surface waters.” The Revised EA lacks analysis to support this sweeping speculative statement of sediment denial.

The Revised EA and Hydrology Report failed to evaluate each existing road segment, each proposed road segment and each culvert for log haul during “dry conditions” during the wet season. Sediment impacts are certain to occur from roads in poor condition and culvert failure would cause a large pulse of sediment entering the stream. The log haul roads must have over a thousand culverts and some are at high risk of failure but the REA does not identify specific culvert replacement sites. The BLM has a “wait and see” approach. Based on the REA, the BLM intends to wait until there are failures rather than take pre-emptive action (e.g. no culverts identified for replacement/repair in REA). When and if ongoing sediment impacts are identified during the wet season, it then depends on sale administrators to correct inadequacies of the proposed action as described in the Revised EA. This is not how BMPs are supposed to work. BMPs are supposed to be preventative not a “after the fact” application as can be expected with the proposed action.

The Revised EA failed to accurately estimate the thousands of log haul trips that would generate sediment, especially with wet season conditioned haul. We assert that when you multiply 3-4 truckloads per day times 100 or more days for each timber sale, the dust related sediment and wet season log haul sediment impacts become significant and cannot be dismissed as “negligible” or “not above background levels” due to the assertion that the increased sediment can’t be measured easily. Log trips provide an index if not a real incremental increase of sediment to streams. The significant volume of timber (105-140 MMBF) removed means cumulative sediment impacts from log haul that cannot be dismissed (i.e. intensity as per NEPA.)

The Revised EA (at 52) provides contradictory statements about the proposed 8.2 miles of permanent new roads, sometimes erroneously stating no new roads will be constructed and therefore no impacts will result. The proposed new roads cannot be distinguished on maps in the Revised EA by the public (or presumably the decision maker if they were to actually view the maps) due to similar choice of color patterns for new roads. We have been unable to effectively field check and the Revised EA contains no field evaluations of each of these proposed permanent new roads. The 8.2 miles of proposed new roads is a significant long-term impact that has not been analyzed in detail or cumulatively in respect to the effects caused by proposed actions.

## **(H) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.**

### **H.1: The decision violates the Endangered Species Act**

#### ***H.1.i: Recently occupied NSO sites***

The BLM makes distinctions about whether a site was recently occupied or not without providing a definition of "recently occupied". The agency also proposes logging 173 acres of nesting habitat removal within 6 "recently occupied" owl sites without disclosing how that might effect reoccupation or the sites. The BLM must disclose when those sites were occupied. This logging undercuts the goals of the Endangered Species Act and Northern Spotted Owl recovery plan, may constitute incidental take, and frustrates the conservation goals of 2016 RMP.

*H.1.ii: The BLM Medford District has failed to re-initiate required ESA section 7 consultation with National Marine Fisheries Service with respect to threatened Southern Oregon Northern California Coast coho and Oregon Coast Coho fish species and their habitat. Re-initiation is needed due to new information about reduced summer low flows following by timber harvest that was not covered in NMFS consultations for the RMP (USDC NMFS 2016) and subsequent Programmatic Biological Opinion (USDC NMFS. 2018).*

The Revised EA (at 68) states that the Poor Windy Project is covered by the programmatic BiOp WCR-2017-7574:

*"The Poor Windy project is within the Rogue Basin which is in the range of the federally threatened Southern Oregon Northern California Coasts (SONCC) and Oregon Coast Coho salmon. Consultation for the Endangered Species Act and Essential Fish Habitat for the Magnuson-Stevens Fishery Conservation and Management Act with the National Marine Fisheries Service is covered under the Endangered Species Act Section 7(a) (2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat for the Programmatic Forest Management Program for Western Oregon (WCR-2017-7574)."*

The Programmatic BiOp WCR-2017-7574 states on page 221:

#### **"2.10 Reinitiation of Consultation**

This concludes formal consultation for Resource Management Plan for Western Oregon.

As 50 CFR 402.16 states, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained or is authorized by law and if: (1) the amount or extent of incidental taking specified in the incidental take statement is exceeded, (2) **new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion**, (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion, or

(4) a new species is listed or critical habitat designated that may be affected by the action.” (emphasis added)

Similarly, the July 17, 2019 programmatic BiOp verification letter from Ken Phippen (NMFS) states:

“Reinitiation of consultation on this action is required and shall be requested by the BLM where discretionary Federal involvement or control over the action has been retained or is authorized by law and (a) the amount or extent of taking specified in the Incidental Take Statement is exceeded, (b) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, (c) the identified action is subsequently modified in a manner that has an effect to the listed species or critical habitat that was not considered in the biological opinion, or (d) a new species is listed or critical habitat designated that may be affected by the individual action (50CFR402.16). ” (emphasis added)

The Programmatic BiOp WCR-20177574 states on page 225:

### **“3.5 Supplemental Consultation**

The BLM must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or **if new information becomes available that affects the basis for NMFS’ EFH Conservation Recommendations** (50 CFR 600.920(l)).” (emphasis added)

### New Information: Perry and Jones 2016

New published information identifies significant decreased summer low flows from forest lands due to conversion of mature/old growth Douglas-fir forests to young stands (Perry and Jones 2017). The Programmatic BiOp WCR-20177574 pages 132-138 discuss effects of timber harvest and roads on peak flows but do not address significant decreases in summer low flows caused by conversion of mature/old growth Douglas-fir forests to young stands. Similarly, USDI/BLM 2016e (p. 408) failed to analyze depleted summer low flows from conversion of mature/old growth Douglas-fir forests to young stands which has likely occurred on most watersheds that support listed coho salmon in western Oregon. Although Perry and Jones 2017 provides new compelling information about depleted low flows beginning 15 years following timber harvest, reduced summer low flows due to timber harvest has been reported in the scientific literature since the 1970s ( Hicks et al. 1991; Haar et al. 1979 ). Despite this scientific information the BLM has not addressed this impact from timber harvest in their 2016 RMP, 2016 FEIS, NMFS programmatic consultation for forest management projects (USDC NMFS 2018) or NMFS consultation for the RMP (USDC NMFS 2016).



#### New Information: Segura et al. 2020

“Daily streamflow from a 40- to 53-yr-old Douglas-fir plantation was 25% lower on average, and 50% lower during the summer (June 15 to Sept 15 of 2006 to 2009), relative to the reference watershed containing mature/old forest. Low flow deficits persisted over six or more months of each year. Surprisingly, contemporary forest practices (i.e., clearcutting of the plantation with riparian buffers in 2009 and 2014) had only a minor effect on streamflow deficits. Two years after logging in 2014, summer streamflow deficits were similar to those observed prior to harvest (under 40- to 53-yr-old plantations). High evapotranspiration from rapidly regenerating vegetation, including planted Douglas-fir, and from the residual plantation forest in the riparian buffer appeared to explain the persistence of streamflow deficits after logging of nearly 100% of the forest plantation.”

This peer reviewed research confirms low flow deficit findings of Perry and Jones 2017. These publications refute the speculation by BLM that somehow the proposed moderate thins and group selection of mature old f forests will have no effect on streamflow. The BLM further erroneously asserts that since their logging of mature old growth will have no effect on summer streamflows. Due to the vast scope of the project significant impacts to streamflow are certain but BLM claims “no effect” from proposed logging of over 8,000 acres. The BLM cannot cite any credible publications or monitoring data that support their speculation of no effect or hydrological recovery of previously logged stands.

Segura, C , K. D. Bladon, J. A. Hatten, J. A. Jones J. Cody Hale, and G. Ice. 2020. Long-term effects of forest harvesting on summer low flow deficits in the Coast Range of Oregon. Journal of Hydrology. <https://doi.org/10.1016/j.jhydrol.2020.124749>

***H.1.iii: The proposed action fails to comply with stipulations in the NMFS Biological Opinion for incidental take of coho salmon (USDC NMFS. 2016).***

The incidental take statement includes the following reasonable and prudent measures necessary to minimize the impact of the amount or extent of incidental take: “The BLM shall implement measures through management direction<sup>1</sup> and anticipated travel management plans to minimize take of ESA-listed species due to sediment and stormwater contaminants derived from the use of roads.” (SWORMP, 37).

The Revised EA/ proposed action and DR#3 fail to adequately implement the following RMP management direction consistent with the RMP BA and NMFS 2016 (RMP) BiOp:

“Implement road improvements, storm proofing, maintenance, or decommissioning to reduce or eliminate chronic sediment inputs to stream channels and waterbodies. This could include

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<sup>1</sup> KS Wild interprets the proposed action as an outcome of “management direction”.

maintaining vegetated ditch lines, improving road surfaces, and installing cross drains at appropriate spacing.” (SWORMP, 93)

“Decommission roads that are no longer needed for resource management and are at risk of failure or are contributing sediment to streams, consistent with valid existing rights.” (SWORMP, 93)

“Fully decommission or obliterate (permanent closure) roads with no future resource management need. Decommission (long-term closure) roads not currently needed for resource management but that will be used and maintained again in the future. Apply road closure BMPs as needed (**Appendix C**). Close roads only with the approval of affected permittees consistent with valid existing rights.” (SWORMP, 96)

Implementation of the above management direction for roads within the planning area would identify a very large number of road miles needing treatment. The Revised EA/proposed action is grossly inadequate to implement management direction and the BiOp because no roads other than newly constructed temporary roads would be decommissioned/obliterated.

It is clear from the 2016 BiOp that NMFS assumed that management direction and BMPs would be implemented to reduce sediment and vehicle pollutants from roads. The following is excerpted from the 2016 BiOp p.199-200. The most relevant passages for the DR/ proposed action are underlined for emphasis.

“The BLM proposes the following Management Direction that would minimize the amount of runoff to streams:

- Allow road construction, and stream crossings where there is no operationally feasible and economically viable alternative to accomplish other resource management objectives In addition to the Management Direction that limits road construction in the RR, the BA says “It is extremely unlikely that any new road or landing construction would occur within the inner zone of a RR. BLM’s recent experience is that most road construction or renovation to provide access for RR thinning projects occurs in what would be the outer zone (at least 50 feet from intermittent streams and 120 feet from perennial streams), or entirely outside of the RR.”
- Implement road improvements, storm proofing, maintenance, or decommissioning to reduce or eliminate chronic sediment inputs to stream channels and water bodies. This could include maintaining vegetated ditch lines, improving road surfaces, and installing cross drains at appropriate spacing<sup>44</sup>.

The following are a subset of the BMPs that could be implemented for road work:

- Locate roads and landings on stable locations, ridge tops, stable benches, or flats, and gentle-moderate slopes.

- Locate roads and landings away from wetlands, Riparian Reserve, floodplains, and waters of the State, unless there is no practicable alternative. Avoid locating landings in areas that contribute runoff to channels.
- Disconnect road runoff to the stream channel by outsloping the road approach. If outsloping is not possible, use runoff control, erosion control and sediment containment measures. These may include using additional cross drain culverts, ditch lining, and catchment basins. Prevent or reduce ditch flow conveyance to the stream through cross drain placement above the stream crossing.
- Effectively drain the road surface by using crowning, insloping or outsloping, grade reversals (rolling dips), and waterbars or a combination of these methods. Avoid concentrated discharge onto fill slopes unless the fill slopes are stable and erosion proofed.
- Locate cross drains to prevent or minimize runoff and sediment conveyance to waters of the State. Implement sediment reduction techniques such as settling basins, brushfilters, sediment fences, and check dams to prevent or minimize sediment conveyance. Locate cross drains to route ditch flow onto vegetated and undisturbed slopes.
- Space cross drain culverts at intervals sufficient to prevent water volume concentration and accelerated ditch erosion. At a minimum, space cross drains at intervals referred to in the BLM Road Design Handbook 9113-1 (USDI BLM 2011), Illustration 11 –‘Spacing for Drainage Lateral.’ Increase cross drain frequency through erodible soils, steep grades, and unstable areas.
- Install cross ditches or waterbars upslope from stream crossing to direct runoff and potential sediment to the hillslope rather than deliver it to the stream. Luce and Black (1999) found that incorporating design features such as cross-drains and ditch relief culverts into roads reduced the hydrological connection of these structures. Forest vegetation buffers flow and prevents sediment from reaching streams (Copstead and Johansen 1998).”

The Revised EA has no specific numeric proposals to implement underlined items at specific locations or road segments in the proposed action (e.g. “prior to log haul 30 cross drains will be installed at priority locations identified in Table B20 pp 108-110”). There are no proposals to hydrologically obliterate identified abandoned roads within and adjacent units but there are specific mapped proposals to construct 30 miles of road. The Revised EA/proposed action fails to provide for distinction between road related sediment reduction BMPs (generally permanent or long lasting covered by 2016 BiOp, e.g. R26), routine road maintenance for temporary effects (covered by 2018 BiOp and routinely described/ implemented in timber sale contracts, e.g. water bars) and road renovation/construction for timber sales that would comply with the 2018 BiOp requirement ( e.g. temp road construction followed by decommissioning). We conclude that the DR/Proposed Action fails to implement actions to substantially reduce sediment from existing haul roads and proposed new roads.

We have learned that the 2019 Medford District aquatic restoration projects will not fulfill the 2016 BiOp's requirements for reducing road related sediment into coho streams because no timber haul roads within coho watersheds will be decommissioned or stormproofed. The Poor Windy project failed to include BMPs to permanently re-direct road related sediment to vegetated slopes and not into stream channels (e.g., permanently disconnect roads from streams with road BMP R26 at roads listed in Table B20 page 108-110). While anticipated temporary BMPs are necessary to comply with 2018 BiOp (e.g. hay bales, sediment detention digouts), permanent changes to drainage are needed to comply with 2016 BiOp since they are not being done under other programs (e.g. Aquatic Restoration Programmatic EA).

#### ***H.1.iv: Timber salvage MP 97 fire impacts***

The Revised EA/DR#3 failed to specifically analyze and disclose where timber salvage of MP 97 fire would occur, impacts of soil health from salvage logging, fire and fuels impacts, and habitat impacts from such salvage logging for the project area. The BA and BiOP for NSO are not valid because they have not been updated via renewed consultation with USFWS. NEPA documents show known occupied NSO sites within the MP 97 fire perimeter overlapped with the Blown Fortune DR#3 Unit boundaries.

#### **H.2: The decision violates the O&C Act's mandate to regulate stream flow**

The Revised EA/Decision does not address alternative 2 logging will likely violate the O&C Act's mandate to regulate stream flow. The SWORMP FEIS failed to analyze reduced summer low flows due to past and proposed logging.

Creating permanent roads on O&C lands removes them from sustainable yield forestry production and thus violates the O&C Act as interpreted by the agency.

#### **H.3: The decision violates the 2016 SWORMP and FLPMA.**

##### ***H.3.i RMP LSR non-compliance***

The Revised EA acknowledges that its prescriptions in LSR stands would delay NRF habitat from developing for 20-80 years. (See June EA pp. 34-35). This is in violation of the ROD/RMP direction to not use silvicultural prescriptions that preclude or delay development by 20 years or more compared to development without treatment. (SWORMP, 72). (p. 5)

##### ***H.3.ii NSO habitat in LSR removed for roads***

Building more roads to remove more NSO habitat in structurally complex fire resilient habitat does not meet the management direction for the LSR and is in violation of the RMP and FLPMA. These acres would have habitat removed for the long term and will not contribute to the ROD/RMP direction to promote and develop NSO habitat in our lifetimes. BLM has not analyzed

or disclosed why these routes were necessary to meet the purpose and need of the LSR logging prescriptions.

For the proposed alternative the BLM does not analyze or disclose a PDF for LSR that would require gap placement to promote NSO habitat/function. The gaps are too big in NSO/LSR habitat and will to remove NRF habitat contrary to RMP requirements.

### ***H.3.iii Purpose and need: Late-Successional Reserve***

The intent of the proposed alternative to conduct commercial and operationally feasible timber harvest within LSR units (where prescriptions proposed match the relative stand density of a LUA that is solely for timber harvest) contradicts the purpose and need of LSRs to develop NSO habitat. These management prescriptions are in direct conflict with the purpose and need of this project to develop NSO habitat.

We provide the following rebuttal to BLM response to this comment (Topic 25). Unit 01-08 has 74 acres HLB-UTA and 43 acres LSR (Appendix D – Commercial Harvest Unit Table). HLB acres and LSR acres are combined in a single mapped unit with presumably the same prescription. The Revised EA fails to explain how the more restrictive standards of LSR will be implemented when UTA and LSR are combined into single unit. The Revised EA fails to explain how LSR/NRF can be maintained when alternative 2 would reduce relative density to as low as 20% (REA p. 12 Table 2-3). The Revised EA is inadequate because it fails to explain how mixed UTA/LSR or LSR units will meet RMP standards. We assert that LSR/NRF acres will be degraded or downgraded beyond RMP standards due to logging to relative density as low as 20% and likely exceed allowed BiOp canopy reduction standards.

### ***H.3.iv Nesting habitat in Riparian Reserves***

By removing 413 acres of nesting habitat, the BLM fails to follow management direction for Riparian thinning as described in the in the BA at page 19.

### ***H.3.v Treating and maintaining NSO habitat***

When the agency intends to "treat and maintain" spotted owl habitat, the prescriptions must address both canopy cover AND structural conditions important to spotted owls and their prey. The BLM should maintain existing or better conditions, not just maintain some arbitrary minimum condition. The BLM fails to disclose that "treat and maintain" actually degrades NSO habitat.

***H.3.vi The Decision fails to implement management objectives and direction with respect to fish passage. The Grants Pass Field Office has failed to actively collaborate and cooperate with the Oregon Department of Fish and Wildlife (ODFW) about fish passage in the Poor Windy planning area as required in BiOps and RMP.***

The following is excerpted from the SWORMP, page 91:

**“Fisheries Management Objectives**

- Improve the distribution and quantity of high-quality fish habitat across the landscape for all life stages of ESA-listed, Bureau Special Status Species, and other fish species.
- **Maintain and restore access to stream channels for all life stages of aquatic species.**

**Management Direction**

- Restore degraded spawning, rearing, and holding habitat for fish using a combination of accepted techniques including but not limited to log and boulder placement in stream channels, tree tipping, and gravel enhancement.
- **Remove or modify human-caused fish passage barriers to restore access to stream channels for all life stages for native aquatic species.** (emphasis added)”

The Revised EA, (p.60) states: “Fish passage barrier culverts or bridges are not proposed to be replaced or upgraded under this project.” Apparently, the Grants Pass Field Office failed to actively collaborate and cooperate with the Oregon Department of Fish and Wildlife (ODFW) about restoring fish passage in the Poor Windy planning area as required in the BiOp. The proposed action fails to implement fish passage objectives and management direction contained in the RMP. Culverts to facilitate log haul are undoubtedly hindering coho passage in the planning area but the Revised EA fails to identify any passage barriers or propose to correct them as directed in the RMP.

***H.3.vii: The Revised EA/proposed action failed to identify all wetlands <1 acre (e.g. seeps/springs) that require a 25 ft Riparian Reserve. (SWORMP,77.)***

The Revised EA fails to discuss field reviews of units to identify wetlands <1 acre such as seeps/springs as protected Riparian Reserves. There is no mapping of seeps/springs in the Revised EA as Riparian Reserves (Revised EA,191-200). On April 13, 2019, R. Nawa (KS Wild) found a spring with 100 ft of perennial flow and wetland vegetation that had no field identification for protection where tractor logging is proposed in Blown Fortune unit 17-1 (Revised EA, 181). The unprotected spring is in the NE portion of the unit. We assert there are many more springs/seeps within units that have not been identified as riparian reserves and given proper protection from proposed logging. The RMP is not being implemented. The Decision falsely states that the RMP is being followed for Riparian Reserve identification protection when in fact springs and seeps are not being identified or protected.

**2. The Revised EA analysis is flawed because it did not incorporate relevant findings of many scientific publications provided by KS Wild and others in its analysis.**

Our organizations provided PDFs of publications during scoping and in support of our EA comment letter. The Revised EA analysis is biased because it failed to incorporate opposing

scientific finding of BLM interpretations and speculation about impacts. We use the findings of several of these citations to support our protest issues.

- The Revised EA is defective because BLM's project actions continue to rely on outdated assumptions about dispersal habitat using the so-called 40/11 rule (40% canopy, 11-inch dbh trees on average retained at the landscape/section scale), and not the more recent peer-reviewed publication (Sovern et al. 2015) that documents juvenile dispersal habitat are equivalent structurally to NRF habitat rather than the old 40/11 rule.
- The Revised EA fails to discuss that mixed severity fire actually creates NSO habitat in the southern range of the owl (Baker 2014) while logging removes it. Thus, the entire reason for thinning to reduce fire intensity in LSRs is unsubstantiated, arbitrary, and capricious decision making by BLM that conflicts with the literature.
- The BLM fails to establish how treatment of LSR fits the stated purpose and need to reduce the risk of large-scale, high-intensity fire in light of recent scientific research, specific to the Klamath-Siskiyou region, that found closed forests and NRF had higher fuel loads than other forest types, but burned at lower severity in the Douglas and Big Windy Fire (Lesmeister et al. 2019).
- This peer reviewed research confirms low flow deficit findings of Perry and Jones 2017. These publications refute the speculation by BLM that somehow the proposed moderate thins and group selection of mature old forest will have no effect on streamflow. Segura, C., K. D. Bladon, J. A. Hatten, J. A. Jones, J. Cody Hale, and G. Ice. 2020. Long-term effects of forest harvesting on summer low flow deficits in the Coast Range of Oregon. Journal of Hydrology.  
<https://doi.org/10.1016/j.jhydrol.2020.124749>
- New published information not considered by the Revised EA identifies significant decreased summer low flows from forest lands due to conversion of mature/old growth Douglas-fir forests to young stands (Perry and Jones 2017)

### **3. Narrow Purpose and Need Is Not Consistent with NEPA**

The purpose and need (and the proposed alternative) is narrowly drawn to intentionally exclude (or discredit) alternatives that do not maximize timber production ahead of all other public lands management objectives.

While the Poor Windy Revised EA contains a commercial thinning action alternative, the biased and narrow preference (not need) for the BLM to remove forests and critical habitat across all Land Use Allocations to facilitate timber production during a global pandemic precludes a reasoned analysis of project tradeoffs or an informed project decision. The biased need statement is designed not to implement the flexibility and discretion in harvest types that is clearly allowed for in the RMP and is instead designed to ensure an outcome that reflects the BLM's preference for removing native forest stands regardless of the significant impacts to wildlife, watersheds and fire hazard in the project area.

The courts have held that in defining a very narrow purpose and need, planning agencies run afoul of NEPA:

*The “purpose” of a project is a slippery concept, susceptible of no hard-and-fast definition. One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing “reasonable alternatives” out of consideration (and even out of existence). The federal courts cannot condone an agency’s frustration of Congressional will. If the agency constricts the definition of the project’s purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act.*

*-Simmons v. U.S. Army Corps of Engineers, 120 F.3d 664, 666 (10th Cir. 1997).*

The courts have recognized that agencies bring a degree of expertise to determining the scope of a particular project, but this deference is not unlimited:

*Deference, however, does not mean dormancy, and the rule of reason does not give agencies license to fulfill their own prophecies, whatever the parochial impulses that drive them. Environmental impact statements take time and cost money. Yet an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action, and the EIS would become a foreordained formality.*

*-Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991).*

*“The stated goal of a project necessarily dictates the range of ‘reasonable’ alternatives and an agency cannot define its objectives in unreasonably narrow terms.” Id., at 1155 (citing Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 192 (D.C. Cir. 1991)).*

*“Project alternatives derive from an [EIS’s] ‘Purpose and Need’ section.” Id. Thus, a court begins by determining whether or not the Purpose and Need Statement was reasonable. Id.; see also Friends of Southeast’s Future v. Morrison, 153 F.3d 1059, 1066-67 (9th Cir. 1998). Westlands Water Dist. V. Interior (9th Circuit July 2004).*

BLM applies a “need” to treat the LSR system authorizing up for 4 acre clearcuts to avoid “losing a substantial investment in the project” through data collection and surveys. Data collected in LSRs can be used for a number of purposes and does not unilaterally require logging. BLM offsetting the costs of survey and data collection by 4 acre group select clearcuts in the reserve system is arbitrary and capacious. (see REA,9). NEPA does not permit the BLM to rig the planning process in this manner.

#### **4. BLM Failed to Take A Hard Look as Required By NEPA.**



In our timely scoping and EA comments, we asked the BLM to analyze and disclose the number of large diameter trees (greater than 20" DBH) proposed for logging. We also asked the BLM to disclose Total Maximum Daily Loads and Water Quality Restoration Plan requirements associated with 303(d) listed waterbodies in the project area. The Poor Windy Revised EA neglected to substantively address these reasonable requests.

**The Revised EA is defective because it does not report stand age for each logging unit.**

Analysis for possible reduced summer flows requires stand age (Perry/Jones 2017 and Segura et al. 2020). Mature stands do not contribute to reduced summer flows while younger stands can cause up to 50% summer flow reductions. Logging prescriptions that convert mature stands to young stands have the greatest effect on summer flow. Prescriptions that replace mature trees with young trees (e.g. moderate thins to less than 60% canopy or less than 40% canopy) would also contribute to reduced summer flows. Since stand age is needed to conduct hydrological analysis we assert stand age of each unit or stand (some large units have stands of different ages) must be disclosed as baseline information (no action alt) for each unit."

**The Revised EA cannot use data (such as stand age) in hydrological analyses (low flow, peak flow analysis) that is not easily available to the public during the comment period.**

**The Revised EA Did Not Take A Hard Look at Determination of Relative Density.**

The Revised EA failed to analyze and disclose how post-harvest relative density would be determined for LUAs. NEPA required that methods for analysis be disclosed. The Revised EA did not fully explain RDA and RDAs determination methods.

The BLM response to comment states how relative density is calculated, ostensibly from existing stands but the Revised EA/response to comment fails to explain how post-logging relative density is calculated. The Revised EA is in error because it fails to disclose and discuss considerable uncertainty about post logging relative density. The Revised EA p. 12 Table 2-3 indicates "relative density 30 (+/-10) percent". The Revised EA fails to discuss the +/-10 error margin for relative density or how it was calculated. The prescriptions based on the 2016 RMP standards have not been implemented on previous timber sales in the Grants Pass RA. Lacking empirical data from previous RMP prescription thins, the BLM cannot assure the accuracy of predicted post logging relative density. This is important because the new prescriptions and marking standards together with post-harvest mortality (tree shock, windthrow, logging damage etc.) could cause the relative density to fall below RMP standards and also violate the BiOp for maintaining required canopy percent. Disclosure of uncertainty of post-harvest relative density needs to be disclosed in an EIS due to the large scale of proposed logging (thousands of acres) and irreversible impact if units are overcut. The Revised EA fails to disclose that alternative 3 with its more conservative relative density objective would not exceed RMP standards.

### **The Revised EA Failed to Take A Hard Look at Loss of Critical Habitat, Late-Successional Reserves, and the Loss of NSO Prey Species.**

The Revised EA is inadequate for NSO because it fails to analyze how many of the Late-Successional Reserve acres are within CHUs.

The Revised EA falsely concludes that treatments would benefit prey species, and ignores the contrary information provided in the BA specific to this project area. The exclusion of USFWS data on impacts to owl prey is a significant omission that undermines agency conclusions and analysis. The REA failed to analyze effects to prey species present in the planning area cumulatively. The BA/BiOp cannot substitute for required analysis in NEPA documents. NEPA is “stand alone” from the ESA consultation requirements

The BLM failed to disclose the number of red tree vole sites that will be impacted by the proposed logging.

The BLM response to Topic 28 Red Tree voles states: “This issue was considered but not analyzed in detail because the BLM is implementing the Southwestern Oregon RMP which does not require the consideration of past Survey and Manage listed species (September EA, p. 154).”

The KS Wild RTV comment is not disputing the RMP decision that “does not require the consideration of past Survey and Manage listed species (September EA, p. 154).” The comment is not about compliance with the RMP or FEIS impact analysis for red tree voles in Southwest Oregon. The comment is about impact disclosure relevant to NEPA and species viability within the planning area. BLM and USFWS data about known RTV sites within the planning area is available information as per NEPA. The Revised EA fails to discuss or disclose direct and indirect impacts to these known RTV sites due to thinning to create stands with more open canopy. Red tree vole nest trees could be logged. RTV colonies would likely be lost with thinning prescriptions for UTA, LITA and non-NRF LSR due to canopy reductions. The cumulative effect of private land logging and BLM logging could fragment existing RTV habitat and contribute to the loss of viability within the planning area. Possible loss of species viability would contribute to the need to federally list the southern population of RTV. Possible loss of viability of RTV within this vast planning area is a significant impact that needs to be spatially analyzed and disclosed in an EIS. Course scale RTV analysis in the RMP FEIS cannot substitute for project scale analysis for RTV viability.

### **The Revised EA Failed to Take a Hard Look at Artificial NSO Calls and Responses.**

The Revised EA failed to account for the effects of NSO that are not detected with survey protocol because some NSO do not respond to artificial calls. **BLM response to Topic 29 is rebutted with the following:** Neither the EA nor the response to comment addresses uncertainty about NSO presence when NSO fail to respond to artificial calling. NSO do not always respond to artificial calls possibly because they do not want their presence known to barred owls. The EA fails to discuss this “non-response” issue via interviews with BLM NSO

surveyors about non-response. It is common knowledge among BLM NSO surveyors that NSO are present in some areas but do not respond to artificial calling. The Revised EA fails to acknowledge that occupied NSO habitat could be logged thus creating the risk of unauthorized take. Uncertainty about NSO presence due lack of response to artificial calling needs to be thoroughly analyzed and possible impacts disclosed in an EIS due to large size of this project and the irreversible impact on occupied NSO habitat from massive proposed logging.

### **The Revised EA Failed to Take a Hard Look at the Impacts of RA 32 Logging:**

The Revised EA's contention that no RA32 habitat exists within the downgrade and removal of NRF acreage in NSO critical habitat is arbitrary and capricious.

The BLM response to Topic 30 "Recovery Action 32" is actually about "structurally-complex forests" and does not explain the relevance or relationship of "structurally-complex forests" to RA 32 habitat. The Revised EA is inadequate because it provides no mapping of RA 32 habitat in relations to units or land use allocations. BLM is clearly in error about units with RA32 that will be logged. Alleged compliance with the RMP does not excuse the Revised EA from disclosing the units that will have RA32 logging. KS Wild staff have observed old growth stands within unit 23-09 that have RA 32 features: snags, nest platforms in deformed trees, large down wood and old growth trees. **See more references to unit descriptions at the end of this protest in the section titled: "Photos with Narrative In Support Of Protest Statement Of Reasons"**

The BLM routinely tiers to the FEIS for the SWORMP stating that the reserves function as their contribution to RA32 stands and for NSO recovery. However, if the same basal area post-harvest metrics are prescribed for stands that are meant for timber production and also NSO recovery the BLM is operating outside of the FEIS analysis for NSO and the reserve system function. This tiering is unlawful because it tiers to a programmatic FEIS for the RMP without the site-specific analysis for RA-32 stands on public lands.

### **BLM Failed to Analyze or Disclose Impacts Related To Climate Change, Ecological Forestry, Logging, And GHG Emissions**

The BLM's choice to not analyze climate change impacts or to analyze the Ecological Forestry alternative in detail is arbitrary and capricious and a violation the RMP/ROD and FLPMA.

The Revised EA failed to quantitatively consider the consequences of logging for greenhouse gas production. The Revised EA fails to consider indiscriminate logging that decouples mortality from fitness, survival and resilience. This is especially important in light of climate change. Conserving genetic and phenotypic diversity is important for climate adaptation. The BLM is logging genetically adapted fire resilient trees needed to survive future climate change that will increase fire hazard and actions are inconsistent with the stated purpose and need of this project.

Even though this project will emit GHG and worsen climate change which will in turn violate numerous BLM legal mandates, the Poor Windy REA eliminated carbon storage and climate change from detailed analysis because “there would be no potential for reasonably foreseeable significant effects of the Proposed Action beyond those disclosed in the 2016 Proposed Resource Management Plan/FEIS.” This refusal to analyze GHG ignores many flaws in the RMP EIS.

**The Revised EA action alternatives failed to identify specific BMPs and general locations for implementation for each proposed new road segments and each haul route road to decrease connectivity of roads with the stream channel system by hydrologically disconnecting the unpaved log haul routes from the stream system with cross drain culverts, outsloping, berms, sediment traps and critical dips. Failure to provide site specific BMPs at actual sites means expectations of sediment minimization is not assured and unprotected coho take will occur since 90% of project sediment will come from roads.**

The Revised EA, at 89-108 merely lists BMPs but fails to identify specific or even general locations where they would be implemented and how many would be implemented. For example, cross drains are important for reducing connectivity of roads with the stream system but the REA/proposed action does not specify a single cross drain location or indicate how many new cross drains would be installed to reduce connectivity of new and existing haul roads with the stream system. The REA provides site specific logging units, roads and haul routes but addresses sediment abatement with BMPs in a programmatic fashion which is not likely to be effective. Since the REA fails to identify structural BMPs needed to disconnect the road system from the stream system they will not be incorporated into project contracts or road upgrades. In other words, contract BMPs will only address drainage and protection of the road surface and not reduce connectivity with streams.

**The Decision/REA failed to adequately incorporate/implement water quality restoration plans especially as these plans relate to reducing road related sediment into streams.**

**The BLM Failed to Take A Hard Look at Watershed Analysis/Water Quality Restoration Plans for the Project Area.**

The BLM failed to incorporate or seriously evaluate watershed analysis findings and recommendations. The BLM failed to identify and incorporate water quality restoration plan recommendations for reducing road related sediment. The REA failed to analyze the impacts of the proposed project on water quality under as required OAR 340041-0004.

**The REA Is Defective Because It Fails to Analyze and Disclose Likely Reduced Summer Low Flows Due the Past and Proposed Replacement of Old Growth/Mature Conifers with Young Trees.**

The Revised EA (135) did not conduct detailed analysis of the effects of proposed timber harvest on summer low flows by stating: “This issue was not analyzed in further detail because none of the analysis areas is expected to have a measurable difference in streamflow conditions due to project activities.”

This statement about no measurable effect to summer low flows from proposed timber harvest is speculation and not based on available data and conclusions in scientific publications.

#### Cumulative Effects

The Revised EA, 133 erroneously states “Because of the small treatment areas relative to the analysis areas, this difference is not expected to be measurable for the analysis areas described.” This statement fails to consider the additive and cumulative effects of all timber harvest in the planning area; past, present, future (i.e. cumulative effects). The Revised EA fails to consider 127 acres of regen harvest in LITA in combination with 4 acre openings that would mimic depleted low flow effects reported in Perry and Jones 2017 (Revised EA:14-15). Twenty to 30% of the 4,078 treatment acres in UTA would be in openings up to 4 acres. UTA treatments would result in 815-1223 acres in openings resembling clear-cuts and dominated by young trees for decades. Late Successional Reserves would also have up to 25% of the treatment area in openings up to 4 acres. LSR treatments would result in up to 643 acres in openings resembling clear-cuts and dominated by young trees for decades. The proposed action would result in up to 1,993 acres in openings that would be expected to cause summer flow depletions beginning about 15 years after replanting and continuing for 30 years or more (i.e. long term impact). In addition to BLM proposed openings, the Oregon Department of Forestry would log 1,128 acres with heavy thins and clear-cutting (Revised EA:176). Private land logging would account for an additional 1,216 acres of potential clear-cutting/heavy thins. The cumulative effects of up to 4,337 acres put into a “young stand” category is certain to have effects on some small headwater streams. The Revised EA failed to conduct the necessary analysis to identify headwater streams most in danger of summer flow depletion. The Revised EA fails to make any analysis of the effect of past conversion of mature/old growth forest to young stands that has likely depleted historic summer low flows (i.e. cumulative effect). This depletion is highly likely to be significant but BLM failed to conduct spatial analysis for small headwater streams (e.g. 6<sup>th</sup> and 7<sup>th</sup> field basins) where conversions to plantations have been substantial.

#### Duration of reduced summer low flows

Summer streamflow deficit effect is not limited to stands aged 15 to 45 years old as inferred/stated in the EA. Perry and Jones (2017) showed that the summer low flow deficits peaked at a stand age of 50 years after harvest, which are the oldest post-harvest stands existing in paired watershed experiments (control watersheds were 150 to 500 years post-disturbance). Perry and Jones (2017) state that deficits increased as stands aged from 25 to 50 years (approximately) and there is no indication of a reduction in the low flow deficit in stands aged 50 years and older. Hence it is

reasonable to infer that stands older than 50 years also produce summer streamflow deficits.

#### Rain Dominated Watersheds.

The Revised EA, 133 states that “Lower summer streamflows because of timber harvest are less likely in rain-dominated catchments”. Nearly all of Perry and Jones sites were at elevations that would be rain dominated (see Perry and Jones 2017, page 2). The REA statement is speculative and not supported by Perry and Jones 2017 research at sites representative of the planning area.

#### Riparian Reserves

The Revised EA, 133 states “None of the 4-acre group select areas would be located within the Riparian Reserves, and low flows appear to be more sensitive to transpiration from vegetation in the riparian than the rest of the catchment (Moore & Wondzell, 2005). Catchment hydrological responses for the H.J. Andrews Experimental Forest found streamflow response is strongly sensitive to harvest distance from the stream channel (Abdelnaour et al., 2011), therefore impacts from these 4 acre group selects would not likely be measurable.” The preceding EA statement misinterprets Abdelnaour et al. 2011 who state on p. 11:

“Our simulation results suggest that post clearcut annual streamflow increases with decreasing harvest distance to the channel (Figure 8). This streamflow sensitivity to harvest location stems from the fact that subsurface flow generated from an upland clear-cut area, as opposed to a lowland clear-cut area, has a relatively longer flow path. This longer flow path subjects subsurface flow to downslope plant water uptake, which reduces the amount of water that reaches the stream channel. These results are consistent with previous findings on the importance of riparian forest buffers and lowland vegetation in reducing subsurface flow to streams [Jordan et al., 1993; Lowrance et al., 1997].”

Abdelnaour et al. 2011 (as stated above) is about the effects of clearcutting increasing streamflow. Cutting down forests close to streams would cause the greatest increase in streamflow. Furthermore, the Riparian Reserve statement is not supported by Jones and Perry 2017 who found that the depleted summer low flows are a watershed effect and do not ascribe higher importance to riparian forests for either summer baseflow depletion or augmentation.

During an April 2018 science conference at OSU about timber harvest and effects on lowering summer streamflows, the question was posed as to whether BLM protective Riparian Reserve management would ameliorate reduced summer low flows from logging on upland areas. Both Julia Jones and Steve Wondzell agreed that BLM Riparian Reserve management could not ameliorate reduced flows caused by upland logging. R. Nawa (KS Wild) was at this conference and it was emphatically stated several times that Riparian Reserve buffers cannot mitigate for upland logging causing depleted low summer flows.

Moore and Wondzell (2005) did not state that riparian vegetation alone affects evapotranspiration, merely that riparian vegetation appears to have important effects on ET. The studies that Moore and Wondzell (2005) cite in support of this assertion were from Eucaplytus watersheds in Australia that may not be relevant to watersheds in the planning area.

### **The Revised EA Failed to Take A Hard Look at Evapotranspiration.**

The Revised EA fails to take a hard look at how proposed logging is significantly increasing long term evapotranspiration and ultimately reduces summer low flows. Abdelnaour et al 2011:15 states:

“Successional changes in forest transpiration are generally consistent with changes in forest Leaf Area Index (LAI), sapwood basal area, and net primary production (NPP) [Watson *et al.*, 1999; Zimmermann *et al.*, 2000]. Ryan *et al.*, [1997] found that forest LAI increases initially after disturbance, reaches a maximum in young stands, and thereafter decreases. Moore *et al.* [2004] found that young Douglas-fir forests in the Pacific Northwest have a higher sapwood basal area and use nearly three times as much water during the growing season as old-growth forests. Acker *et al.* [2002] found that the NPP of young stands in the Pacific Northwest is larger than the NPP of mature and old stands (Figure B1). Furthermore, several experimental studies found that the streamflow in managed forests is reduced to below old-growth values due to rapidly transpiring young vegetation [Bond *et al.*, 2008; Hicks *et al.*, 1991]. “ [and most recently Perry and Jones 2017]

The Revised EA fails to discuss that the proposed action will remove many tens of thousands of mature trees and possibly hundreds of old growth trees that will ultimately be replaced with young trees that evapotranspire at 3 times the rate of the trees cut. The increased evapotranspiration of replacement trees will ultimately reduce low summer streamflows in the long term beginning about 15 years after logging and continuing for at least 30 years or more. The age at which forests recover hydrologically from summer low flow deficits is not known.

### **Conclusion**

Any reductions of flow, even minor ones, would reduce the rearing capacity of streams for coho salmon. Critical habitat would be degraded due to reduced summer flows. Long term reduced summer low flows (30 years or more) due to proposed logging warrants re-initiation of consultation since there are no conservation measures in the programmatic BiOp or RMP BiOp that address the issue of reduced summer low flows

that would develop from the proposed Poor Windy logging. The Revised EA does not analyze site specific effects of timber harvest on depletion of summer low flows of small headwater streams or the effect of reduced flows on coho salmon rearing in the catchments affected.

### **The BLM Failed to Take a Hard Look at Impacts to Bureau Sensitive Species**

The Revised EA neglects to analyze or disclose project impacts to BSS species in the project area. At 155 the REA indicates that “The RMP has allocated a larger Late-Successional Reserve network which will protect older more structurally-complex forests and will continue to provide management for many of the formerly Survey and Manage species as Bureau Sensitive species.” NEPA does not permit the BLM to forgo analysis of impacts of its activities from the public and the project decision maker. Relying on the LSR system to protect all BSS species while prescribing logging in the LSR that is identical to logging occurring in the Harvest Land Base is arbitrary and capricious.

It appears that the BLM refuses to follow the 2016 RMP ROD direction (page 115) to “implement conservation measures that reduce or eliminate threats to Bureau Sensitive Species...”

The direction (RMP ROD page 115) to “*include altering the type timing, location, and intensity of management actions*” for the benefit of BSS species appears incompatible with the BLM’s intent to focus exclusively on timber production regardless of impacts to wildlife habitat in this planning area.

Please implement the direction (RMP ROD page 72) to “[u]tilize integrated vegetation management in designing and implementing treatments... for any of the following reasons... *Restore and maintain habitat for Bureau Special Status species.*”

Please implement the direction (RMP ROD page 106) to “[p]rovide for the conservation of *Bureau Special Status plant and fungi species.*”

The Revised EA and DR#3 contain no site-specific information as to where Bureau Sensitive Species are located within project units, no buffers or PDFs are included in the maps provided in the Revised EA to field check buffers within marked units.

The Revised EA contains no information, data, mitigation measures or management goals regarding Pacific fisher. We are concerned that proposed canopy removal and large tree logging across the landscape may contribute the jeopardy of the proposed listed species under the ESA.

### **THE PROJECT INVOLVES SIGNIFICANT ENVIRONMENTAL IMPACTS**



BLM timber planners are mistaken in their belief that the existence of the 2016 RMP relieves the agency of its duty to analyze and disclose significant adverse environmental impacts in an Environmental Impact Statement (EIS).

This Revised EA is designed to involve intensive logging over an extended period of time. The production of over a hundred million board feet of timber involves significant site-specific and cumulative impacts that are not detailed, analyzed or disclosed in the 2016 RMP. (Revised EA, 65).

The proposal to liquidate thousands of acres of dispersal and NRF habitat within Critical Habitat Units involves significant environmental impacts that must be fully analyzed and disclosed in an EIS.

The proposal to drastically reduce forest canopy in a project area that has forgone analysis to determine existence of Pacific fisher populations is a significant action that necessitates completion of an EIS to analyze and disclose project impacts.

The BLM proposal to ignore Spotted Owl Recovery Plan Recovery Actions 10 and 32 while implementing the Poor Windy timber sales is significant impact necessitating completion of an EIS.

## **5. The BLM Has Failed to Engage in Collaborative NEPA**

**The Grants Pass Field Manager failed to respond to our November 18, 2018 scoping request for BLM collaboration with interested parties towards consensus-based management for the Poor Windy project as described in FR 73:61294; DOI Implementation of NEPA.**

We note that Part 46.110 (c) states: “*the Responsible Official must, whenever practicable, use a consensus-based management approach to the NEPA process.*”

### **43 CFR § 46.110 Incorporating consensus-based management states**

*(a) Consensus-based management incorporates direct community involvement in consideration of bureau activities subject to NEPA analyses, from initial scoping to implementation of the bureau decision. It seeks to achieve agreement from diverse interests on the goals of, purposes of, and needs for bureau plans and activities, as well as the methods anticipated to carry out those plans and activities. For the purposes of this Part, consensus-based management involves outreach to persons, organizations or communities who may be interested in or affected by a proposed action with an assurance that their input will be given consideration by the Responsible Official in selecting a course of action.*

We believe that the requested collaboration among interested parties towards consensus-based management would improve communication and lead to non-controversial timber sales that can be efficiently implemented, however, the Grants Pass BLM refuses to collaborate with interested parties as intended by the DOI via NEPA

A forest management project of this scale and intensity certainly warrants a public field trip to more effectively satisfy BLM's duties to inform the public during the NEPA process and be more responsive towards better communication between BLM and our organizations about proposed logging and road building. Furthermore, many timber sale units are behind locked gates which makes access difficult for the public.

## 6. The BLM Has Failed to Analyze A Reasonable Range Of Alternatives

Agencies are required to consider alternatives in both EISs and EAs and must give full and meaningful consideration to all reasonable alternatives. *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1245 (9th Cir.2005); *see also* 40 C.F.R. § 1508.9(b)."

The BLM has acknowledged across multiple Resource Ares that it understands prescribing significant forest canopy removal increases fire hazard in logged stands. Yet here the BLM ignores those previous findings by identifying a project "need" that is so narrow as to preclude a reasonable range of action alternatives. Indeed the BLM goes as far as to contend that its hands are tied such that the only "feasible" way for it to implement the 2016 RMP is by liquidating the reserve forests allocations in the planning area and hoping that additional spotted owl sites elsewhere become unoccupied so that the agency can remove those forests as well. Hence the BLM has relied upon an extremely narrow "need" (of its own making) to preclude development and analysis of other reasonable action alternatives.

The biased need statement is designed not to implement the flexibility and discretion in harvest types that is clearly allowed for in the RMP, and is instead designed to ensure an outcome that reflects the BLM's preference for removal of native forest stands regardless of the significant impacts to wildlife, watersheds and fire hazard in the project area.

The courts have held that in defining a very narrow purpose and need, planning agencies run afoul of NEPA:

*The "purpose" of a project is a slippery concept, susceptible of no hard-and-fast definition. One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing "reasonable alternatives" out of consideration (and even out of existence). The federal courts cannot condone an agency's frustration of Congressional will. If the agency constricts the definition of the project's purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act.*

*-Simmons v. U.S. Army Corps of Engineers, 120 F.3d 664, 666 (10th Cir. 1997).*

The courts have recognized that agencies bring a degree of expertise to determining the scope of a particular project, but this deference is not unlimited:

*Deference, however, does not mean dormancy, and the rule of reason does not give agencies license to fulfill their own prophecies, whatever the parochial impulses that drive them. Environmental impact statements take time and cost money. Yet an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality.*

*-Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991).*

*"The stated goal of a project necessarily dictates the range of 'reasonable' alternatives and an agency cannot define its objectives in unreasonably narrow terms." Id. at 1155 (citing Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 192 (D.C. Cir. 1991)).*

*"Project alternatives derive from an [EIS's] 'Purpose and Need' section." Id. Thus, a court begins by determining whether or not the Purpose and Need Statement was reasonable. Id.; see also Friends of Southeast's Future v. Morrison, 153 F.3d 1059, 1066-67 (9th Cir. 1998). Westlands Water Dist. v. Interior (9th Circuit July 2004).*

The Revised EA failed to disclose or analyze a reasonable alternative for why the 92 acres of HLB high quality, structurally complex habitat was necessary for road and landing construction.

The Revised EA Failed to analyze an alternative where NRF in the LSR isn't removed for landing and road construction.

**Alternative 3 that the EA claims is based on an Ecological Forestry alternative was not adequately analyzed to emphasize its clear differences from the proposed action as intended by NEPA.**

The Revised EA misinforms the decisionmaker about the factual parameters, intent and effects of our Ecological Forestry alternative as analyzed as alternative 3. We stated in our scoping letter that "The Ecological Forestry alternative would modify the anticipated proposed action to reduce the intensity of logging impacts as per NEPA and provide clear choices for decision maker." We provided the Ecological Forestry alternative as a modification of the proposed action, not as a standalone alternative.

Assuming alternative 3 is based on our Ecological Forestry alternative, the Revised EA, (at 13) errs by indicating "0" fuels treatment for alternative 3. We did not indicate in the Ecological Forestry alternative that proposed action fuels treatments be dropped. The Revised EA makes alternative 3 decidedly inferior to the proposed action by indicating "0" fuels treatment acres for alternative 3. We do not see how the Revised EA can claim alternative 3 is based on the

Ecological Forestry alternative when we did not specify that fuels treatments acres be reduced to “0”. In addition, indicating “0” fuels treatment acres guarantees that this action alternative cannot be chosen due to prevailing concerns about fire management in the Medford District.

The Revised EA failed to identify Franklin et al. 2012 as the basis for alternative 3 as we did for the Ecological Forestry alternative. This is important because this publication provides the conceptual and practical basis for forest management that is decidedly different than the proposed action. It would be too cumbersome to repeat the general basis and details for silvicultural prescriptions from the publication into our scoping comment but the Revised EA failed to even identify Franklin et al 2012 in conjunction with alternative 3. For example, Franklin and Johnson 2012, 435 states: “Retain and improve survivability of older conifers by reducing adjacent fuels and competing vegetation—old trees can respond positively (e.g., McDowell et al. 2003)” Alternative 3 that proposes “0” acres of fuels treatment is not based on Franklin and Johnson 2012 as posited in our Ecological Forestry alternative.

The Revised EA failed to identify that skips and openings would be accomplished in alt 3 UTA units as we did with Ecological Forestry alternative. Individuals, Clumps and Openings (ICO) is a detailed silvicultural techniques described in Churchill et al 2013a and Churchill et al. 2013b used to better mimic the clumps and openings created with historic natural fire regimes. The Ecological Forestry alternative did not specify ICO for LITA where the proposed action would employ standard BLM prescriptions to maximize timber volume. Thus, whereas the Ecological Forestry alternative provides a fundamentally different approach to UTA as compared to LITA, alternative 3 does not make this important distinction which would be reflected in NEPA analysis.

The Revised EA at 12 failed to identify that there would be DBH limit of 32” for UTA and LITA in alternative 3 as was proposed in the Ecological Forestry alternative. The 32” DBH limit is important because this diameter limit would ensure that all old-growth trees are retained and eliminate the need for an EIS to disclose the significant impact of old growth logging that would be allowed with the Proposed Action (i.e. logging of trees 32”-40” DBH and >200 years). We have previously documented old growth trees 32”-36” and 240 years old and identified for logging within the Clean Slate timber sale that had a 36” dbh limit. Old growth logging issue is very important for us in decision making as it would give the decision maker a clear choice to log old growth trees (>32”DBH and >200 years) with the proposed action or not to log old growth trees with the Ecological Forestry alternative.

The Revised EA (at 13) failed to identify reduced roads for alternative 3 as was proposed in the Ecological Forestry alternative. Restrictions on road building we identified for LSR and RR were not identified in alternative 3. The Ecological Forestry alternative would have substantially reduced sediment producing roads as compared to proposed action and gave the decision maker a clear choice about the intensity of road construction which is very high (22 miles) with both action alternatives in the REA.

The Revised EA at 19 states that the Ecological Forestry alternative was somehow not compliant with the RMP but does not specify the reasons for “non-compliance” with the RMP. We were very careful to use the 2016 RMP to identify parameters that were analyzed in the RMP FEIS and could be implemented without exceeding any RMP standard and still provide for economically viable and technically feasible timber sales. The Ecological Forestry alternative does not exceed any impact analyzed in the FEIS. The RMP provides for considerable discretion for the implementation of logging and road building by field offices as long as minimum decadal acreages for each district are offered in timber sales.

The court has recently found the Grants Pass Field Office was in error for not properly analyzing the Ecological Forestry alternative we submitted for the Lower Grave forest management project. It appears that the Grants Pass Field office has once again erred by not analyzing the Ecological Forestry alternative as submitted by KS Wild, Oregon Wild, and Cascadia Wildlands in our scoping letter. We requested collaboration and a field trip to better inform the BLM of our intent with the Ecological Forestry alternative but the Grants Pass Field Office ignored our written requests for collaboration and failed to provide a field trip. The BLM then proceeded to arbitrarily develop alternative 3 in lieu of our Ecological Forestry alternative for analysis in the EA. The Grants Pass Field Office failed to communicate with us about implementation parameters of the Ecological Forestry alternative as submitted not being “compliant” with the RMP.

## 7. FAILURE TO RESPOND TO PUBLIC COMMENTS AND SCIENTIFIC CONTROVERSY

"NEPA procedures must ensure that environmental information is available to public officials *and citizens* before decisions are made and before actions are taken." 40 C.F.R. 1500.1(b). "NEPA requires consideration of the potential impact of an action before the action takes place." *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1313.

Please note that NEPA is primarily a procedural statute: It mandates a particular process but not necessarily a particular result. *Inland Empire Public Lands Council v. USFS*, 88 F.3d 754, 758 (9th Cir. 1996). This process must proceed without undue bias from the action agency and ultimate decision maker. The CEQ regulations warn that a NEPA document may not be used to justify a decision already made. 40 CFR §1502.2(g). In the case of this planning process, it was inevitable that the agency would issue a DR/FONSI to authorize timber harvest as proposed in Alternative 2 regardless of public comments or scientific controversy.

Please note, the Decision Record/Finding of No Significant Impact (DR/FONSI) does not directly respond to the content of many of substantive comments and references to peer-reviewed scientific literature that were submitted to the agency during the EA commenting period. Indeed, the DR/FONSI limits itself to a cursory dismissal of all of the concerns raised during the commenting period and fails to directly address the majority of the comments and referenced literature submitted by the public. While the agency is entitled to disagree with substantive public comments and peer-reviewed literature, NEPA at the very least requires that the BLM

acknowledge and respond to substantive comments and scientific controversy that are raised in a timely manner during the NEPA planning process.

The Ninth Circuit has repeatedly confirmed that NEPA does not allow an agency to simply disregard contrary input that is directly applicable to its proposal. *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9<sup>th</sup> Cir. 1998) (requiring disclosure of scientific controversy about post-fire logging); *Center for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1169 (9<sup>th</sup> Cir. 2003) (requiring disclosure of scientific controversy about logging in goshawk habitat); *Seattle Audubon Society v. Lyons*, 871 F. Supp. 1291, 1318 (W.D. Wash. 1994), *aff'd sub nom.*, *Seattle Audubon Society v. Moseley*, 80 F.3d 1401 (9<sup>th</sup> Cir. 1996) (NEPA requires the agency to “disclose responsible scientific opinion in opposition to the proposed action, and make a good faith, reasoned response to it,” and requiring disclosure of scientific controversy about old growth forest logging); *Seattle Audubon Society v. Espy*, 998 F.2d 699 (9<sup>th</sup> Cir. 1993) (holding that the failure to disclose and respond to the opinions held by well respected scientists concerning the hazards of a proposed action “is fatally deficient,” and requiring disclosure of scientific controversy about northern spotted owl viability); *Silva v. Lynn*, 482 F.2d 1282, 1285 (1<sup>st</sup> Cir. 1973) (“[NEPA] helps insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug,” and requiring disclosure of scientific controversy about aquatic resource issues). This court has also been clear that the only appropriate place to disclose and discuss a scientific controversy is in the body of the NEPA document itself. *Blackwood*, 161 F.3d at 1214 (9<sup>th</sup> Cir. 1998) (invalidating an environmental document that “contains virtually no references to any material in support of or in opposition to its conclusions.”

Given that the DR/FONSI contains no substantive new information or analysis, and that it fails to address substantive public comments and scientific controversy regarding the effects of this timber sale project, this Administrative Protest reiterates the deficiencies in the agency’s NEPA analysis that were previously identified by our organizations.

The BLM largely discounts or ignores identified science and case law that conflicts with its logging agenda and the selection of the pre-determined and inevitable logging outcome.

**Organizational Rebuttals to BLM “Response to Public Comments” in Support of Blown Fortune Statement of Reasons.**

< [https://eplanning.blm.gov/epl-front-office/projects/nepa/99604/20011084/250015190/20190912\\_Response the EA Review Public Comments.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/99604/20011084/250015190/20190912_Response_the_EA_Review_Public_Comments.pdf)>

The following section is a reiteration of information contained above and specific rebuttals to the BLM’s Response to Public Comments published in DR1.

**Topic 3 NSO and Barred Owl Competition**

BLM response p.3 states: “The EA took a hard look at barred owl and spotted owl interaction (September EA, pp. 32, 35, 47, 158-160).”

The Revised EA p. 34 states that “NSO protocol surveys are not designed to locate barred owls, however, barred owls have been detected in 49 of the 60 [NSO] sites within Poor Windy project area, and in areas outside of known sites.” The REA fails to take a “hard look” at the relevance of high detection rates of barred owls at NSO sites and what this means with each action alternative for the planning area. The REA fails to discuss how each alternative would affect future detection rates of barred owls within NSO sites.

The Revised EA p. 46-47 states “Increasing barred owl populations, barred owl competition and interaction negatively impacting spotted owls, and decreasing spotted owl occupancy or reproduction is expected to occur following recent decreasing population trends (Davis et al., 2011; Forsman et al., 2011; Dugger et al., 2106; USDI/USFWS 2016), with barred owl removal and developing large blocks of older forest providing the best NSO population response (USDI/BLM 2016e, pp. 948, 962, and 973).” This summary of published literature provides no context or comparative relevance to the Poor Windy alternatives. Merely repeating known science is not a “hard look”.

The Revised EA p.35 states that “Harvesting [in alternative 2] would negatively affect the capability of Harvest Land Base to support NSO occupancy, foraging, breeding, sheltering and dispersal, and refuge from barred owls.” The Revised EA fails to take a hard look at alternative 2 negative effect on the capability of the Harvest Land Base to support “refuge from barred owls” as compared to the more benign alternative 3. The Revised EA provides no analysis to support the false assumption that alternative 2 and alternative 3 would have the same degree of negative effect on the capability of the Harvest Land Base to support “refuge from barred owls.”

Furthermore, there is no science that suggests that existing stands support “refuge from barred owls”. The Revised EA at 165-166 contradicts the assertion of forest stands providing “refuge from barred owls” by stating “current research provides no evidence that the BLM can manage individual forest stands to provide northern spotted owls with a competitive advantage over barred owls (Dugger *et al.*, 2011; Wiens *et al.*, 2014). **Instead, research reaffirms the importance of older forest conditions and managing for large blocks of unfragmented older forest** (Dugger *et al.*, 2011; p. 2463; Wiens *et al.*, 2014; pp. 36– 38). (USDI/BLM 2016e, p. 948).” (emphasis added). Neither the Revised EA nor response to comments addresses the cumulative effect of alternative 2 fragmentation of NSO habitat, especially in the HLB. Alternative 2 fragmentation of NSO habitat is known to increase barred owl competition.

The Revised EA at p.165 states: “This indicates that, within the scope of the alternatives and the RMP, the northern spotted owl population response is determined by the effect of barred owl encounter rates on northern spotted owl survival. (USDI/BLM 2016e, p. 961).”

Fragmentation of NSO habitat as proposed in alternative 2 would likely increase barred owl encounter rates with NSO and this impact could be significant. The Revised EA is clearly in error by dismissing barred owl competition/forest fragmentations as an **“Issue Considered but Not Analyzed in Further Detail”** (see Appendix C; p.120). Cumulative impacts of fragmentation (public and private lands) of NSO habitat needs to be fully analyzed in an EIS with spatially explicit analysis to identify alternatives and specific units that are causing harmful fragmentation to wildlife habitat.

BLM claims that they avoid downgrade and removal in the LSR but conveniently forgoes the road and landing construction of LSR acreage in NRF habitat.

#### **Topic 4. Cumulative Effects: NSO Home Ranges.**

BLM provided no analysis for “floater” owls in the REA or the BiOp. The Response to Comment pointed suggests the commenter misunderstands the duties of the BLM’s cumulative effects scope. However, the BLM has a duty to analyze effects to owls that migrate between owl sites that are within the planning area. Owls with overlapping home ranges have the ability to fly in and out of the project area and effects to them caused by the proposed action must be analyzed. In the same response the BLM both admits that home ranges of an additional 43 owl sites overlap the action area and without analysis concludes that “The 43 owl sites discussed in the BA are not affected by the Poor Windy proposed action.” This is arbitrary and capricious.

#### **Topic 5. Maintenance of NSO Habitat Function**

It is arbitrary and capricious for the BLM to commercially thin active NSO sites and modify stands of NRF+D and claim that habitat will continue to function. BLM has not analyzed or disclosed whether or not they are following SOWRMP guidance of Apx A at pg 121 following priority order of harvest.

#### **Topic 21. Determination of Relative Density**

The response to comment states how relative density is calculated, ostensibly from existing stands but the Response to Comment fails to explain how post logging relative density is calculated. The REA is in error because it fails to disclose and discuss considerable uncertainty about post logging relative density. The Revised EA p. 13 Table 2-3 indicates “relative density 30 (+/-10) percent”. The Revised EA fails to discuss the +/-10 error margin for relative density or how it was calculated. The prescriptions based on the 2016 RMP standards have not been implemented on previous timber sales in the Grants Pass RA. Lacking empirical data from previous RMP prescription thins, the REA cannot assure the accuracy of predicted post logging relative density. This is important because the new prescriptions/marking standards together with post-harvest mortality (tree shock, windthrow, logging damage etc;) is likely to cause the relative density of some or even many units to fall below RMP standards and also violate the



BiOp for maintaining required canopy percent. The uncertainty of post-harvest relative density needs to be disclosed in an EIS due to the large scale of proposed logging (8 thousand acres) and irreversible impact if units are overcut with alternative 2 prescriptions. The REA fails to disclose that Alternative 3 with its conservative relative density objective would not exceed RMP standards.

### **Topic 23. Recently Occupied NSO Sites.**

The BLM's response to comment failed to analyze or disclose where proposed treatments such as 173 acres of nesting habitat removal within 6 "recently occupied" owl sites may be implemented.

### **Topic 24. Cumulative Effects: Changes to NSO Habitat.**

The BLM failed to analyze if the 401 ac of downgrade and removal within 9 recently occupied NSO sites overlaps with the above 6 recent occupied sites mentioned at topic 23, or if they overlap with .5 ac of Nesting removal within 5 recently occupied sites or the 5 ac of Foraging removal for road construction. "To avoid incidental take, harvesting would be deferred...unless protocol surveys determine the site is unoccupied (September EA, p. 38)" If surveys determine that sites are occupied the BLM must reconsult with USFWS or they are in violation of the ESA. In this same response to comment the BLM admits that core effects are uncertain. This level of uncertainty to a threatened and listed ESA species necessitates an EIS to be prepared.

### **Topic 25. Purpose and Need: Late-Successional Reserve.**

Unit 01-08 has 74 acres HLB-UTA, 43 acres LSR and 16 acres RR (Appendix D – Commercial Harvest Unit Table REA p.172). HLB acres, LSR acres and RR acres are combined in a single mapped unit with presumably the same prescription (REA 186). The Revised EA fails to explain how the more restrictive standards of LSR and RR will be implemented when UTA, LSR and RR are combined into single unit. The Revised EA fails to explain how LSR/NRF identified in Appendix D can be maintained when Alternative 2 would reduce relative density to as low as 20% ( Revised EA p. 13 Table 2-3). The Revised EA is inadequate because it fails to explain with spatially explicit mapping of how mixed UTA/LSR/RR or LSR NRF units will meet RMP standards. We assert that LSR/NRF acres will be degraded or downgraded beyond RMP standards due to alternative 2 cutting to relative density as low as 20% and likely exceed BiOp canopy standards. BLM provides no empirical data from previous thinning that canopy can recover to >60% in 20 years once it has been substantially lowered.

### **Topic 30 Recovery Action 32**

The BLM response is about "structurally-complex forests" and does not explain the relevance or relationship of structurally-complex forests" to RA 32 habitat. The REA is inadequate because it provides no mapping of RA 32 habitat in relations to units. BLM is clearly in denial about units with RA32 that will be logged. Alleged compliance with the RMP does not excuse the REA from

disclosing the units that have RA32 habitat. KS Wild staff have observed old growth stands within unit 23-09 that have RA 32 features: snags, nest platforms in deformed trees, large down wood and old growth trees(see photos 13a,b,c,d) . The REA fails address RA32 presence in the planning area from NSO habitat surveys. The REA fails to discuss the project scale adverse impacts from logging RA32 in HLB lands. The REA fails to analyze or disclose to the public where NR stands were not deferred.

### **Topic 31 Biological Opinion Requirements- Fish Passage Blocked by Culverts.**

The Response states: “The BLM initiated the BiOp validation process for the Poor Windy project on July 11, 2019 and received verification on July 17, 2019 that the Poor Windy project is consistent with the effects analysis and conclusions of the NMFS Programmatic Biological Opinion (WCR 2017-7574).” Concurrence with “effects” analysis does not excuse the BLM from required coordination with ODFW about fish passage, especially for log haul roads. ARBO II is not relevant because BLM is not proposing modifications to roads at stream crossings. The NMFS cannot excuse the BLM from complying with the basic purpose and need of the RMP:1: “Contribute to the conservation and recovery of threatened and endangered species”.

### **Topic 32. Fish Passage**

Restoring fish passage is a high priority for ODFW. Since BLM is probably going to be replacing defective culverts for log haul, it would seem prudent to replace culverts for ESA listed coho fish passage. Regardless of the need to coordinate with ODFW or RMP management objectives, the REA is defective because it did not identify reduced fish production due to passage barriers at specific roads in the no action alternative. The REA fails to explain why the BLM will replace culverts for log haul but not for fish passage. This appears arbitrary and capricious.

### **Topic 35. Large Tree Definition**

The BLM response erroneously conflates tree size retention standards in the RMP with large tree standard (20”dbh) used in the FEIS. The tree size retention standard for LUAs is not a large tree standard or definition of large tree. The REA fails to acknowledge that it is removing large trees when it removes trees >20”DBH. This is important because (large) trees >20’dbh are an important component of NSO habitat.

### **Topic 36. Harvest Land Base: Complex Habitat, Roads and Landings**

BLM failed to include any reasonable alternative where 92 ac of RA 32 in HLB was not cut for roads or landings.

### **Topic 37. Harvest Land Base, Recovery Action 32, and Critical Habitat**

The REA:37 states: “NSO surveys identified approximately 92 total acres of high quality, structurally-complex habitat on the Harvest Land Base that would be removed from harvest

prescriptions and associate road and landing constructions.” The REA fails to identify the location of RA 32 (aka structurally complex) habitat within units. **We cannot comment substantively about removal of RA 32 habitat if we are not informed of its location within units.** The REA fails to report that 64 of these RA32 acres are in critical NSO habitat. Merely tiering to the FEIS analysis, does not excuse the BLM from disclosing the removal of 92 acres of RA32 (structurally complex) habitat as a project scale “significant” impact in the REA. DR 3 is in error because it fails to inform which if any units have structurally complex lands that will be logged. The REA is defective because it fails to analyze how many of these acers are recently occupied.

### Topic 38. Timber Salvage

BLM arbitrarily and capriciously provides no cite for their statement that, “Further, salvage would not exceed effects of extraction methods proposed, or maintain, downgrade, or remove NSO habitat as analyzed and not exceed the conclusions of effects to resource.” Occupied Owl sites were within the MP 97 fire footprint and the associated timber sale units and require supplemental analysis of effects to habitat not conducted in the REA.

### Topic 41. Windthrow

The response states; “In some cases, the risk of windthrow could be increased in the short-term when opening up a stand.” and then speculates that “low levels of windthrow may be desirable for wildlife habitat and stand complexity” Monitoring of past thins (BLM 2015) found that severe windthrow in thinned units caused canopy to be below BiOp standards for NSO. This is a significant impact not addressed in the REA with a unit by unit analysis. Assuming low levels of windthrow is arbitrary and capricious when BLM monitoring data finds high levels of windthrow on thinned units.

#### Appendix E: Medford BLM 2015 Post-Harvest Monitoring

Round	Resource Area	Timber Sale Name	Unit Number	Acres	Target # of Plots	BA Effects	BA Target Canopy Cover	Field Canopy Cover	Target Met (Y/N)	Comments
1	Ashland	COTTONWOOD	5-8	10	200	NRF Maintained	60%	50.71%	N	Large blowdown trees noted: 3 layers, high # snags, high # CWD, avg. overstory trees > 20" dbh
1	Ashland	HEPPSIE	1-8	1	100	Dispersal Removed	<40%	29.22%	Y	
1	Ashland	HEPPSIE	35-3	33	200	Dispersal Maintained	40%	30.28%	N	Lots of blowdown trees noted: 1 layer, high # snags, high # CWD, avg. overstory trees > 20" dbh
1	Ashland	PILOT JOE	26-1A	25	200	Dispersal Maintained	40%	63.23%	Y	
1	Ashland	RIO SAG	13-6D	7	200	NRF Maintained	60%	64.86%	Y	

### Topic 42. Unit age

The REA alternative 2 is logging specific stands in specific units. The REA p.24-27 describes general conditions in the planning area but the REA does not provide stand conditions (e.g., age or age class) for each unit proposed for logging. NEPA also requires accurate description of proposed actions. Alternative 2 is not adequately described because it does not report acres of trees in standard age classes that would be logged (e.g. young, mature, late mature, old growth). NEPA requires disclosure of intensity of impacts. Logging young stands has relatively minor impacts as compared to logging older stands. Due to the enormity of the proposed

logging (.8,000 acres) some analysis of stand age of units is needed to make comparisons between alternatives. For example, alt 3 would not log large old trees but alternative 2 allows for logging of trees 32-40" dbh that could be >200 years (i.e. old growth). NEPA requires disclosure of significant impacts. The REA fails to disclose logging of trees or stands >170 years or >200 years that would be considered old forest or old growth. We assert logging stands or trees >170 or >200 years is a significant impact and must be disclosed.

The REA is defective because it does not report stand age(s) for each logging unit. Analysis for possible reduced summer flows requires stand age (Perry/Jones 2017 and Segura et al. 2020). Mature stands do not contribute to reduced summer flows while younger stands can cause up to 50% summer flow reductions as compared to pre-logging mature/old growth stands. Prescriptions that convert mature/old growth stands to young stands have the greatest effect on summer flow. Prescriptions that replace mature trees with young trees (e.g. moderate thins to less than 60% canopy or less than 40% canopy) would also contribute to reduced summer flows. Since stand age is needed to conduct hydrological analyses we assert stand age of each unit must be disclosed as baseline information (no action alternative) for each unit;. Some units due to large size and previous logging have 2 distinct stand ages.

#### **Topic 43 Adequacy of EA**

Increment bore indicates this (Photo Below) cut tree is >200 years. The REA is defective because it fails to disclose the number of old growth trees >170 or >200 years that would be logged. We assert logging old growth trees is a significant impact that must be disclosed with project NEPA.



(Photo in reference to above Topic 43, taken 1/31/20 in unit 23-4G)

#### **Topic 44. Trees Per Acre**

The BLM provides prospective purchasers with the number and size of trees offered for logging for each unit in timber sale prospectus but withholds this information from the public during the EA comment period. This is arbitrary and capricious.

The BLM is proposing to log trees, BLM suggests that the number of trees per acre logged are needless details. NEPA requires adequate descriptions of the proposed action and alternatives. The most informative parameters for describing the logging is to compare alternatives with baseline conditions by estimating the number of trees in various size classes that would be logged or conversely remain after logging. This is about providing the public with easily compared numeric data about how many trees/acre will be removed (or retained). Since BLM provides this data to purchasers, BLM can provide similar data to the public when publishing the EA for public comment. We demand to be informed via the EA, to estimate how many large trees you are identifying in each unit for future timber sales. We understand that you will not know exact tree numbers until the trees are marked but BLM can estimate these numbers via stand exams and modeling. BLM does this modeling but withholds the data from disclosure in the EA.

#### **Topic 45. Fragmentation: Removal of Barred And Spotted Owl Habitat**

The REA:165 states: current research provides no evidence that the BLM can manage individual forest stands to provide northern spotted owls with a competitive advantage over barred owls (Dugger *et al.*, 2011; Wiens *et al.*, 2014). Instead, research reaffirms the importance of older forest conditions and managing for large blocks of unfragmented older forest (Dugger *et al.*, 2011; p. 2463; Wiens *et al.*, 2014; pp. 36– 38). (FEIS, p. 948).

Fragmentation is the reduction in the quality or function of large blocks of habitat by removing or degrading small parcels of habitat within the larger block. Any wildlife biologist knows what fragmentation is. BLM is arbitrarily prohibiting or ignoring fragmentation analysis for the REA, merely enumerating degraded or removed habitat is not the same as fragmentation. Fragmentation has a contextual aspect. Any aerial photo analysis of the planning area will show a heavily fragmented landscape with large blocks of intact, continuous forest on BLM lands. Group selection and thinning to below 60% canopy or below 40% canopy will fragment the remaining intact blocks of BLM habitat and have impacts greater than the mere enumeration of degraded/removed NSO habitat acres. This is because chipping away at large blocks of habitat makes the remaining unlogged habitat less productive for NSO and other late successional species (e.g. red tree voles). For example, the Oh Windy unit 23-4G group selection removes some of the best NSO habitat in the 80-acre BLM block which renders the remaining unlogged habitat less useful for NSO. Research (REA:165) has identified fragmentation as a major cause for reduced NSO from barred owl competition. The REA has failed to analyze the cumulative impacts of combined public/private forest fragmentation on NSO and especially as it relates to barred owl competition. To summarize, the REA did not acknowledge or analyze forest fragmentation and its impact on NSO and other late successional species. Fragmentation of the planning area with 8,000 acres of public land logging is certain to be a significant impact. The REA fails to acknowledge that Alternative 3 which maintains more harvested forest at 60% canopy would have less fragmentation impact.

#### **Topic 46. Unstable Areas**

The EA identifies a process to identify unstable areas to be added to riparian reserves but does not explicitly map these unstable areas at a scale sufficient for public review. Furthermore, during the EA review period no documents were available describing the units affected by unstable areas that were added to the standard default riparian widths illustrated in the REA. The response to comment states: “Location specific field review of soils including fragile and unstable areas is ongoing with the Grants Pass hydrologist/soils specialist and the District Soil Specialist among others, to detect and protect unstable areas that could be used to modify or drop unit and proposed roads.” We cannot review or comment on “ongoing field reviews” that were not made available to the public during the comment period. Furthermore, the REA cannot rely on information not available to the public to support no impact determinations from potential unstable areas (e.g. landsliding). The BLM released the REA prior to having completed necessary field reviews to support impact determinations.

#### **Topic 47. Roads and unstable areas**

Our comment is not about proposed roads passing through TPCC soils and needing special design features. The REA fails to provide a field-based analysis of each road segment (regardless of TPCC designations) for possible accelerated erosion or landsliding. The REA cannot assert no impacts from proposed roads without site specific analysis by qualified professional. The REA statements about impacts from roads are conjectural and not based on actual field data.

#### **Topic 48. Methods to identify unstable areas**

The response focuses on methods to manage previously identified TPCC lands. Identifying unstable areas would require analysis of all lands proposed for logging, landings and road building and not limited to TPCC lands (see Meredith 2017). Analysis for unstable lands must precede the EA. The response does not say when the analysis was completed. The assertions in the REA about no impacts from unstable areas are conjectural and not based on field studies conducted in a timely manner by qualified professionals. The process identified is occurring after the EA was produced for comment. The EA cannot base impact analysis on studies or analysis not available to the public during the comment period or studies and analysis conducted after the EA is released.

#### **Topic 49. Wetland Identification.**

The response identifies a process but no results are reported in the REA. The REA fails to map a single spring or wetland for over 8,000 acres of proposed logging. No springs are identified for protection on timber sale maps. The REA cannot demonstrate that springs and wetlands are being protected since none are identified.

#### **Topic 50. Spring in unit 17-1**

The spring in unit 17-1 is not associated with a stream channel as illustrated.

### **Topic 51. Low Summer Flows and Re-Initiation of Consultation**

- The Blown Fortune protest provides detailed rebuttals of REA denial of alternative 2 logging induced summer flow deficits.
- The Blown Fortune protest provides the administrative basis for re-initiation of consultation due to logging induced lowered summer flows.
- The REA analysis (REA 139-140) is inaccurate because it reduces the effects of logging by using analysis areas of a large size as compared to analysis of small catchments of the size studied in Perry/ Jones 2017 and Segura et al. 2020 .Analysis of catchments of the size studied in published research would likely show impacts from proposed logging.
- The analysis did not consider that moderate thins that remove mature trees to encourage growth of young trees would have an adverse effect on summer flow since young trees apparently have greater water needs than mature trees.
- The analysis erroneously assumes that trees older than 45 years would not cause reduced low summer flows. There is no exact stand age where the adverse impact dissipates as assumed in REA. Any reduction in flow, no matter how small, is likely to be adverse to coho salmon and other aquatic animals since it would exacerbate stochastic events (e.g. drought).
- The REA provides no methodology of how it was determined “ no measurable effect” for each watershed analyzed. Stand age would be needed for this analysis but the REA fails to provide stand age to the public.
- The REA failed to determine baseline summer flow deficits for all small watersheds in the planning area. This would include private land watersheds and mixed ownership watersheds. Baseline summer flow deficits are needed to make prudent decisions about logging that would exacerbate a degraded condition.
- Even so called “unmeasurable” flow depletions could have adverse effects to coho salmon and other aquatic animals.
- The response to comment states: “Also, Perry and Jones did not evaluate the potential for riparian buffers mitigating the response .” Research findings by Segura et al 2020 suggests the opposite effect, riparian leave buffers cause the outset of deficits earlier than totally clear- cut catchments.

### **Topic 52. Low Summer Flows**

See rebuttal for Topic 51 above.

### **Topic 53. Low Summer Flows and Coho**

See rebuttal for Topic 51 above.

### **Topic 54. Best Management Practices and Project Design Features for Coho**

The REA fails to admit that it does not require any BMPs for any specific locations (e.g. roads) in the planning area:

“Stream fine sediment to coho spawning streams that already crossings listed in these tables **may** require the implementation of sediment reduction techniques such as settling basins, brush filters, sediment fences sediment standard. and/or check dams (September EA, PDF 53, p. 106” (emphasis added)

Similarly, placement of sediment control structures are at the **discretion** of the purchaser who will bare the costs. Sale administrators **may** require sediment control when monitoring shows sediment pollution from logging activities (e.g. log haul) from roads.

Exhibit C14, Blown Fortune Timber Sale [prospectus], Page 3 of 3 states:

“If hauling activities during the wet season causes or begins to cause road damage or the transport of sediment into streams, the Authorized Officer **may** suspend wet season haul or require additional erosion control devices to prevent damage or off-site transportation of sediment. “

Discretionary or “after the fact” requirements for sediment control will result in substantial sediment pollution of streams contrary to statements in the REA saying sediment impacts will be negligible or not measurable due to BMPs. The sale administrator cannot possible monitor dozens of stream crossings for sediment pollution each day it rains as well as other duties. The REA cannot credibly claim no substantial sediment impacts to streams with largely a voluntary BMP implementation program. An EIS is needed to disclose likely sediment impacts with alternative 2 discretionary implementation of BMPs. The REA fails to disclose that alternative 3 that prohibits haul during the wet season would have far less need for sediment control BMPs and would have far less sediment pollution than alternative 2 with wet season haul.

### **Topic 55. Road Connectivity to Streams**

The REA failed to identify intermittent streams that would be flowing during wet season haul as being connected to the stream system and in need of sediment control structures. The REA fails to take into consideration wet season haul as factor for connectivity for intermittent streams.

### **Topic 56. Effectiveness of Best Management Practices and Project Design Features**

The REA does not address the known lack of effectiveness of certain BMPs to reduce fine sediment into coho salmon streams and other waterbodies. REA assertions of no sediment impacts to coho cannot be substantiated even if certain sediment control structure BMPs are implemented. Compliance with the ESA does not excuse the BLM from accurate NEPA required impact assessment from sediment producing activities. Alleged compliance with the ESA does



not mean compliance with NEPA. An EIS is needed to disclose the uncertainties about BMP effectiveness and implementation.

#### **Topic 57. Intermittent Streams**

The REA failed to identify intermittent streams that would be flowing during wet season haul as being connected to the stream system and in need of sediment control structures. The REA fails to take into consideration wet season haul as factor for connectivity of roads to intermittent streams

#### **Topic 58. Dry condition and Sediment**

The BLM response fails to address anticipated connectivity of haul roads to intermittent stream during wet season haul. The REA failed to identify intermittent streams that would be flowing during wet season haul as being connected to the stream system and in need of sediment control structures. The REA fails to take into consideration wet season haul as factor for connectivity of roads to intermittent streams and identify the stream crossings where sediment laden water from roads would enter the stream system.

#### **Topic 59. Permanent Roads**

There is no analysis of each new permanent road segment in section 3.4. Impacts are discounted with reference to unspecified PDFs. Specific temporary and permanent sediment control structures and engineering specifications are not specified for each new road segment. The REA impact determinations are not supported by professional field evaluations of slope stability and drainage features for each road segment. Analysis in the REA is programmatic in nature since it could apply to any amount of new road miles and location of new roads. The REA fails to provide site specific analysis of road segments not on ridges (REA:57)

#### **Topic 60. Alternative 3 Volume Over Time.**

BLM admits to modeling timber volume over time with alternative 3 and then withholding the results from disclosure in the REA or supporting documents easily available to the public. The REA failed to disclose that BLM did do timber volume modeling of the 2 action alternatives for various harvest dates into the future. We assert that the modeling data was withheld because it does not support the conclusions about timber volume for the action alternatives. At a minimum the numeric data could have been summarized in a table but BLM chose instead to keep it hidden in the administrative file despite our scoping request to have this analysis be transparent in the EA.

#### **Topic 64. BLM ignores Ecological Forestry Alternative.**

BLM improperly tiered GHG emissions, climate change, and carbon storage to the FEIS of the RMP without any site specific analysis reflecting the size and amount of TPA proposed for logging.

#### **Topic 66. NSO Surveys**

BLM acknowledges that NSO surveys take place yearly in the Klamath Demographic Study Area. However, BLM conveniently only cites the DSA report for 2015. (Hollen et. al., 2015 at REA, 32, The year is 2020. It has been 5 years since the data from the 2015 DSA Klamath study accurately described the site-specific conditions of NSOs in the project area. The 2017 Klamath DSA is available online, yet the BLM failed to consider the best available information relevant to NSO populations in the project area and is in violation of the ESA and NEPA.

#### **Topic 67, 68. TPCC Analysis**

BLM ironically claims they analyzed at Issue C-34 Timber Production Capability Classification Impacts. However, the “C” section of the REA is literally titled, “Appendix C - Issues Considered but Not Analyzed in Further Detail”. BLM failed to distinguish DDR-TPCC impacts from TPCC impacts and locations.

#### **Topic 69. TPCC Analysis: Ground Based Yarding**

BLM arbitrarily and capriciously asserts that “Because both the Late-Successional Reserve and Riparian Reserve land use allocations are not intended to produce a sustained yield of timber harvest, there was no need to designate these areas into a separate land use allocation” (September EA, p. 150).” However, the project prescriptions for both the LSR and RR units within the Poor Windy REA and DR 3 are designed to facilitate logging targets for a decadal goal and thus this analysis is improper.

#### **Topic 70. Alternative 3 Fuels**

The BLM arbitrarily and capriciously identified zero acres for fuels treatment in alternative 3 which guaranteed that alternative 3 would not be selected. The response by BLM is specious because the no action alternative provides a valid alternative with zero fuels treatment. There was no need to identify a second alternative with zero fuels treatment but they did simply to make this alternative unattractive.

#### **Topic 71. Alternative 3 Franklin et al. 2012**

The response by BLM is specious and illogical. The RMP is not based on ecological forestry principals in Franklin et al. 2012 because the RMP provides for clear-cuts of dry forests and has no prohibition of logging old growth trees 32-40” dbh. However, the RMP does provide for agency discretion to implement ecological forestry principals consistent with the RMP. We submitted an ecological forestry alternative that would not clear-cut, would not log large fire-

resistant trees and would maintain most NSO NRF habitat which is consistent with the RMP. It would be too cumbersome to provide all the details found in Franklin et al 2012 so we submitted it to provide context for our Ecological Forestry alternative.

#### **Topic 72. Alternative 3 Individuals Clumps and Openings**

The ICO method is consistent with Ecological Forestry but the BLM failed to explain why it was not implemented. Field review of Oh Windy and Blown Fortune units found no clumps identified for retention except for the marking of a few co dominants for retention. The REA fails to acknowledge reduced natural heterogeneity in stands, especially LSR and RR by not implementing ICO. Even partial implementation is better than having leave trees spaced similar distances from each other.

#### **Topic 73. Alternative 3: reduced roads**

The BLM response is specious. Alt 3 has only 0.5 miles less temp roads and 1.1 miles less permanent roads.

#### **Topic 74. Alternative 3: Compliance with Resource Management Plan.**

The BLM response makes no sense and repeats response to comment #64 in verbatim. If the Ecological Forestry Alternative we submitted is compliant with the RMP then how can it not meet the purpose and need of the project? The BLM response fails to answer that salient question. We assert that the BLM violated NEPA by not analyzing our Ecological Forestry Alternative as submitted because it was a legal alternative. Furthermore, the BLM ignored out formal request to collaborate which could have refined the Ecological Forestry Alternative so it would better meet the purpose of need of the project.

#### **Topic 76. Best Management Practices: implementation locations**

The BLM admits that the REA defers to timber sale contracts to identify specific locations for BMPs. This violates NEPA since we cannot comment on the adequacy of timber sale contracts that are prepared well after the comment period ends. Nevertheless, the REA asserts no measurable sediment impact (whatever that means) from unspecified BMPs that may or may not be implemented at unspecified locations. In addition, sediment control BMPs are entirely discretionary with the purchaser and sale administrator. With respect to BMPs, alternative 2 is programmatic in nature because BMPs are listed but there is no mapping or descriptions of specific sites where they will be implemented (e.g. apply BMP R-26 at x, y,z roads crossing Windy Creek). An EIS is needed to provide site specificity for sediment control BMPs that will be required.

#### **Topic 77. National Marine Fisheries Service Biological Opinion: Compliance with Stipulations**

The BLM response fails to identify a single project that is designed to meet the BiOp and RMP requirements to reduce road related sediment. Sediment from BLM roads is killing coho salmon

while BLM fails to implement projects to substantially reduce sediment from heavily used roads consistent with the BiOp and RMP. 8.2 miles of new permanent road will be constructed but no existing unneeded roads or even ghost roads will be decommissioned.

#### **Topic 79. Best Management Practices: Road Related Sediment**

The mere listing of BMPs does not mean any specific BMP is part of the action alternative 2. For example, the REA says about 300 miles of haul roads will be maintained for log haul but it does not list a single cross drain for placement. Thus, routine maintenance or even culvert replacement to ensure log haul will be implemented, but specific structural BMPs to reduce sediment are not explicit in alternative 2 (e.g. 50 additional cross drains to reduce road connectivity to streams.).

#### **Topic 80. Sediment**

The REA fails to discuss the uncertainty about pulses of sediment from extreme rainfall events during and immediately after soil disturbance. Since log haul is allowed during the wet season the REA cannot reasonably assure that turbidity and sediment standards will not be exceeded. Prolonged rainfall and 'after the fact' BMP implementation puts streams at risk. The assumption in the EA that BMPs during contract administration will prevent sediment impacts to coho salmon and other aquatic animals is especially true due to the precedent setting 8,300 acres of logging in 5 or more timber sales with over 300 miles of log haul road. The REA states "good project administration should reduce the risk of this source being above background conditions for sediment delivery to surface waters. " Alternative 2 lacks built in safeguards such as structural sediment control structures to be put in place prior to logging to prevent sediment laden water from being delivered to both intermittent and perennial streams. The REA fails to admit that relying on "good project administration" to prevent elevated sediment creates a huge amount of uncertainty for a project of this size.

The Blown Fortune Prospectus states; "Pursuant to Section 26 of Form 5450-004, Timber Sale Contract, the Purchaser shall, prior to October 15 of the same operating season, winterize and rehabilitate temporary routes, landings, hydrologically connected corridors and skidtrails and other areas of exposed soils by properly installing and/or using water bars, berms, sediment basins, gravel pads, hay bales, small dense woody debris, seeding and/or mulching, to reduce sediment runoff and divert runoff water away from stream channels, headwalls, slide areas, high landslide hazard locations or steep erodible fill slopes as directed by the Authorized Officer."

Thus the burden of sediment prevention is placed on the purchaser and sale administrator with no identification in the REA where sediment control structures are required due to existing erosion risk. The REA does identify perennial streams connected to road system but fails to identify structural sediment control structures (i.e. BMPs such as cross drains, critical dips, grade reversals) to be implemented prior to the commencement of contract logging. The REA

fails to discuss the uncertainty for sediment control by relying on the purchaser to take on the burden of sediment prevention at their own cost.

### **Topic 81. Sediment into Streams**

The BLM response provides no quantification of sediment from the action alternatives. The REA relies on qualitative assessments of sediment increases that are speculative and unsupported with published literature or monitoring. A project of this size and scope cannot assure water quality with qualitative assessments of increased sediment. An EIS is needed to make more detailed assessments of small headwater watersheds most at risk from sediment produced by proposed actions. The EIS process would provide for alternatives with explicit mitigations at specific sites to reduce sediment risks. EPA would provide for needed oversight to properly implement BMPs and reduce uncertainty about sediment effects.

### **Topic 82. Sediment Analysis Rationale**

Sediment modeling in the RMP programmatic FEIS is not adequate or accurate for sediment analysis of a large project with numerous stream crossings where sediment laden road runoff would enter streams. The REA failed to conduct field analysis at stream crossings to determine the actual extent of connectivity (i.e. % connectivity). More importantly field inventory of actual extent of connectivity would provide for identifying specific BMPs to disconnect the road from the stream system (e.g. installation of cross drains, critical dips, grade reversals, rolling dips). The REA inappropriately relies on road maintenance and contract administration to identify and correct road related sedimentation when this could have been done for incorporation into alternatives. The REA is programmatic in nature with respect to sediment abatement. An EIS is needed to identify needed actions to disconnect the stream system from a portion of the road system prior to commencement of logging.

### **Topic 83. Soils Report.**

The BLM response states: “The hydrology field surveys identified 31 areas with unstable soils, these areas would typically be flagged in the field and avoided by 25 feet. This is typically done with changes in unit boundaries, added to riparian zones or buffered areas within units.” We have no way of verifying that the 31 unstable areas have been adequately buffered since we do not know their location. The BLM failed to make the surveys that identify 31 areas with unstable soils available to the public during the EA comment period or the Blown Fortune protest period (see for example Merideth 2017 which provided analysis of unstable areas and management actions during the Elk Camel EA cmt period). The REA is programmatic in nature with respect to soils and soil stability because it describes a process but provides no inventories for public review in a timely manner. We assert that an EIS is needed that would include all inventory data documents or summaries of inventories for the public to review during the comment period.

### **Topic 108. Adverse Critical Habitat to NSO Critical Habitat.**

BLM's statement that "There is nothing within the RMP that precludes adverse modification of critical habitat" displays the intent of the agency's singular focus on timber production off public lands and is controversial.

**PHOTOS WITH NARRATIVE IN SUPPORT OF PROTEST STATEMENT OF REASONS  
PHOTOS BY R. NAWA WITH ACCURATE DATE STAMP EMBEDDED**

Photo #	Sale Name	Unit	Description
1	Blown Fortune	17-1	Unprotected Spring/ Riparian Reserve
2	Blown Fortune	17-15G	Compacted Soils, Invasive Species
3	Blown Fortune	17-15G	Blackberry infestation
4	Deer North	7-11	Alien annual weed infestation
5	Blown Fortune	17-15	LUAs not mapped, % canopy reductions and prescriptions not disclosed in REA at unit scale
6	Blown Fortune	17-2	Large trees identified for cutting with alternative 2
7	Blown Fortune	17-2	Excessive thinning on DDR-TPPC LUA
8	Blown Fortune	17-2	New temp road location, blowdown risk
9	Oh Windy	18-1	Slump bench with possible risk for landsliding
10	Oh Windy	23-4G	Old Growth cut tree >200 years
11	Oh Windy	23-4G	Old Growth cut tree >200 years
12	Oh Windy	23-4G	Rocky mulch soils with high erosion potential
13a,b,c,d		23-09	RA 32 lands not identified in REA

Blown Fortune Unit 17-1 75 acres DR3 Appendix 3  
71 acres UTA  
4 acres RR  
Selection Harvest  
Foraging Dispersal REA:173



**Photo 1.** Blown Fortune unit 17-1. This spring/seep located in the NE portion of the unit was not identified in the REA or on the ground for protection from ground based logging. Trees adjacent to the spring/seep were not marked for retention. The spring/seep area was not restricted from ground based logging machines. The Decision/REA fails to identify all springs/seeps in the Blown Fortune timber sale as Riparian Reserves and designate field marked protections as required in the RMP.

Blown Fortune Unit 17-15G 4 acres DR3 Appendix A

4 acres-UTA

NSO habitat: Capable, Dispersal, Foraging (EA:167)





**Photo 2.** Blown Fortune unit 17-15 G was previously thinned in late 1990s and now DR3 would remove the remaining canopy with modified group selection. Only one tree at the far left in photo would be retained. All of the remaining trees in the photo will be removed since none have a recent pink stripe indicating leave tree.

The REA is defective because it does explain how previous thins for this stand was inadequate to meet the LUA objectives for UTA. The REA is deceptive and misleading because it fails to explain that thinning does not preclude subsequent group selection, a form of regeneration harvest. The EA is misleading because it falsely assumes that in alternative 2 there will be no further treatment of units for 50 years. This assumption is obviously false since the BLM is removing remaining canopy about 20 years after previous thinning. This is important because the EA does not acknowledge that up to 30% of the thinned stands (e.g. unit 17-15) could be subsequently harvested as group selection in the short term and not in 50 years as assumed. Essentially the Decision implements step two of a two step regeneration cut for unit 17-15G. First the stand is heavily thinned and a decade or so later the remaining canopy is removed with group selection with 4 acre mini clear-cuts. Alternative 2 does not acknowledge this possible scenario towards increased regeneration harvest by exploiting loopholes in the RMP. This long term impact is not discussed.

Unit 17-15G has severe soil compaction due to previous tractor logging, machine piling, and historic mining. The REA is defective because it fails to estimate base line soil compaction percent for this unit or indicate how RMP standards will not be exceeded with another round of ground based tractor logging, machine piling of slash and burning of slash. Since it appears that soil compaction standards are already exceeded, the standard mitigations for ground based harvest are not adequate, since they cannot reduce the percent of existing soil compaction by merely treating new disturbance/compaction areas.



The Prospectus Special Provisions p. 6 states:

“Rehabilitate utilized skid roads, landings, cable-tractor swing routes, and/or temporary routes as necessary to achieve no more than twenty (20) percent detrimental soil conditions in the ground-based harvest unit, as Specified in Sec. 42(C)(12)(E-1).”

The provisions in 42 (C ) (12) (E-1) are designed for ameliorating soil compaction from anticipated ground based harvest and temp road construction. See “Special Provisions” p. 24-25 . They are not designed for units such as 17-15G with substantial soil compaction that would be expected to remain outside of designated skid trails.

The REA, Decision and prospectus fail to indicate specifically how the compacted soils outside of designated skid trails will be rehabilitated or how the 20 percent detrimental soil standard would be measured either pre- or post-treatment. The EA provides no example of successful reductions of soil compaction for sites as badly compacted as unit 17-15G.

The REA erroneously assumes that all units can meet RMP detrimental soil standards with PDFs and standard provisions in the timber sale contract prospectus. Due to the enormity of units proposed for logging (hundreds of units covering many thousands of acres in 5 timber sales), the standard provisions are not likely to be adequate to achieve the 20% standard for each and every unit. The REA has failed to provide unit specific analysis of existing and proposed soil damaging actions to determine if the standard “one- size-fits- all” provisions in timber sale contracts are adequate for ALL UNITS. For example, slash burning alone could exceed the standard if the unit has previous compaction.

Soil compaction is a significant impact since it is long term and generally irreversible. The REA failed to disclose the number of acres of irreversible soil compaction for unit 17-15G, other units, temp roads, permanent roads and landings. Even if RMP standards are met, the increased acres and severity of soil compaction is significant for this project. On some units, burning would also contribute to cumulative detrimental soil condition. This is particularly true because there was no unit specific soils analysis supporting the REA.



**Photo 3.** Past thinning adjacent unit 17-15G has resulted in the establishment of about 0.5 acres of invasive blackberry. The blackberry patch increases in size each year. The infestation is not being controlled by BLM or being controlled by the establishment of woody vegetation as stated in REA:126.



**Photo 4.** Deer North unit 7-11. This unit was thinned with prescriptions similar to REA alternative 2. Sparse fire adapted native vegetation in the understory has been replaced with alien annuals and blackberry which are extremely flammable and would carry a fire at a rapid rate. Native vegetation has been largely outcompeted by alien weeds over the entire unit except where canopy was maintained at 60%.

The REA: 126 states that “Further analysis of the [invasive species] issue would not lead to a more informed decision. The abundance of invasive plants in the project area is around 1.5% of the total area. The implementation of this project would result in a short-term pulse in invasive plant abundance following project implementation but, within approximately 5 years, new infestations would be outcompeted by native woody vegetation or be controlled by BLM if determined to be above the baseline 12% rate of spread or if new species were introduced.”

The assertion that within 5 years new infestations would be outcompeted by native woody vegetation is speculative and not supported by any data or monitoring of past thinning projects. One can plainly see in photo 3 that thinning which reduces the canopy to 40% or less as anticipated with DR3 will certainly result in new blackberry infestations that will establish and expand for decades (long term). Photo 4 illustrates how alternative 2 thinning is likely to result in significant alien annual weed infestations that will increase fire hazard. The REA:125 estimates 187 acres of blackberry with high impact in the planning area. The REA fails to estimate the number of post harvest acres that will be infested with blackberry and other invasives despite precautions (equipment precautions cannot stop the spread of blackberry because it is spread by birds). Since the BLM control efforts would allow for a 12% rate of increase, the increase of infested acres could be significant. The REA fails to quantify the “pulse” of increased alien species due to alternative 2 activities and its adverse impacts to native plants, animals and fire suppression.

The REA: 126 describes the pathways and proposed activities that will increase invasives but the REA fails to make a project scale assessment of impacts (the REA for Integrated Invasive Plant Management is programmatic in nature and cannot substitute for project scale analysis). The Poor Windy REA fails to estimate the number of new infestations and new invasive acres within units for each alternative. An estimate would indeed be possible if the BLM has actually been monitoring past projects as claimed. The REA fails to make an assessment of the consequences to plants, animals and fire suppression due to the new infestations on 8,103 acres where soil disturbance and canopy reductions will invite new infestations and exacerbate existing infestations. The REA:128 states that there has been no treatment of existing blackberry. An obvious impact based on photo 3, is that conifers and other desirable native vegetation will fail to establish at desired densities due to blackberry infestations. This impact could be significant because treating blackberry appears to be a low priority with no previous treatment in the planning area. Similarly, reducing the canopy to 40% or less is certain to result in widespread alien annual weed infestations that will increase fire hazard. The EA is defective because it does not quantify harmful impacts from increased invasives due to canopy reductions, ground disturbance and burning.

The Poor Windy project would disturb soils and substantially reduce canopy on 8,193 acres. The EA fails to acknowledge that existing high canopy percents currently prevent significant invasives in natural stands. Alternative 2 reduces canopy to a greater degree and on more acreages than alternative 3. Maintaining canopy at 60% also maintained understory vegetation at Deer North unit 7-11. The REA fails to acknowledge that unwanted invasive infestations



would be greater in alternative 2 than alternative 3. Alternative 3 would maintain more acre at 60% canopy.

Since the Medford District weed program is programmed to treat 2,000 acres/year (net 300-500 acres/year), the Poor Windy project alone could overwhelm the capacity of the Medford district to monitor and control new invasive locations caused by alternative 2. Assertions of reduced fire danger from thinning are not valid if sparse native understory vegetation is replaced with a carpet of highly flammable alien annuals and highly flammable blackberry (Photos 3 & 4). These are potentially significant impacts requiring unit specific analysis for the proposed 8,193 acres of harvest.

Blown Fortune Unit 17-15 35 acres DR3 Appendix A

27 acres-UTA

3 acres LSR

5 acres-RR

NSO habitat: Capable, Dispersal, Foraging (REA:173)



**Photo 5.** Unit 17-15 southern parcel. At this location of about 1 acre R.Nawa counted 12 pink marked leave trees up to 30" DBH and 36 cut trees up to 24" DBH on about 1 acre. Photo taken by R. Nawa on April 13, 2019.

The sparse number of leave trees suggests major canopy reduction in this unit. The REA is defective because it does not disclose existing (baseline-no action) estimated percent canopy and estimated canopy for each action alternative along with predicted NSO habitat downgrade or removal. The REA fails to explicitly map the 3 NSO habitat classifications for REA unit 17-15. We cannot make unit specific substantive comments when NSO habitat classifications, downgrades and removals are lumped, totaled or combined. Similarly, the REA fails to provide

unit specific impact analysis for these important parameters. The DR3 fails to state canopy standards for each unit from section 7 consultation.

The REA maps are inadequate because they do not illustrate LUAs except for RR. The DR3 Appendix A provides unit scale land use allocation maps and silvicultural prescriptions that were absent from the REA. Thus, these critical data were available but the EA failed to provide these data during the comment period.

Unit 17-15 has UTA, LSR and RR land allocations spread out in two parcels but only one prescription (Selection Harvest) for all three LUAs. The REA failed to explain how this one prescription best meets the objectives for all LUAs within this unit. The REA failed to disclose that more protective and variable prescriptions in our Ecological Forestry alternative would better achieve RMP objectives for LSR and RR in this and other similar units.

The BLM failed to identify which trees would be cut with alternative 2 during the EA comment period. During the EA comment period some cut trees in some units within Blown Fortune and Oh Windy timber sale areas were identified but none in the three remaining timber sale areas in the southern portion of the planning area.

Blown Fortune Unit 17-2 75 acres (DR3 Appendix A)

9 acres RR

1 acre DDR-TPCC

7 acres LSR

24 acres UTA

34 acres LITA

0.22 miles new Temp Road

Capable/ Dispersal/Foraging (EA:167)



**Photo 6.** Blown Fortune unit 17-2 is primarily second growth from 1960s era clear-cutting (center area of photo), however, some large fire resistant trees up to 35" DBH would be cut (cut tree at right). The REA is defective because it does not discuss the trade-off of desirable forest structure/fire resistance from logging large trees for increased timber volume. The REA fails to adequately inform the decision maker that this type of trade-off would be lessened with our Ecological Forestry Alternative. The DR 3 fails to explain how alternative 2 logging of large fire resistant trees that reduces stand structure best meets the purpose and need of the project.

Unit 17-15 =has UTA, LSR, LITA, DDR-TPCC and RR land allocations and prescribes Commercial Thin/Selection Harvest in DR3 Appendix A. The EA failed to explain how these prescriptions best meets the objectives for the LUAs within this unit. The EA failed to disclose that more protective and variable prescriptions in our Ecological Forestry alternative would better achieve RMP stand structure objectives for LSR and large wood objectives for RR in this unit and other similar units because large trees >32"DBH would not be identified for harvest (photo 6 ).

The REA maps are = inadequate because they do not illustrate LUAs except for RR. The DR3 Appendix A provides unit scale land use allocation maps for this unit and silvicultural prescriptions that were absent from the REA. Thus, this critical information was available but the EA failed to provide these data during the comment period.





**Photo 7.** Blown Fortune unit 17-2 DDR-TPCC. The DR3:6 erroneously states that treatment applies a “light thinning prescription”. Six of seven trees in the photo will be removed from on or adjacent rock outcrop. This is not a “light thinning prescription” that would comply with RMP direction. RMP is also being violated for DDR-TPCC because no hardwoods were marked for retention to maintain species diversity ( e.g. canyon live oak, chinkapin, madrone).



**Photo 8.** Blown Fortune unit 17-2. A new 0.022 mile temp road will be constructed on high elevation ridge with thinning on each side of road. The REA fails to assess increased risk for windthrow (aka blowdown) for this windswept ridge. The REA is defective because it failed to make unit by unit assessment for windthrow risk and analyze possible corrective actions. Windthrow is relevant because a 2015 monitoring report by BLM found several thinning units that did not meet BiOp canopy standards due to blowdown. Deer North unit 7-11 with thinning prescriptions similar to DR3 had 15 trees blow down within 3 years of logging. Techniques are available to assess windthrow risk which will be highest during the first 5 or ten years post harvest but BLM did not use any of them. Assertions by BLM that they cannot do windthrow risk assessments because windthrow locations are unpredictable are specious. Fire is equally unpredictable as wind damage but BLM makes fire risk or fire hazard assessments in the REA.





**Photo 9.** Oh Windy unit 18-1. The trees in the lower left portion of photo are growing on a slump bench. The DR1 identified 5 acres of TPCC lands :3.7 acres RSMR and 1.3 acres RSW. Contrary to what is stated in REA, this unit and others on very steep slopes do have the potential for increased landsliding and soil damage due to logging and road construction.

The REA is in error because it fails to disclose the number of acres of irreversible soil losses from roads and landings as a significant impact (Photo 8). The EA is defective because it has no analysis or field report recommendations by qualified professional (e.g. soils scientist) for proposed logging units, roads, and landings. The REA simply assumed new road construction and logging units on very steep slopes (e.g. unit 18-1 photo 9) would not cause unacceptable soil erosion (e.g. landsliding) risks due to BMPs. With DR3, the Grants Pass Resource Area is implementing logging units, roads and landings with no written field review of each unit and road by a qualified specialist. For example, the Elk Camel Forest Management Project in the Ashland Resource area was reviewed by a qualified soil scientist who conducted LIDAR for proposed logging/road building and conducted follow up field investigations on which to make recommendations to drop or modify fragile or landslide prone areas from logging (Meridith 2017).

Oh Windy Unit 23-4G

REA: 174 and TS Map Exhibit E-4 and Exhibit S-5

NSO Foraging

10 acres UTA in 3 parcels

Helicopter

28mbf/acre with group selection



**Photo 10.** Oh Windy Unit 23-4G. Increment boring indicates this old growth cut tree is >200 year





**Photo 11.** Oh Windy Unit 23-4G. Increment boring of adjacent tree indicates this old growth cut tree is >200 years.

The REA is defective because it did not disclose the estimated number of old growth trees >32" dbh and >170 years or >200 years that would be cut. Failure to disclose old growth tree logging in alternative 2 violates NEPA since the cutting of these trees is an irreversible and irretrievable commitment of resources. We assert that logging old growth forests and or individual old growth trees is a significant impact that must be disclosed in an EIS since the RMP FEIS did not assess old growth forest logging or old growth tree logging. The RMP allows old growth trees 32-40" DBH of any age to be logged.



**Photo 12.** Oh Windy unit 23-4G. Rock mulch on 65% slope. The REA is defective because it fails to disclose that soils on steep slopes >50% are dominated by a rock mulch that would be extremely susceptible to dry ravel subsequent to logging and burning. The REA is defective because it has no analysis or field report recommendations by qualified professional (e.g. soils scientist) for proposed logging units, roads and landings. The REA simply assumed new road construction and logging units on very steep slopes would not cause unacceptable soil erosion (e.g. landsliding, dry ravel, gullying) risks due to BMPs. With DR3, the Grants Pass Resource Area is implementing logging units, roads and landings with no written field review of each unit and road by a qualified specialist. For example, the Elk Camel Forest Management Project in the Ashland Resource area was reviewed by a qualified soil scientist who conducted LIDAR for proposed logging/road building and conducted follow up field investigations on which to make recommendations to drop or modify fragile or landslide prone areas from logging (Meridith 2017). We assert that the BLM cannot assure that standard one- size –fits- all erosion prevention measures in the REA and Prospectus will be effective, even if implemented by sale administrator.



Unit 23-09 165 acres REA:174

32 acres UTA

9 acres LSR

37 acres RSW (DDR TPCC too rocky to plant)

69 acres RTW ( REA: 158 "Reforestation Temperature Withdrawn. High solar radiation in combination with low available soil moisture.")

9 acres RMW (REA: 158 "RMW – Reforestation Moisture Withdrawn. Low available soil moisture in combination with competing vegetation and low precipitation during the growing season.")

9 acres RR

NSO habitat:Dispersal/Foraging/NRF



Photo 13A

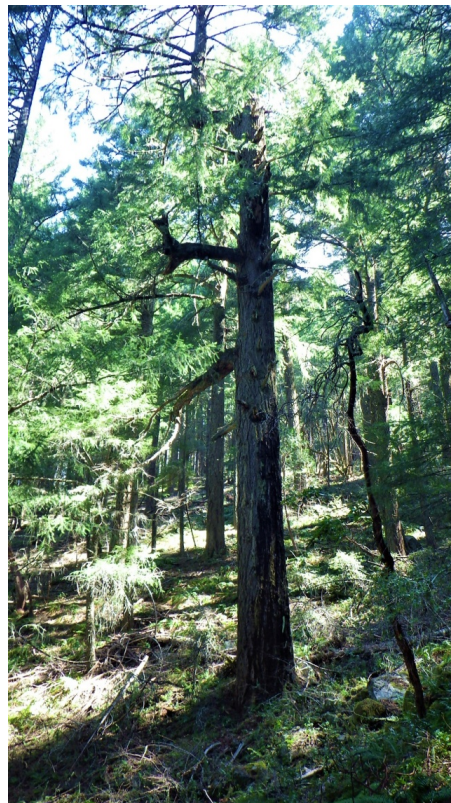


Photo 13B



Photo 13C



Photo 13D

**Photos 13A,B,C,D.** The BA and REA failed to identify (map) any RA32 acres for section 7 consultation and resulting BiOp. The photos above illustrate RA 32 high quality NRF characteristics: snags (upper left), nest platforms in deformed trees (upper right), large down wood (middle photo) and old growth trees (bottom 2 photos).

Unit 23-09 has outstanding habitat for late successional species. It's a mix of mostly dense mature forest with legacy trees and groves of old growth in draws/swales where fires did not burn hot. We found no large stumps and it appears to be a rare stand that was not high-graded. A sooty grouse (formerly blue grouse) was heard calling during May visit near the north end of access road. Public field trips to unit 23-09 are practical due to close proximity to Grants Pass but BLM failed to engage the public with a requested field trip to fulfill its NEPA duties.



## **SUMMARY OF FIELD REVIEW FINDINGS**

Our field review supports our assertions that the REA failed to map actual site specific treatment areas (i.e. timber sale units), describe baseline forest conditions at these sites (stand age, accurate NSO habitat class, previous management) where specific silvicultural treatments would be implemented (e.g. group selection, skips, commercial thin, etc.). For example, the September 2019 EA:174 lists unit 23-04 and identifies the land allocation areas (UTA/ RR/DDR). Riparian Reserves are mapped (REA: 198). Percent slope class and yarding systems identified, however, REA:174 says logging system is GB/C but REA 188 says helicopter. NSO habitat is foraging. The REA:15 describes various management activities for UTA (e.g. commercial thinning, selection harvest, group selection harvest etc.) and for RR (REA:17). However, the REA fails to map the precise areas within the 70 acre “unit 23-04” where these treatments would occur for specific LUAs. In other words, the REA primarily provides land allocation and management direction information from the SWO RMP. The REA lacks mapping of site-specific logging prescriptions and lacks analysis of site-specific logging impacts within REA unit 23-04 that one would expect in an EA. Furthermore we could not comment on the site specific impacts of proposed logging prescriptions (e.g. commercial thin, group selection, skips etc.) since they were not available for review during the EA comment period.

Field review of Oh Windy timber sale layout reveals that the western parcel of Oh Windy unit 23-4 is a plantation with commercial sized trees (15-26” dbh) where commercial thinning is identified in Oh Windy Timber Sale draft map. The Oh Windy timber sale site specific silvicultural prescription and spatially explicit mapping was not available in the June 2019 EA. Contrary to misleading information in the EA:168, a portion of EA unit 23-04 would be heli logged as indicated on Oh Windy Timber sale exhibits. Contrary to misleading information in the EA:168, the commercial thin Oh Windy (plantation) unit 23-4 is NSO dispersal habitat not “foraging” NSO habitat.

Field review of northwestern parcel of Oh Windy timber sale unit 23-4G reveals a mature stand with scattered old growth trees where “modified group selection” will be implemented. The intent of group selection is to remove the canopy to promote regeneration of a new stand. See September 2019 EA: 48-49 that describes how group selection removes NSO habitat but is consistent with RMP objectives. However, the REA fails to disclose that old growth trees 32-33” DBH would be cut (Photos 10, 11). The REA is defective because it fails to disclose that relatively benign commercial thinning would occur in the estimated 60 year old plantation (Oh Windy unit 23-4) while intensive group selection logging would occur in the older mature stand (Oh Windy unit 23-4G).

There are 3 parts to the REA site specific treatment deficiency: 1) REA alternative 2 fails to map the spatially explicit locations of specific silvicultural treatments ; 2 the no action baseline condition of these specific treatment areas are not described; 3) the impacts of these treatments due to the variable forest stand characteristics of these specific locations is not disclosed (i.e. context).

Field review and Blown Fortune Timber Sale map indicates the RMP 10% requirement for skips is not being implemented for all units (RMP:68). The Blown Fortune Prospectus timber sale map identifies skips with the symbol "S" but we failed to find any skips within units. The BLM has not provided data to verify that the "S" delineations comprise at least 10% of the unit. The REA alternative 2 does not mention the RMP requirement for skips. The implementation of skips systematically in each Blown Fortune unit >10 acres is questionable.

Field review found that NSO habitat classifications in the REA are wrong or inaccurate. Unit 23-4 is a young plantation. It's dispersal NSO habitat not foraging. Unit 23-4G appears to be NRF not foraging habitat

Field review supports our assertion that alternative 2 is severely fragments existing continuous closed canopy NSO habitat. The Modified Group Selection parcel we surveyed (unit 23-4G) is especially damaging because it removes the highest quality NSO habitat within the 80-acre BLM parcel. The REA failed to assess the reduced quality of remaining (unlogged) NSO habitat in this 80 acre parcel subsequent to fragmentation logging with commercial thins to less than 40% and near complete removal of canopy with modified group selection.

To summarize, the REA is programmatic in nature and lacks base line forest conditions and logging prescriptions for specific LUAs within timber sale units. Land allocation delineations, silvicultural prescriptions and trees identified for cutting are being disclosed piecemeal in Decision Records when this information is clearly needed in one environmental document during the comment period. These site-specific omissions hindered our ability to comment substantively on the EA during the comment period about the relative efficacy of alternative prescriptions for various LUAs within highly variable stand conditions (cut over stands vs. uncut stands, older stands vs. younger stands). An EIS is needed to provide mapped land allocations within all proposed units as well as alternative silvicultural prescriptions for these land allocations during the comment period.

Signed:



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A handwritten signature in black ink, appearing to read 'Gabe Scott', with a stylized, cursive script.

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