



August 17, 2017

Judd Lehman, Chiloquin District Ranger
c/o Kyle Gomez
Chiloquin Ranger District
38500 Hwy 97 N
Chiloquin, Oregon 97624

Submitted online at: <https://cara.ecosystem-management.org/Public//CommentInput?Project=45750>

Re: Comment on Lobert Restoration Project Draft Environmental Impact Statement

To District Ranger Lehman:

WildEarth Guardians respectfully submits these comments to the U.S. Forest Service concerning the agency's analysis under the National Environmental Policy Act (NEPA) of the Lobert Restoration Project on the Chiloquin Ranger District of the Fremont-Winema National Forest. Under the Lobert Restoration Project the Forest Service proposes logging, prescribed burning, road management, and recreation improvements across 97,500 acres of National Forest lands in the Sprague River, Hog Creek-Williamson River, Swan Lake Valley, Long Lake Valley-Upper Klamath Lake, Yonna Valley-Lost River, and Wood River watersheds. Under the proposed Alternative 2, the Forest Service would decommission 165 miles of system roads out of a total 630 system miles in the project area, representing a 26% reduction in the road system on the landscape. We strongly support the proposed road decommissioning.

WildEarth Guardians is a nonprofit conservation organization with offices in Oregon, Washington, and six other states. WildEarth Guardians has more than 184,000 members and supporters across the United States and the world. Guardians' mission is to protect and restore wildlife, wild places, wild rivers, and the health of the American West. WildEarth Guardians has organizational interests in the proper and lawful management of the forest road system and its associated impacts on the Fremont-Winema National Forest's wildlife and wild places. We submitted scoping comments on the Lobert Restoration Project on November 13, 2015, and incorporate those, including Appendices A-D, here by reference. Please add our names and organizations to the contact list to receive any future public notices regarding this project.

1. We support the Forest Service's efforts to create a resilient future road network.

We support ecosystem restoration and applaud the Forest Service's efforts here to address many of the factors that continue to degrade the project area. Specifically, we strongly support the agency's proposal to decommission 165 miles of system roads to protect resource values.¹ Identifying a

¹ See Lobert Restoration Project Draft Environmental Impact Statement (hereafter, DEIS), page 432.

resilient future road network is one of the most important endeavors the Forest Service can undertake to restore aquatic systems and wildlife habitat, facilitate adaptation to climate change, ensure reliable recreational access, and operate within budgetary constraints. And it is a win-win-win approach: (1) it's a win for the Forest Service's budget, closing the gap between large maintenance needs and drastically declining funding through congressional appropriations; (2) it's a win for wildlife and natural resources because it reduces negative impacts from the forest road system; and (3) it's a win for the public because removing unneeded roads from the landscape allows the agency to focus its limited resources on the roads we all use, *improving* public access across the forest and helping ensure roads withstand strong storms.

We applaud the agency's explanation of why new road closures and decommissioning are necessary within the project area. *See* DEIS at 35. A thoughtful, strategic approach to improving public access to the forest, reducing negative impacts from forest roads to water quality and aquatic habitats, and improving watersheds and forest resiliency.

2. Consider the Fremont-Winema's forest-wide travel analysis report.

The Forest Service faces many challenges with its oversized, under-maintained, and unaffordable road system. The impacts from roads to water, fish, wildlife, and ecosystems are tremendous and well documented in scientific literature. The Fremont-Winema National Forest is no exception, with over 12,000 miles of system roads, the required maintenance of which exceeds annual maintenance costs. *See* Fremont-Winema National Forest, Forest-Wide Travel Analysis Report (September 2015) (Attachment A).

To address its unsustainable and deteriorating road system, the Forest Service promulgated the Roads Rule (referred to as "subpart A") in 2001. 66 Fed. Reg. 3206 (Jan. 12, 2001); 36 C.F.R. part 212, subpart A. Subpart A is meant to close the gap between the agency's limited resources and the maintenance required to keep up its oversized and deteriorating road system. It sets out two important obligations for the agency:

- (1) Identify the minimum road system needed for safe and efficient travel and for the protection, management, and use of National Forest system lands; and
- (2) Identify unneeded roads to prioritize for decommissioning or to be considered for other uses.

36 C.F.R. § 212.5(b).

Direction from the Forest Service's Washington Office required all forests to submit travel analysis reports by the end of FY 2015 and then begin implementing the recommendations and working towards full compliance with subpart A.² We applaud the Fremont-Winema National Forest for finalizing its travel analysis report in September of 2015. *See* Attachment A. Even more important, however, is the next step under subpart A: Consider the recommendations and science-based

² *See* Memorandum from Leslie Weldon to Regional Foresters *et al.* on Travel Management, Implementation of 36 CFR, Part 212, Subpart A (Mar. 29, 2012) (Attachment B) ("The next step in identification of the [minimum road system] is to use the travel analysis report to develop proposed actions *to identify* the [minimum road system].") (emphasis added). *See also* 66 Fed. Reg. at 3215 (explaining the 2001 "final rule requires that the agency use a roads analysis prior to making decisions about road construction, reconstruction, and decommissioning.").

analysis in the travel analysis report as it applies to the project area to identify the minimum road system³ and identify unneeded roads for decommissioning. Given that with this project you are considering changes to a large number of miles of roads, and given its large geographic scale, it is precisely the type of project to complete the next steps under subpart A.⁴

Our scoping comments urged the Forest Service to consider the Fremont-Winema's travel analysis report. The Forest Service mentions the 2015 forest-wide travel analysis report in terms of general funding for Region 6. DEIS at 35. And it identifies the forest-wide report as a source of information. DEIS at 430. But the agency also explains that it completed a project-level analysis. DEIS at 21. And it states that "[t]he roads in Lobert were not included because the Lobert Travel Analysis occurred in early 2015." DEIS at 432, n.32.

Does this mean that the Lobert project-level travel analysis report *replaces* the forest-wide travel analysis report for this project area?

The Forest Service states the IDT evaluated each road based on a set of questions related to the benefits and environmental effects of each road, and made a recommendation for its future management that was then incorporated into the proposed action. DEIS at 21.

What were those recommendations, and how do they compare to the recommendations from the Fremont-Winema's forest-wide travel analysis report?

3. Identify the minimum road system.

To identify the minimum road system, the Forest Service must consider whether each road segment the agency decides to maintain on the system is needed to meet certain factors outlined in the agency's own regulation.⁵ Consider whether each road segment is needed to:

- (1) Meet resource and other management objectives adopted in the relevant land and resource management plan;
- (2) Meet applicable statutory and regulatory requirements;
- (3) Reflect long-term funding expectations; and
- (4) Ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.

³ 36 C.F.R. § 212.5(b)(1) ("In determining the minimum road system, the responsible official must incorporate a science-based road analysis at the appropriate scale").

⁴ Attachment B at 2 ("The next step in identification of the [minimum road system] is to use the travel analysis report to develop proposed actions to identify the [minimum road system]. These proposed actions generally should be developed at the scale of a 6th code subwatershed or larger."). *See also* Pacific Northwest Region Memorandum, *Monitoring Travel Management NEPA Decisions for the Minimum Road System* (Sept. 6, 2016) (Attachment C) (explaining that "[p]roposals to develop the MRS may be incorporated into landscape level restoration projects or stand alone as a single purpose proposal," and "[t]ravel management decisions related to the MRS that require NEPA include removing a route from the Forest transportation system, decommissioning a route or an unauthorized route, closing roads to vehicular travel, putting roads in storage (converting an open road to a Maintenance Level 1 status) or changing the allowed classes of motor vehicles or time of year for motor vehicle use.").

⁵ Attachment B ("analyze the proposed action and alternatives in terms of whether, per 36 CFR 212.5(b)(1), the resulting [road] system is needed"); ("The resulting decision [in a site-specific project] identifies the [minimum road system] and unneeded roads for each subwatershed or larger scale").

36 C.F.R. § 212.5(b)(1). In assessing specific road segments, the Forest Service should also consider the risks and benefits of each road as analyzed in the travel analysis report, and whether the proposed road management measures are consistent with the recommendations from the travel analysis report. To the extent that the final decision in this project differs from what is recommended in the travel analysis report, the Forest Service must explain that inconsistency. *See, e.g., Smiley v. Citibank*, 517 U.S. 735 (1996) (“Sudden and unexplained change . . . or change that does not take account of legitimate reliance on prior interpretation . . . may be ‘arbitrary, capricious [or] an abuse of discretion’”) (internal citations omitted).

Here, the Forest Service states that roads are identified for decommissioning in part to move towards the minimum road system. DEIS at 21. As discussed in our scoping comments, the Forest Service should take this opportunity to identify the minimum road system for these watersheds, based on the factors listed at 36 C.F.R. § 212.5(b)(1). This would be consistent with the Fremont-Winema Forest Plan’s goals, objectives and anticipated future conditions that direct the forest to “[p]rovide the minimum number of roads needed for management activities and for public access.” *See* Lobert Restoration Project Transportation Report, page 3. It would also be consistent with directive memoranda from the Forest Service’s Washington Office⁶ and Region 6 guidance directing forests to identify the minimum road system for precisely this type of project.⁷ Short of that, the Forest Service should provide a date-certain timeline for achieving compliance with subpart A. Deferring the minimum road system decision will further unduly delay compliance with subpart A, which has been a Forest Service duty for more than 15 years.

4. We strongly support the Forest Service’s proposal to decommission unneeded roads.

Subpart A also requires the Forest Service to identify unneeded roads for decommissioning or other uses. 36 C.F.R. § 212.5(b)(2). Here, the Forest Service proposes to decommission approximately 165 miles of road out of 630 system miles in the project area for a 26% reduction in the road system. We are thrilled to see the Forest Service take such a proactive approach to addressing roads in this project area.

Based on current natural resource conditions, assessed risks from the existing road network, road densities across the landscape, the agency’s limited resources, and long-term funding expectations, the road decommissioning proposed under Alternatives 2 and 4 are warranted. As the Forest Service notes, the Fremont-Winema National Forest receives only about 8% of annual funding needed to fully maintain its road system each year. DEIS at 35.

Road decommissioning can temporarily increase sediment to streams but has dramatic reductions in the long run. The Forest Service’s Rocky Mountain Research Station has spent over a decade monitoring the effectiveness of road treatments. A 2012 report evaluating pre and post treatment of roads showed an 80% reduction in sediment delivery to streams when roads were decommissioned.⁸ In addition, the 20-year monitoring report of the Northwest Forest Plan confirmed that watersheds

⁶ *See, e.g.*, Attachment B.

⁷ Attachment C (explaining that “Travel management decisions related to the [minimum road system] that require NEPA include . . . closing roads to vehicular travel, putting roads in storage”).

⁸ Nelson N., Black T., Luce C. and R. Cissel, U.S. Forest Service Rocky Mountain Research Station, LRT Monitoring Project Update 2012.

that showed the most improvement in condition were those that completed road decommissioning.⁹ Decommissioning road miles is consistent with the Forest Service’s long-standing policy to “manag[e] access within the capability of the land.”¹⁰

As forest road users and conservationists, we understand that a strategic reduction in road miles does not necessarily equate to a loss of access. Some roads are already functionally closed, either due to washouts, lack of use, or natural vegetation growth. Other roads receive limited use and are costly to maintain. Resources can be better spent on roads providing significant access than to spread resources thinly to all roads. This is why we strongly support the Forest Service’s proposal under Alternatives 2 and 4 to decommission 165 miles of unneeded roads.

5. Clearly articulate the statement of purpose and need to include identification of the minimum road system, and provide support for the claimed need.

Applicable statutory and regulatory requirements should shape a project’s statement of purpose and need. When the agency takes an action “pursuant to a specific statute, the statutory objectives of the project serve as a guide by which to determine the reasonableness of objectives outlined in an EIS.” *Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 866 (9th Cir. 2004).

Under subpart A of its travel rule, the Forest Service has a substantive duty to address its over-sized road system. *See* 36 C.F.R. § 212.5. The agency’s underlying substantive duty to identify the minimum road system must inform the scope of, and be included in, the agency’s NEPA analysis. *See* Attachment C (“Ensure that travel management proposals analyzed under the National Environmental Policy Act (NEPA) are addressed in the purpose and need statement.”).

Here, the Forest Service lists several purposes and needs, including a need to “[p]rovide . . . a safe road system that also meets resource management objectives.” DEIS at vi. Guidance from Region 6 makes clear that “[t]ravel management decisions related to the [minimum road system] that require NEPA include removing a route from the Forest transportation system, decommissioning a route or an unauthorized route, closing roads to vehicular travel, putting roads in storage . . . or changing the allowed classes of motor vehicles or time of year for motor vehicle use.” *See* Attachment C. Because this project proposes [list kinds of road actions], this is precisely the type of project where the Forest Service should incorporate identification of the minimum road system into its statement of purpose and need. After more than 15 years since finalizing the subpart A rules, the Forest Service can no longer delay in addressing this duty.

The Forest Service should provide support for its claimed needs. We advocated for this in our scoping comments. The Forest Service states that its response to scoping comments is found in Appendix D, but that document is not provided on the project website. We asked the following questions:

⁹ Northwest Forest Plan—The First 20 Years (1994-2013): Watershed Condition Status and Trend (Draft, May 2015), pages 3, 5, 66, 68, available at https://re0.gov/monitoring/reports/20yr-report/GTR_AREMP_DRAFT_MAY_2015.pdf (last accessed April 14, 2017) (noting the “decommissioning of roads in riparian areas has multiple benefits according to our model by improving both the riparian scores and typically the sedimentation scores.”).

¹⁰ 66 Fed. Reg. at 3208, 3215 (highlighting in 2001 that the Forest Service was “shifting from developing new roads” and increasing “emphasis on maintaining existing roads and improving access in other areas.”)

Might competition among large and old trees promote more resistant and resilient forests?
 What is the historic fire regime that the Forest Service is comparing to?
 Does that historic fire regime reflect patterns that will lead to a resilient forest?
 What indications exist to support the Forest Service's conclusion that the wildfire effects are uncharacteristic?
 What species of concern exist in this region of the forest, and are the protections for these species the same as that needed to protect mule deer?

6. Consider a reasonable range of alternatives.

The alternatives analysis is the “heart” of NEPA, and therefore “an agency must *on its own initiative* study all alternatives that appear reasonable and appropriate for study at the time, and must also look into other significant alternatives that are called to its attention by other agencies, or by the public during the comment period afforded for that purpose.” *Dubois v. Dep’t of Agriculture*, 102 F.3d 1273, 1291 (1st Cir. 1996), *quoting Seacoast Anti-Pollution League, v. Nuclear Reg. Comm’n*, 598 F.2d 1221, 1231 (1st Cir. 1979) (emphasis from *Dubois* court) (internal citations omitted).

Here the Forest Service considers one action and three action alternatives. Under Alternative 1, the no action alternative, there would be 630 miles of system roads in the project area, with motor vehicle access on 339 miles and dispersed camping on 195 miles. DEIS at 431. The agency expects it would maintain only 27 miles of roads each year. *Id.*

The agency provides total number of system roads on the entire forest for Alternative 1, but not the specifics for the project area. This prevents a fair comparison among alternatives and precludes meaningful public comment. We completed the math to create a fair comparison in the following table:

	Alternative 1		Alternative 2	Alternative 3	Alternative 4
	(forest-wide)	(Lobert area)	(Lobert area)	(Lobert area)	(Lobert area)
ML1	5795	324	178	289	182
ML2	5256	275	255	270	251
ML3	736	31	32	32	32
ML4	254	0	0	0	0
ML5	0	0	0	0	0
Total	12,041	630	465	591	465
Decomm’n		0	165 (26%)	39 (6%)	165 (26%)
Road & motorized trail miles on MVUM		339	315 (7% reduction)	332 (2% reduction)	311 (8% reduction)
Temp Roads		0	81	86	67

The analysis also fails to disclose the recommendations from its project-specific travel analysis for each road segment. To ensure meaningful public comment, the Forest Service should provide a roads table that lists the project-specific travel analysis recommendation, forest-wide travel analysis

recommendation, objective maintenance level and operational maintenance level for each road segment in the project area.

Under Alternative 2, the proposed action, the Forest Service would authorize vegetation restoration treatments, prescribed burning, Northern spotted owl habitat treatments, road management activities, watershed and aquatic restoration, and recreation improvements. Up to 278 miles of ML1 roads would be opened for access, and any ML2s and ML3s would be maintained. DEIS at 432. This would total 584 miles of road to be maintained. Following project actions, the ML1 roads would be closed until the next time they are needed.

Alternative 3 would authorize more logging in Northern spotted owl habitat treatments. Up to 308 miles of ML1 roads would be opened for access, totaling 614 miles once added to ML2 and ML3 roads. DEIS at 434. And Alternative 4 would authorize fewer project activities, including no logging in Saddle Mountain Cultural Resource Area. Up to 203 miles of ML1 roads would be opened for access, totaling 503 miles once added to ML2 and ML3 roads. DEIS at 436.

We agree with the Forest Service that direction to identify the minimum road system needed for safe and efficient travel and for administration, utilization, and protection of National Forest System lands is better met by Alternatives 2 or 4. DEIS at 437. But we urge the Forest Service to carefully evaluate the proposed Lobert project and each of the alternatives through the lens of what constitutes a minimum road system.¹¹ Assessing each alternative based on the factors that make up a minimum road system will help identify needed roads that should be a part of the minimum road system, and likely unneeded roads, which should be prioritized for decommissioning.

7. Provide a robust environmental analysis of effects under NEPA.

The Forest Service should prepare a robust environmental analysis of the Lobert Restoration Project, ensuring that it takes NEPA's required "hard look." The agency may not ignore topics if the information is uncertain or unknown. Where information is lacking or uncertain, the Forest Service must make clear that the information is lacking, the relevance of the information to the evaluation of foreseeable significant adverse effects, summarize the existing science, and provide its own evaluation based on theoretical approaches. 40 C.F.R. § 1502.22.

The Forest Service must consider a broad array of impacts related to forest roads in its NEPA analysis. NEPA requires Forest Service to "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 C.F.R. § 1500.2(d). A critical part of this obligation is presenting data and analysis in a manner that will enable the public to thoroughly review and understand the analysis of environmental consequences. NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most importantly, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail. 40 C.F.R. § 1500.1(b). The Data Quality Act expands on this obligation, requiring that influential scientific information use

¹¹ 36 C.F.R. § 212.5(b)(1) (defining the minimum road system in terms of what is needed to (1) meet resource and other management objectives adopted in the forest plan, (2) meet applicable laws, (3) reflect long-term funding expectations, and (4) ensure the identified road system minimizes adverse environmental impacts).

“best available science and supporting studies conducted in accordance with sound and objective scientific practices.” Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub.L. No. 106-554, § 515.

Impacts from Forest Roads

The best available science shows that roads cause significant adverse impacts to National Forest resources. *See, e.g.*, 66 Fed. Reg. at 3208 (“Scientific evidence compiled to date [2001] suggests that roads are a significant source of erosion and sedimentation and are, in part, responsible for a decline in the quality of fish and wildlife habitat.”). A 2014 literature review from The Wilderness Society surveys the extensive and best available scientific literature—including the Forest Service’s General Technical Report synthesizing the scientific information on forest roads (Gucinski 2001)—on a wide range of road-related impacts to ecosystem processes and integrity on National Forest lands.¹² Erosion, compaction, and other alterations in forest geomorphology and hydrology associated with roads seriously impair water quality and aquatic species viability. Roads disturb and fragment wildlife habitat, altering species distribution, interfering with critical life functions such as feeding, breeding, and nesting, and resulting in loss of biodiversity. Roads facilitate increased human intrusion into sensitive areas, resulting in poaching of rare plants and animals, human-ignited wildfires, introduction of exotic species, and damage to archaeological resources.

Climate Change and Forest Roads

Climate change is a major challenge for natural resource managers because of the magnitude of potential effects and the related uncertainty of those effects. A robust analysis under NEPA of the forest road system and its environmental and social impacts is especially critical in the context of climate change.

Climate change intensifies the impacts associated with roads. For example, as the warming climate alters species distribution and forces wildlife migration, landscape connectivity becomes even more critical to species survival and ecosystem resilience.¹³ Climate change is also expected to lead to more extreme weather events, resulting in increased flood severity, more frequent landslides, altered hydrographs, and changes in erosion and sedimentation rates and delivery processes.¹⁴ Many National Forest roads are poorly located and designed to be temporarily on the landscape, making them particularly vulnerable to these climate alterations.¹⁵ Even those designed for storms and water flows typical of past decades may fail under future weather scenarios, further exacerbating adverse ecological impacts, public safety concerns, and maintenance needs.¹⁶ At bottom, climate change

¹² *See* The Wilderness Society, *Transportation Infrastructure and Access on National Forests and Grasslands: A Literature Review* (May 2014).

¹³ The Wilderness Society, *Transportation Infrastructure and Access on National Forests and Grasslands: A Literature Review* (May 2014), pages 9-14.

¹⁴ *See, e.g.*, Halofsky, J.E. et al. eds., USDA, Forest Service, Pacific Northwest Research Station, *Adapting to Climate Change at Olympic National Forest and Olympic National Park*, PNW-GTR-844 (2011), pages 21-27.

¹⁵ *See, e.g., id.* at 36-38.

¹⁶ *See, e.g.*, Strauch, R.L. et al., *Adapting transportation to climate change on federal lands in Washington State*, *Climate Change* 130(2), 185-199 (2015) (noting the biggest impacts to roads and trails are expected from temperature-induced changes in hydrologic regimes that enhance autumn flooding and reduce spring snowpack).

predictions affect all aspects of road management, including planning and prioritization, operations and maintenance, and design.¹⁷

The Forest Service has a substantive duty under its own Forest Service Manual to establish resilient ecosystems in the face of climate change.¹⁸ More broadly, the Forest Service has a mission to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The agency's own climate change science identified above demonstrates how climate change places ecosystems on our national forests at risk. Thus to fulfill its mission, the Forest Service must address the risks of climate change when managing road activities on our national forests.¹⁹

Here, the Forest Service must analyze in detail the impact of climate change on forest roads and forest resources. It should start with a vulnerability assessment, to determine the project area's exposure and sensitive to climate change, as well as its adaptive capacity.²⁰ For example, the agency should consider the risk of increased disturbance due to climate change when analyzing this proposed project. It should include existing and reasonably foreseeable climate change impacts as part of the affected environment, assess them as part of the agency's hard look at impacts, and integrate them into each of the alternatives, including the no action alternative. The agency should also consider the cumulative impacts likely to result from the proposed project, proposed road activities, and climate change.²¹ In planning for climate change impacts and the proposed road activities, the Forest Service should consider: (1) protecting large, intact, natural landscapes and ecological processes; (2) identifying and protecting climate refugia that will provide for climate adaptation; and (3) maintaining and establishing ecological connectivity.²²

Temporary Roads

The Forest Service explains that between 67 and 81 miles of temporary roads will be constructed depending on the alternative, and then closed and rehabilitated after conclusion of the project. DEIS at 429. We are particularly concerned about the proposal to construct temporary roads. Temporary roads must be closed within 10 years of completion of a project, per 16 U.S.C. 1608(a), unless the Forest Service re-evaluates the road and determines it to be necessary for the minimum road system.

¹⁷ Halofsky, J.E. et al. eds., USDA, Forest Service, Pacific Northwest Research Station, *Adapting to Climate Change at Olympic National Forest and Olympic National Park*, PNW-GTR-844 (2011) at 35.

¹⁸ See, e.g., FSM 2020.2(2) (directing forests to “[r]estore and maintain resilient ecosystems that will have greater capacity to withstand stressors and recover from disturbances, especially those under changing and uncertain environmental conditions and extreme weather events”); FSM 2020.3(4) (“[E]cological restoration should be integrated into resource management programs and projects . . . Primary elements of an integrated approach are identification and elimination or reduction of stressors that degrade or impair ecological integrity.”).

¹⁹ USDA, Forest Service, *National Roadmap for Responding to Climate Change* at 26 (2011), available at <http://www.fs.fed.us/climatechange/pdf/Roadmapfinal.pdf>, page 4 (outlining the agency's plans to respond to climate change through assessing risks and vulnerabilities, engaging to seek solutions, and managing for resilience).

²⁰ Halofsky, J.E. et al. eds., USDA, Forest Service, Pacific Northwest Research Station, *Adapting to Climate Change at Olympic National Forest and Olympic National Park*, PNW-GTR-844 (2011) at 36 (“potential climate change effects underscore the need to increase activity and be proactive in priority areas to avoid impacts associated with infrastructure failure.”).

²¹ *Id.* (“Managers will likely need to evaluate the density, location, design, and maintenance intensity of roads and related structures in the context of climate change to avoid escalating road maintenance costs associated with [climate change] impacts”).

²² See Schmitz, O.J. and A.M. Trainor, *Adaptation Approaches for Conserving Ecosystem Services and Biodiversity in Dynamic Landscapes Caused by Climate Change*, USDA Forest Service RMRS-P-71 (2014), pages 301-303.

This project proposes up to 87 miles of temporary roads. The DEIS should fully discuss the effects of the construction of temporary roads, including disclosing the specific location of each road.

During the project, and for an addition of at least 10 years after completion of the project, temporary roads will continue to have very real impacts on the forest. For example, temporary roads will continue to allow for harassment of wildlife, segmenting of habitat, littering, fires, invasive plant distribution, and negative impacts to aquatic and riparian habitat, as well as the fish that depend on that habitat. Some impacts are unclear, given the lack of information in the scoping notice regarding locations of proposed road activities. As noted above, the Forest Service must conduct site-specific analysis as part of this DEIS. This includes explicitly delineating where temporary roads will be located.

The Forest Service must also consider the effects of its proposal to construct temporary roads when combined with the effects of its system roads and how, in the cumulative, these actions might detract from achieving the purpose and intent of subpart A of the Travel Management Rule. It must consider how construction of temporary roads will detract from the forest's efforts to achieve road density standards. Temporary roads are not included in road density calculations, but are certain to have real, lasting impacts on the resources that road density standards are designed to protect. These considerations are especially important if the Forest Service fails to provide assurances that the proposed temporary roads will in fact be closed within 10 years of completion of the relevant project.

The Forest Service states the temporary roads will be "used for a short duration," but does not give an actual timeframe. DEIS at 20. It must provide a schedule or timeline for the obliteration of these roads. Without some assurances, it is possible the temporary roads could remain on the landscape well beyond the 10-year limit. The agency must consider these likely impacts, direct and cumulative, especially if it does not add the following monitoring assurances.

Currently, the Forest Service does not track temporary roads and has no system to enforce closure of temporary roads once they have outlived the forecasted 10-year time span. The Forest Service must ensure that the temporary roads will in fact be temporary by including monitoring and enforcement during the vegetation projects, and then tracking the temporary roads for 10 years following completion of the projects to ensure the road will be removed from the landscape. The Forest Service must provide a detailed monitoring plan to assess how the selected alternative addresses impact concerns and to ensure effectiveness of the identified mitigation measures, such as the proposal to obliterate roads after project completion. It must provide a schedule of monitoring to show how, by whom, and when monitoring will be conducted. It must also require some type of monetary assurance from the users of the temporary roads to guarantee that the user will close them 10 years after a project. Otherwise, the burden falls on the Forest Service and the public.

Construction of temporary roads without adequate monitoring and enforcement to ensure the roads will in fact be temporary undermines the goals of subpart A to establish an economically and environmentally sustainable road network.

Unroaded & Inventoried Roadless Areas

The Forest Service should design this project to avoid unroaded and inventoried roadless areas, including the Badlands Roadless Area. DEIS at 458.

Cumulative Impacts

Since Appendix D with the Forest Service's response to our scoping comments is not available on the project website, we repeat our questions regarding cumulative impacts here:

- Are there timber harvests ongoing or planned for this region or nearby regions that may result in cumulative impacts that should be discussed in this environmental analysis?
- Is there road construction planned for this region or nearby regions that may result in cumulative impacts that should be discussed in this environmental analysis?

The analysis does note that outside of the project area, the Red Knight project authorized decommissioning of 234 miles and closure of 4 miles and the Bluejay project authorized decommissioning of 196 miles and closure of 4 miles. DEIS at 431.

- Are there treatments to address invasive species for this region or nearby regions that may result in cumulative impacts that should be discussed in this environmental analysis?
- Are there gravel extraction activities for this region or nearby regions that may result in cumulative impacts that should be discussed in this environmental analysis?

8. Ensure compliance with NFMA, the CWA and the ESA.

Under the National Forest Management Act (NFMA), specific projects like this must be consistent with the governing forest plan. 16 U.S.C. § 1604(i). We applaud the Forest Service for identifying potentially applicable forest plan components. The Forest Service should explain how the proposed actions are consistent with those plan components. For example, Standard and Guideline 3-7 states that existing roads not needed for future transportation purposes shall be closed and returned to vegetative production. Standard and Guideline 3-18 directs existing roads not needed for access should be closed until access is required.

The Forest Service should assess its proposed Forest Plan amendments to ensure they fit as site-specific amendments. Site-specific amendments are meant to address unique characteristics of a particular forest area, not conditions that are common throughout an entire forest or region. Here the Forest Service proposes amendments to (1) change protection zones and timing restrictions for nesting bald eagles; (2) remove restriction on treatment area size in Scenic Management Areas; (3) remove visual restrictions of management activity from Scenic Management Areas, and (4) allow a higher level of tree and shrub removal from some riparian management areas.

The Forest Service must also determine which substantive requirements of the 2012 Planning Rule are directly related to the proposed Forest Plan amendments, and apply those requirements accordingly. The agency is supposed to provide early notification to the public of which substantive requirements are likely to be implicated, thereby facilitating public engagement and enhancing transparency. Any determination of which requirements are directly related must be based on the purpose and effects of the proposed amendment, using best available science, scoping, effects analysis, monitoring data, and other rationale to inform the determination. Where species of conservation concern (SCC) have not been identified and an amendment could have substantial adverse impacts to or substantially lessen protections for a specific species, the responsible official

must determine whether that species is a potential SCC and, if so, must apply the requirements of section 219.9(b) of the 2012 rule to that species as if it were an SCC.

Under the Clean Water Act (CWA), states are responsible for developing water quality standards to protect the desired conditions of each waterway within the state's regulatory jurisdiction. 33 U.S.C. § 1313(c). Water bodies that fail to meet water quality standards are deemed "water quality-limited" and placed on the CWA's § 303(d) list. The CWA requires all federal agencies to comply with water quality standards, including a state's anti-degradation policy. 33 U.S.C. § 1323(a). The Forest Service must ensure all activities in this proposal comply with the CWA. In particular, it must ensure its proposal to allow commercial and noncommercial logging, and the associated road reconstruction, maintenance, and ongoing use, will not cause or contribute to a violation of water quality standards.

Finally, the Forest Service must ensure that its actions comply with the Endangered Species Act (ESA). The project area on the Fremont-Winema National Forest provides habitat for species listed under the ESA, including Gray wolf, northern spotted owl, and Oregon spotted frog. Section 7 of the ESA imposes a substantive obligation on federal agencies to "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of" habitat that has been designated as critical for the species. 16 U.S.C. § 1536(a)(2).

Importantly, we encourage the Forest Service to be transparent about the consultation process and affirmatively post all consultation documents, including any Forest Service Biological Evaluations or Assessments, any letters seeking concurrence, and any responses or Biological Opinions from the Fish and Wildlife Service (FWS). Without these records, we are unable to assess the agency's analysis of impacts to wildlife in light of FWS's expert opinion. Providing this information will allow the public to view these critical documents, and other documents in the project record, without the need to submit a formal Freedom of Information Act request. Without this information being publicly available during the notice and comment period, we are unable to meaningfully comment on the agencies' determinations or analysis.

Conclusion

The Forest Service's current road system is over-sized and unaffordable. Identifying a sustainable future road system is one of the most important endeavors the Forest Service can undertake to restore aquatic systems and wildlife habitat, facilitate adaptation to climate change, enhance recreation, and lower operating expenses.

Sincerely,

A handwritten signature in black ink that reads "Marla Fox". The signature is fluid and cursive, with the first name "Marla" and the last name "Fox" clearly distinguishable.

Marla Fox, Rewilding Attorney
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Attachment List

Note: The documents listed below are part of the comments and should become part of the project record.

Attachment A: Fremont-Winema National Forest, Forest-Wide Travel Analysis Report (September 2015).

Attachment B: Memorandum from Leslie Weldon to Regional Foresters *et al.* on Travel Management, Implementation of 36 CFR, Part 212, Subpart A (Mar. 29, 2012).

Attachment C: Pacific Northwest Region Memorandum, *Monitoring Travel Management NEPA Decisions for the Minimum Road System* (Sept. 6, 2016).