



January 28, 2019

Forest Supervisor Jamie Kingsbury or Objection Reviewing Officer
 Mount Baker Snoqualmie National Forest
 2930 Wetmore Ave., Suite 3A
 Everett WA 98201

Sent via hard copy and electronic email to comments-pacificnorthwest-mtbaker-snoqualmie-mtbaker@fs.fed.us

Re: Objection to Excelsior Mine Plan of Operation

Dear Forest Supervisor Jamie Kingsbury or Objection Reviewing Officer:

The undersigned organizations received notice of the U.S. Forest Service's draft decision to move forward with the Excelsior Mine Redevelopment project, which would impact the Mt. Baker North Inventoried Roadless Area, after completing an environmental assessment on this issue. Pursuant to 36 CFR 218, subpart B, Washington Wild, The Wilderness Society, North Cascades Conservation Council, Winter Wildlands Alliance, Skagit Audubon Society, Washington Chapter of the Sierra Club, Greater Bellingham Running Club, WildEarth Guardians, Conservation Northwest, North Cascades Audubon Society and American Rivers formally object to the Mt Baker Ranger District's Draft Decision Notice (DN) and Environmental Assessment (EA) for the Excelsior Mine Plan of Operation, as described in District Ranger Erin Uloth's letter dated December 17, 2018.

Identification of Objectors

Tom Uniack (Lead Objector)
 Executive Director
 Washington Wild
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Washington Wild is a statewide 501(c)3 nonprofit organization focused on protecting wild lands and waters in Washington State through advocacy, education and civic engagement. Throughout

Washington State we draw from a membership core of more than 1,500 and an advocacy base of more than 7,000 supporters. Founded in 1979 Washington Wild has played an invaluable role in permanently protecting nearly three million acres of Wilderness throughout Washington State while also preserving and enhancing recreational access. Our success comes from our flexible, pragmatic approach, and ability to form coalitions with diverse allies.

Mike Anderson
Senior Policy Analyst
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Since 1935, The Wilderness Society has led the effort to permanently protect nearly 110 million acres of wilderness in 44 states. We have been at the forefront of nearly every major public lands victory. The Wilderness Society's mission is to protect wilderness and inspire Americans to care for our wild places. We contribute to better protection, stewardship and restoration of our public lands, preserving our rich natural legacy for current and future generations.

Tom Hammond
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Since 1957, North Cascade Conservation Council has worked to protect and preserve the North Cascades' lands, waters, plants, and wildlife through public participation and legal channels. We actively support expanding the North Cascades National Park, establishing new Wilderness Areas, protecting wildlife, promoting environmentally sound recreational use in wild areas, and protecting old-growth trees. We take action to stop damaging timber sales, while supporting responsible forest management and protecting forestlands from conversion to non-forest uses. We are an independent, all-volunteer organization whose work is carried out by our board and 400 members.

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Winter Wildlands Alliance (WWA) is a national nonprofit organization dedicated to promoting and preserving winter wildlands and a quality human-powered snowsports experience on public lands. WWA represents over 50,000 members and 40 grassroots partner organizations in 17 states, including The Mountaineers, El Sendero Ski and Snowshoe Club, Cascade Backcountry Alliance, and the Spokane Mountaineers in Washington State. These, and many other organizations, utilize the WWA Backcountry Film Festival to raise funds to support human-powered recreation and conservation

efforts, winter education and avalanche/safety programs and to raise awareness of winter management issues. We are working to educate the next generation through our Snow School program, which annually engages over 33,000 participants. Each winter, in 16 states along the US snow-belt, K-12 students and teachers venture out on snowshoes as part of a fun and educational science-based field trip. , Winter Wildlands is also a founding member of the Outdoor Alliance, which works to preserve public lands to ensure there are trails to ride, rivers to paddle, peaks to ski and crags to climb.

Tim Manns
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Skagit Audubon Society has been serving the Skagit County region since 1983 and is one of 25 Audubon chapters in Washington State. SAS is a 501(c)(3) tax-exempt, non-profit organization. Our mission is to conserve and restore natural ecosystems, focusing on birds, other wildlife and their habitats for the benefit of humanity and the earth's biological diversity. Skagit Audubon Society works hard to increase public appreciation for birds and wildlife and their habitat in a variety of ways including monthly programs by informative speakers on a variety of wildlife and conservation topics, birding field trips and weekly hikes, a variety of educational programs in schools and the community and focus on conservation issues in Skagit County and in our region.

Harry Romberg
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Founded by legendary conservationist John Muir in 1892, the Sierra Club is now the nation's largest and most influential grassroots environmental organization -- with three million members and supporters. Our successes range from protecting millions of acres of wilderness to helping pass the Clean Air Act, Clean Water Act, and Endangered Species Act. More recently, we've made history by leading the charge to move away from the dirty fossil fuels that cause climate disruption and toward a clean energy economy. Sierra Club's mission statement is, "to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

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WildEarth Guardians is a nonprofit conservation organization with offices in Oregon, Washington and five other states. WildEarth Guardians has more than 210,000 members and supporters across the U.S. Guardians works to protect and restore wildlife, wild places, wild rivers, and the health of the American West. WildEarth Guardians has organizational interests in roadless areas and the proper and lawful management of the forest road system and its associated impacts on the Mt. Baker National Forest's wildlife and wild places.

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"Keeping the Northwest wild" since 1989, Conservation Northwest works from the Washington Coast to the British Columbia Rockies to protect old-growth forests and other wildlands, connect large landscapes and vital habitats, and restore native wildlife.

Robert Kaye
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Since 1970, the North Cascades Audubon Society has represented the interests and importance of wildlife, habitat and the environment in Whatcom County. Through scientific research, environmental education, stewardship and advocacy, NCAS provides a variety of services and opportunities for members and the public to engage with the natural world.

Larry Lober
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GBRC is a 100% volunteer-driven, 501c3 nonprofit. We have proudly served our community since 1976, making running and trail running accessible and inviting to everyone. GBRC proudly puts on running and trail running events throughout the year. We also offer weekly workouts and runs, social gatherings, work parties, and other volunteer opportunities. GBRC supports the community through local youth groups, community events, trail building and local businesses and departments.

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American Rivers is the nation's leading nonprofit river conservation organization. Since 1973, we have worked to protect wild rivers, restore damaged rivers, and conserve clean water for people and nature. Headquartered in Washington, DC, American Rivers has offices across the country and more than 275,000 members, supporters, and volunteers, many of whom live in the Columbia River Basin states of Washington, Oregon, Idaho and Montana. We have been working to protect and restore rivers in the Pacific Northwest for over 25 years through conservation advocacy, Wild and Scenic River designations, integrated watershed management, floodplain restoration, and dam removal projects. American Rivers has a strong interest in protecting and restoring healthy fish and wildlife populations in the North Cascades and the Mt Baker-Snoqualmie National Forest.

Previous Involvement in the Excelsior Mine Redevelopment Proposal

Our organizations have submitted comments on the proposed redevelopment of the Excelsior Mine several times over the past five years.

- On January 30, 2014, 9 organizations submitted comments raising concerns about an Environmental Assessment for proposed access improvements, repairs, and sampling at the Great Excelsior Mine (See attached):

- | | |
|---------------------------------------|--|
| • Washington Wild | • Conservation Northwest |
| • The Wilderness Society | • American Rivers |
| • North Cascades Conservation Council | • Sierra Club - Washington State Chapter |
| • American Whitewater | • The Mountaineers |
| • Washington Trails Association | |

- On December 1, 2017, 15 organizations submitted scoping comments raising concerns about the Excelsior Mine Plan of operations (See attached):

- | | |
|---|--|
| • Washington Wild | • WildEarth Guardians |
| • The Wilderness Society | • North Cascades Audubon Society |
| • North Cascades Conservation Council | • Skagit Audubon Society |
| • American Whitewater | • El Sendero Backcountry Ski & Snowshoe Club |
| • Washington Trails Association | • Winter Wildlands Alliance |
| • Conservation Northwest | • Mount Baker Club |
| • Washington Chapter of the Sierra Club | • Washington Wildlife Federation |
| • The Mountaineers | |

- On October 22, 2018, 21 organizations submitted comments raising concerns about the Excelsior Mine Redevelopment Draft Environmental Assessment (See attached):

- | | |
|---------------------------------------|---|
| • Washington Wild | • Washington Chapter of the Sierra Club |
| • The Wilderness Society | • The Mountaineers |
| • North Cascades Conservation Council | • WildEarth Guardians |
| • American Whitewater | • North Cascades Audubon Society |
| • Washington Trails Association | • Skagit Audubon Society |
| • Conservation Northwest | |

- El Sendero Backcountry Ski & Snowshoe Club
- Winter Wildlands Alliance
- Washington Wildlife Federation
- American Rivers
- Great Old Broads for Wilderness
- Save Our Wild Salmon
- Defenders of Wildlife
- Greater Bellingham Running Club
- Wild Washington Rivers
- Northwest Watershed Institute

- On November 13, 2018, representatives of Washington Wild, The Wilderness Society, and Washington Chapter of the Sierra Club, attended a field tour of the Excelsior Mine redevelopment project. In response to our request, Forest Service geologist Todd Griffin led an informative inspection of the Upper Road and the original access road (FS Road 3700-031) to the mine on November 13, 2018. The field tour confirmed and heightened our concerns that the proposed project would have significant impacts to the Mount Baker North IRA. Significant concerns surround the status, classification, and authorized activities associated with the Upper Road. The Upper Road includes portions that are extremely steep (>25% slope) and poorly located on unstable ground, raising concerns that watershed and habitat values of the IRA will be seriously harmed, notwithstanding the rudimentary water-barring that the Forest Service intends to install to mitigate damage. We also observed clear evidence of unauthorized road clearing and maintenance activity and vehicle use of the Upper Road. In addition, we found that the decommissioned portion of FSR 3700-031 could be utilized to provide reasonable access for the small-scale mineral exploration and rock removal that is planned. Attached is a report summarizing the field tour, which includes photos documenting the steepness and unauthorized clearing of the Upper Road.
- On November 16, 2018, Washington Wild and The Wilderness Society submitted a supplemental comment letter referencing new information regarding prohibitions on road building in certain roadless areas such as the Mount Baker North IRA under the Northwest Forest Plan. See attached.
- On December 17, 2018, Washington Wild and The Wilderness Society submitted a supplemental comment letter referencing new information referencing U.S. Forest Service Chief Vicki Christiansen's October 2 decision regarding an exemption for this project from the Roadless Rule. See attached.
- On December 21, 2018, after consultation with many of the undersigned organizations, Senator Maria Cantwell (D-WA), Senator Patty Murray (D-WA) and Congresswoman Suzan DelBene (D-WA01) sent a letter to USFS Chief Christiansen raising concerns about the Excelsior Mine redevelopment proposal. See attached.

Introduction

We recognize that mining is one of the allowed uses on Forest Service lands. However, such activities do create potential impacts not only from mining but also from associated roading to the surrounding watershed and environment – especially where conducted under the antiquated 1872 Mining Law governing such activities. Consequently, proposed mining requires a thorough and serious analysis to avoid detrimental impacts to longstanding conservation, recreation, wildlife and Tribal values.

The central issue of this objection is the agency's plan to provide road access to the Excelsior Mine through a portion of the Mount Baker North Inventoried Roadless Area (IRA). Roadless areas represent some of the last and best remaining intact forests and watersheds, providing clean water, fish and wildlife habitat and world class opportunities for recreationists and the ability for northwest Tribes to exercise their cultural and treaty rights. The planned access route to the mine would be an unclassified, non-Forest Service road called

the “Upper Road,” which would traverse through the Mount Baker North IRA for 0.7 mile. For the reasons presented herein, and as stated to the agency in our previous comments noted above, we contend that the planned Upper Road reconstruction and maintenance activity would violate the Roadless Area Conservation Rule.

Furthermore, the draft Decision Notice and Environmental Assessment fail to provide analysis of key rules and regulations or address the environmental impact of several issues. For example, the District opted not to examine in detail the obvious alternative of providing access to the mine by utilizing an existing classified road (FSR 3700-031) that is located outside of the IRA. The agency’s failure to analyze this alternative access route in the EA would violate the National Environmental Policy Act. Nor does the EA adequately disclose the project’s potential environmental impacts.

Specific Objections

Pursuant to 36 CFR 281.8, each of the following Objection issues (including those raised in the attachment) were either previously raised in the groups’ comments or concern issues that arose after the close of the public comment period.

I. The Plan of Operation Violates the Roadless Area Conservation Rule.

The Roadless Area Conservation Rule (Roadless Rule) generally prohibits road construction and reconstruction within Inventoried Roadless Areas, including the Mount Baker North IRA. The DN incorrectly argues that using the Upper Road to access the mine is allowed by an exception in the Roadless Rule for hard-rock mining activities, or, alternatively, that the Roadless Rule does not apply at all because the access plan involves no road building – only “restoration, use, and maintenance.”

However, neither the DN nor the EA addresses the fact that the Roadless Rule’s exceptions for road reconstruction do not apply to unclassified roads like the Upper Road. Nor does the agency document why reconstructing the Upper Road is “needed” to access the mine site, when the same site is already accessed by a classified road (FSR 3700-031) that has been partially decommissioned. Likewise, the DN and EA fail to confront the issue that the Roadless Rule does not allow maintenance of unclassified roads.

In accordance with Forest Service policy, the Mount Baker District submitted its road building plan for the Excelsior Mine to the Chief’s Office to determine whether the plan is consistent with the Roadless Rule. As explained below, the Chief’s Office erroneously concluded that the road access plan is consistent with the Roadless Rule’s exception for “road reconstruction” needed to access a hard-rock mining operation. However, the information provided by the District to the Chief’s Office failed to clarify that the Upper Road is not a classified road. Therefore, the District cannot now rely on the Chief’s review to conclude that reconstruction of the Upper Road is allowed by the Roadless Rule.

A. Maintenance of the Unclassified Upper Road Is Not Allowed by the Roadless Rule

The Roadless Rule prohibits road construction and reconstruction in Inventoried Roadless Areas, with certain exceptions. [36 CFR 294.12(a)].¹ Further, the Rule provides that “Maintenance of classified roads is permissible in inventoried roadless areas.” [36 CFR 294.12(c)].

¹ All citations to the Roadless Area Conservation Rule are to the Rule as it was promulgated in the Federal Register on January 12, 2001 (66 Fed. Reg. 3243). The Roadless Rule is in full legal force and effect, but it has not yet been formally codified in the Code of Federal Regulations.

Phase one of the Selected Alternative involves “use and maintenance of ... the non-Forest Service temporary road (upper road) for a 10-year term” [DN, p. 2]. According to the District, the Upper Road project is consistent with the Roadless Rule because “there will in fact be no new road building for this project” [DN, pg. 9]. However, the EA ignores the fact that the Rule only allows maintenance of “classified roads” in IRAs – not unclassified roads like the Upper Road.

The Roadless Rule defines a “classified road” as a road that is “determined to be needed for long-term motor vehicle access, including ... privately owned roads, National Forest System roads, and other roads authorized by the Forest Service.” [36 CFR 294.11]. Conversely, an “unclassified road” is defined as one “that is not part of the forest transportation system, such as ... abandoned travelways,” and a “temporary road” is defined as “[a] road authorized by contract, permit, lease, other written authorization, or emergency operation, not intended to be part of the forest transportation system and not necessary for long-term resource management.” [Id.].² The “upper road” in question clearly does not meet the definition of a “classified road.”

The agency’s response to our comments on the Draft EA regarding this issue asserts that the “[t]he roadless rule does allow for maintenance of temporary roads within an inventoried roadless area.” [Response to Comments Table, p. 9]. However, as noted above, the Roadless Rule makes it clear that classified roads only include roads that are “determined to be needed for long-term motor vehicle access” [36 CFR 294.11, emphasis added]. A “temporary road” like the Upper Road is clearly not one that has been “determined to be needed for long-term motor vehicle access.” Thus, the planned road maintenance is not allowed by the Roadless Rule.

B. Reconstruction of the Unclassified Upper Road Is Not Allowed by the Roadless Rule

The DN illegally relies on an erroneous finding of the Forest Service Chief’s office that the Excelsior project is allowed by the Roadless Rule’s exception for road reconstruction. The Chief’s October 2 decision repeatedly refers to the proposed action as “road reconstruction.”³

We first note that the DN and EA for the Excelsior Mine Plan of Operations never refer to the proposed work on the non-system Upper Road as “road reconstruction.” Instead, the District says that the proposal involves “restoration and maintenance” of the Upper Road on a temporary basis (e.g. DN, p. 2). Similarly, the Mt. Baker Ranger District’s March 8 Line Officer Certification memo and accompanying Briefing Paper and Roadless Frequently Asked Questions documents for the Chief’s Office review for Roadless Rule consistency refer to the proposed road work as “use and maintenance.”

The Chief’s decision violates the Roadless Rule because the Rule does not provide an exception for road reconstruction of non-system, unclassified roads like the Upper Road. The Rule defines “road reconstruction” as “[a]ctivity that results in improvement or realignment of an existing classified road....” [36 CFR 294.11 (emphasis added)]. The Rule defines “classified road” as “[a] road wholly or partially

² Since 2001, the Forest Service has developed new terminology and definitions for its road system. For example, the 2005 Travel Management Rule contains definitions for “forest road” and “unauthorized road” that are comparable to the Roadless Rule’s definitions of classified and unclassified roads. However, we believe that the Roadless Rule’s terminology and definitions remain in effect and should be used in evaluating compliance with the Roadless Rule in this case.

³ This issue was raised in a supplemental comment letter submitted by Washington Wild and The Wilderness Society after we learned in November that the Chief’s Office had reviewed and erroneously concluded that the Excelsior Project complied with the Roadless Rule’s exception for “road reconstruction.”

within or adjacent to National Forest System lands that is determined to be needed for long-term motor vehicle access, including State roads, county roads, privately owned roads, National Forest System roads, and other roads authorized by the Forest Service.” [36 CFR 294.11]. The Upper Road is described by the District as a “non-system road,” [EA, p. 45] and as a “non-Forest Service temporary road” [DN, p. 2], while the March 8 briefing paper and FAQ refer to it as “an existing non-system temporary road.”

Clearly, the Upper Road does not meet the Roadless Rule’s definition of a classified road. Therefore, none of the exemptions in the Roadless Rule for “road reconstruction” can apply to the Upper Road.

This error should be brought to the attention of the Chief or Regional Forester (since the Chief has now delegated approval authority for Roadless Rule exceptions to the Regional Foresters) for additional review and clarification of the decision in light of the fact that the Upper Road is not a classified road. Until such a review and clarification occurs, it would be inappropriate and illegal to move forward with a final decision to approve the proposed road work associated with the Excelsior Mine Plan of Operations.

C. The EA Fails to Demonstrate that an Exemption from the Roadless Rule for Reconstruction or Construction of the Upper Road Is “Needed”

In our comments on the draft EA, we pointed out that the agency failed to comply with the Roadless Rule’s exception for road construction or reconstruction when “a road is needed pursuant to reserved or outstanding rights, or as provided for by statute or treaty.” [36 CFR 294.12(b)(3), emphasis]. While the Chief’s Office consistency review approved the Excelsior Upper Road access based on this exception, neither the draft nor the final EA evaluates or explicitly relies on the exception to justify the mining road access work. However, the agency’s response to our comments states, “Vehicular access would be needed to excavate and repair the blacksmith portal and be needed for transporting samples off National Forest Service System lands.” [Response to Public Comments Table, p. 10].

As discussed in issue I.2 above, we believe that reconstruction of the Upper Road does not qualify for this exception in the Roadless Rule because it is not a classified road. Furthermore, even if the Upper Road was a classified road, the agency has not adequately demonstrated that the road construction or reconstruction work is “needed” to access the mine. For example, the one-sentence statement in the Response to Public Comments does not explain why the small-scale planned mining activity could not be accomplished with pack animals or all-terrain vehicles that do not require road access.

PROPOSED REMEDY: Revise the Plan of Operation to eliminate the Upper Road access route to the mine. Instead, provide the minimal access necessary (potentially stock or off road all-terrain vehicle) to provide the removal of small rocks from the mine site providing access via FSR 3700-031.

II. The DN Violates the Northwest Forest Plan Protection of Inventoried Roadless Areas in Key Watersheds

We object to the Excelsior road access plan because it would violate the Northwest Forest Plan’s prohibition against road building in IRAs within Key Watersheds. In response to our supplemental comments on this issue, the District responded, “No new road building would occur within an inventoried roadless area. Access to the mine portals will be by way of an existing road (upper road) within the Mt. Baker (north block) inventoried roadless area.” [Response to Public Comments Table, p. 12-13]. However, as discussed above, the Roadless Rule does not allow road reconstruction or maintenance of unclassified roads like the Upper Road. Consequently, for the purpose of Roadless Rule compliance, the only viable option would be to consider the Upper Road work as “road construction.”

Furthermore, the road definitions in the Roadless Rule clearly indicate that the planned road development activity on the Upper Road would be road construction. The Roadless Rule provides the following definition of “road construction”: “Activity that results in the addition of forest classified or temporary road miles.” [36 CFR 294.11, emphasis added]. The Roadless Rule’s defines “temporary road” as follows: “A road authorized by contract, permit, lease, other written authorization, or emergency operation, not intended to be part of the forest transportation system and not necessary for long-term resource management.” [id.]. The Roadless Rule’s definition of “temporary road” describes well what the Upper Road would become according to the Excelsior mine operating plan. In fact, as noted above, the District’s Response to Comments [p. 9] states that the Upper Road would be a temporary road.

The Northwest Forest Plan’s prohibition on road building is clearly stated on page C-7 of the Plan’s standards and guidelines for Key Watersheds: **“Inside Roadless Areas – No new roads will be built in remaining unroaded portions of inventoried (RARE II) roadless areas.”**⁴ Unlike the Roadless Rule, the Northwest Forest Plan does not provide an exception for road building needed for hard rock mining development. Further, there is no exception for mining operations from compliance with the National Forest Management Act (NFMA). “The Forest Service’s failure to comply with a forest plan violates NFMA.” *Save Our Cabinets v. U.S. Dept. of Agriculture*, 254 F.Supp.2d 1241, 1258 (D. Mont. 2017)(agency approval of mining operation violated forest plan and INFISH standards).

The North Fork Nooksack River is listed as a Tier 1 Key Watershed (W-114) in the Northwest Forest Plan.⁵ The EA acknowledges that “the project area is located within the Upper North Fork Nooksack Watershed” and that “watershed analyses have been completed in the areas of the proposed project activities.”⁶ However, EA does not mention that the North Fork Nooksack River is a Key Watershed. Nor does it mention or analyze the Northwest Forest Plan’s road building prohibition in IRAs within Key Watersheds and its relevance to and effect on the proposed road building activity. The failure of the DN and EA to recognize, consider, or analyze this important requirement of the Northwest Forest Plan is a serious error that must be corrected.

PROPOSED REMEDY: Revise the DN and EA to fully address and comply with the roadless provision in the Northwest Forest Plan (which has not been done). In order to pursue road building in the Mt. Baker North Inventoried Roadless Area, which is within the Key Watershed of the North Fork Nooksack River, a plan amendment would need to be obtained.

III. The Draft Decision Notice and Environmental Assessment Are Insufficient and violate the National Environmental Policy Act

In addition to the primary objection that the proposal violates the 2001 Roadless Rule, we also have identified several areas in which the draft Decision Notice and Environmental Assessment fail to adequately analyze or address environmental impacts.

⁴ USDA Forest Service and USDI Bureau of Land Management. 1994. Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl, April 1994 (Attachment A to the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl), p. C-7.

⁵ USDA Forest Service and USDI Bureau of Land Management. 1994. Final Supplemental Environment Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl, Vol. II, Appendix B6: Aquatic Conservation Strategy. p. B-102, Table B6-3: Key Watersheds on lands administered by the Forest Service and BLM within the range of the northern spotted owl.

⁶ EA, p. 42.

A. The EA's decision to dismiss developing an alternative around repairing the original access to the mine site was arbitrary and capricious

In scoping comments submitted by many of the undersigned organizations, we called for the agency to develop an alternative that would analyze and evaluate the relative costs and impacts to the affected environment of repairing the decommissioned portion of FS Road 3700-031. This road is an existing Forest Service system road that has provided the original access to the Excelsior mine site without impacting the inventoried roadless area. Repairing this road would restore access without violating the Roadless Rule and potentially at less or comparable expense and impact than constructing a new road through intact old growth forest to arrive at the same location.

The Forest dismissed developing this alternative access route outside of an inventoried roadless area, arguing that "impacts to hydrologic, fish, and soil resources would be considerable when compared to the impacts on these same resources from the use and maintenance of the upper road." [EA Pg. 12-13] However, no analysis or other details were provided to support that statement. Such an analysis is necessary to determine if construction/reconstruction of the upper road is "needed" for the mining, as well as to comply with NEPA's requirement to consider reasonable alternatives.

B. Several Issues Were Raised Around Insufficient Analysis in our Comments on the Draft Environmental Assessment

In our October 22, 2018 comment letter on the Draft Environmental Assessment, we raised several issues in Sections IV through IX arguing that there was insufficient analysis. No changes were made in the EA or DN.

These and other issues are further included and discussed in the attachment to this Objection and are included as part of this Objection under 36 CFR Part 218.

PROPOSED REMEDY: The EA should be revised to include detailed consideration of an alternative providing reasonable access via FSR 3700-031, along with further analysis of the project's environmental impacts on several issues referenced in our previous comments including baseline conditions, cumulative impacts and impacts on threatened and endangered species. Alternatively, an EIS should be prepared.

IV. Unauthorized Road Development on the Upper Road

Furthermore, we object to the unauthorized road development work on the Upper Road that has already taken place illegally within the Mount Baker North IRA. This situation became evident on our field tour. It was clear that significant work brushing out the decades-old unclassified route had taken place on Forest Service land within the inventoried roadless area without prior notice or authorization. This illegal activity evidently has been accomplished by the same company that is now requesting approval to upgrade and use the Upper Road for further mining activity. This raises questions about the attention that the Forest is paying to this and other mining related projects as well as the reputation and diligence of the company proposing the plan of operations.

PROPOSED REMEDY: The Forest Service should take immediate corrective action and suspend further review of the proposed Excelsior Mine operating plan pending an investigation of this unauthorized activity.

Conclusion

Thank you for the opportunity to register this objection. Please contact us to discuss any remedies with respect to improving this decision and avoiding a violation of the 2001 National Forest Roadless Area Conservation Rule, the National Forest Management Act, the National Environmental Policy Act, and the other laws and regulations noted in this Objection. We would be very interested in setting up a conference call or meeting in advance of the formal objection meeting to explore opportunities to resolve our objections.

Sincerely,

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Executive Director
Washington Wild

Mike Anderson
Senior Policy Analyst
The Wilderness Society

Tom Hammond
President
North Cascades Conservation Council

Marlies Wierenga
Pacific Northwest Conservation Manager
WildEarth Guardians

Hilary Eisen
Policy Director
Winter Wildlands Alliance

Dave Werntz
Science and Conservation Director
Conservation Northwest

Tim Manns
Conservation Chair
Skagit Audubon Society

Robert Kaye
Conservation Committee Chair
North Cascades Audubon Society

Harry Romberg
Co-Chair, National Forest Committee
Washington Chapter of the Sierra Club

Wendy McDermott
Director, Rivers of Puget Sound & Columbia Basin
American Rivers

Larry Lober
President
Greater Bellingham Running Club

CC: *Erin Uloth, Mt. Baker District Ranger, Mt. Baker-Snoqualmie National Forest*
Jamie Kingsbury, Mt. Baker-Snoqualmie National Forest Supervisor
Julia Riber, Director of Resource Planning and Monitoring, U.S. Forest Service (Region 6)
Christine Dawe, Director of Ecosystem Management
Vicki Christiansen, Forest Service Chief
Senator Patty Murray
Senator Maria Cantwell
Representative Suzan DelBene

**ATTACHMENT TO OBJECTIONS TO DRAFT DN AND EA FOR THE EXCELSIOR MINE
REDEVELOPMENT PROJECT, SUBMITTED BY WASHINGTON WILD, ET AL.**

Pursuant to 36 CFR Part 218, the following additional issues are included as part of the Objections to the Draft Decision Notice (Draft DN) and Environmental Assessment (EA) for the Excelsior Mine Plan of Operations issued by Mount Baker Snoqualmie National Forest, Mount Baker District Ranger Erin Uloth (December 17, 2018), submitted by Washington Wild (Lead Objector), et al. As noted in the main Objection, each of the following Objection issues were either previously raised in the groups' comments or concern issues that arose after the close of the public comment period.

I. The EA fails to fully analyze all baseline conditions

Despite acknowledging that the Project will either directly or indirectly impact various resources, such as wildlife, water quality, etc., the EA fails to fully analyze the baseline conditions of these affected resources.

For example, although the EA admits that species listed under the Endangered Species Act may be adversely affected (and for northern spotted owls and marbled murrelets "likely to adversely affect" these species), no surveys for the species have been done. Indeed, the EA admits that no surveys were done for any species described in Table 7 (ESA-listed, Sensitive Species, Indicator Species, etc.). (EA Pg. 48). The EA also notes that sediment runoff may increase from Project activities, (EA Pg. 18, 21-22), but no on-site baseline water quality analysis was done for sediment or related impacts.

NEPA requires the USFS to "describe the environment of the areas to be affected or created by the alternatives under consideration." 40 CFR 1502.15. The establishment of the baseline conditions of the affected environment is a fundamental requirement of the NEPA process:

Without establishing the baseline conditions which exist ... before [a project] begins, there is simply no way to determine what effect the [project] will have on the environment and, consequently, no way to comply with NEPA.

Half Moon Bay Fisherman's Mktg. Ass'n v. Carlucci, 857 F.2d 505, 510 (9th Cir. 1988).

A recent federal court decision involving mining on national forest lands in western Washington emphasized the NEPA requirement for a detailed groundwater baseline analysis in an EA.

Ninth Circuit cases acknowledge the importance of obtaining baseline condition information before assessing the environmental impacts of a proposed project.

Gifford Pinchot Task Force v. Perez, 2014 WL 3019165, *28 (D. Or. 2014) (USFS/BLM EA for mineral exploration project failed to obtain and analyze baseline water quality data in violation of NEPA).

As another example, the EA admits to the potential for sediment discharges, but relies on vague "mitigation" measures to attempt to offset these impacts:

"The NWFP (USDA FS and USDI BLM 1994) Standards and Guidelines for Road Management in Riparian Reserves require that road drainage be routed away from potentially unstable channels, fills, and hillslopes. Most of the upper road, which is aligned on a series of switchbacks through a broad draw leading down to Wells Creek, is within a Riparian Reserve situated around that draw. Water draining down the road is most likely to discharge at the

middle of the draw where drainage would flow naturally, as well as at switchback ends that are topographic low points. Removal of vegetation and road blading are both actions that will compact the road surface and reduce infiltration, causing more rainfall or snowmelt to become runoff. Increased amounts of runoff concentrated to a small number of discharge points such as the middle of the draw or ends of the switchback will likely lead to surface erosion of soils downslope of the discharge point, saturation of the hillslope, and potential mass wasting. Three mitigation measures will reduce or eliminate the risk of negative effects of the proposed project to soils...” (EA Pg. 40)

Yet as the court in Gifford Pinchot v. Perez held, reliance on future mitigation measure cannot be used as a substitute for full baseline analysis.

The mitigation measures incorporated into Alternative 3, likely go a long way to controlling possible contamination of groundwater, but, without baseline data, the impact to groundwater remains uncertain because there is no information as to the current conditions of the actual Project area. As a result, there is no way to determine what effect the action will have on the environment and thus, “no way to comply with NEPA.

Gifford Pinchot at *33 quoting Half Moon Bay, 857 F.2d at 510.

II. The EA fails to analyze mine rock under NEPA and plan standards

The EA admits that the agency must ensure compliance with the Minerals Management Standards in the Northwest and Mt. Baker-Snoqualmie National Forest Plan. Yet despite acknowledging the Forest Plan(s)’ requirement that the agency “Analyze the waste material using the best conventional sampling methods and analytic techniques to determine its chemical and physical stability characteristics,” (EA Pg. 41) the EA admits that such analysis will only occur in the future, long after the NEPA and public review process is over. “Before placing any waste rock on either mine dump the claimant shall provide the Forest Service sample results for waste rock sulfide contents.” (EA Pg. 13). Under NEPA and the Forest Plan(s) (and thus the National Forest Management Act), this analysis must be done as part of the public NEPA process – not deferred to the operational phases of the project.

III. The EA fails to fully analyze all direct, indirect and cumulative impacts

The EA lists a number of current and future reasonably foreseeable future projects in the analysis area, but it contains no detailed analysis of their impacts.⁷ In addition, the EA mentions other potentially connected actions to (and cumulative impacts from) other named and unnamed facilities, but little information is provided about these sites, regarding both the current baseline conditions as well as the impacts from these facilities:

excavated material from the vicinity of the Mine Portals and waste ore from the mines should be transported and deposited in a stable location such as the Burnt Knob quarry if feasible, unless chemical analysis demonstrates that this material needs to be transported off forest to a suitable certified waste site. (EA Pg. 41)

For example, regarding air quality, “RFFAs {Reasonably Foreseeable Future Actions} are expected to cause additional incremental and dispersed increases in fugitive and point source emissions in the CESA [Cumulative Effect Study Area].” EA at 66. For water resources, “RFFAs within this CESA that would impact surface water resources include future residential and commercial development and

⁷ EA Appendix A, Table A: Past, Present, and Foreseeable Actions for Cumulative Effects Analysis.

livestock grazing.” EA at 67. For wildlife impacts, “RFFAs within the CESA that could impact wildlife include future residential development, recreation, and livestock grazing.” No detailed analysis is provided concerning these cumulative impacts. The EA thus fails to conduct the required “hard look” at the Project’s impacts, including both the mine site itself and cumulative impacts from these activities and the access route(s).

Under NEPA, USFS must consider all direct, indirect, and cumulative environmental impacts of the proposed action. 40 CFR §§ 1502.16, 1508.8, 1508.25(c). Direct effects are caused by the action and occur at the same time and place as the proposed project. 40 CFR § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. 40 CFR § 1508.8(b). Both types of impacts include “effects on natural resources and on the components, structures, and functioning of affected ecosystems,” as well as “aesthetic, historic, cultural, economic, social or health [effects].” *Id.* The USFS must also fully review the impacts from all “past, present, and reasonably foreseeable future actions.” These are the “cumulative effect/impacts” under NEPA. Cumulative effects/impacts are defined as:

“[T]he impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

40 CFR § 1508.7

In a cumulative impact analysis, an agency must take a “hard look” at all actions.

An EA's analysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment. ... Without such information, neither the courts nor the public ... can be assured that the [agency] provided the hard look that it is required to provide.

Te-Moak Tribe of Western Shoshone v. U.S. Dept. of Interior, 608 F.3d 592, 603 (9th Cir. 2010) (rejecting BLM-issued EA for mineral exploration that had failed to include detailed analysis of impacts from nearby proposed mining operations).

A cumulative impact analysis must provide a “useful analysis” that includes a detailed and quantified evaluation of cumulative impacts to allow for informed decision-making and public disclosure. Kern v. U.S. Bureau of Land Management, 284 F.3d 1062, 1066 (9th Cir. 2002); Ocean Advocates v. U.S. Army Corps of Engineers, 361 F.3d 1108 1118 (9th Cir. 2004). The NEPA requirement to analyze cumulative impacts prevents agencies from undertaking a piecemeal review of environmental impacts. Earth Island Institute v. U.S. Forest Service, 351 F.3d 1291, 1306-07 (9th Cir. 2003).

The Ninth Circuit has repeatedly faulted the federal land agencies’ failures to fully review the cumulative impacts of mining projects. In the most recent case, vacating BLM’s approval of a mine, the court stated that “‘in a cumulative impact analysis, an agency must take a ‘hard look’ at *all* actions that may combine with the action under consideration to affect the environment.’” Great Basin

Resource Watch v. BLM, 844 F.3d 1095, 1104 (9th Cir. 2016)(emphasis in original)(*quoting Te-Moak Tribe*). BLM violated NEPA because it “did not ‘identify and discuss the impacts that will be caused by each successive project, including how the combination of those various impacts is expected to affect the environment.’” *Id.* at 1105 *quoting Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 973-74 (9th Cir. 2006).

In Great Basin Mine Watch, the Ninth Circuit required “mine-specific ... cumulative data,” a “quantified assessment of their [other projects] combined environmental impacts,” and “objective quantification of the impacts” from other existing and proposed mining operations in the region. *Id.* at 972-74. The agency cannot “merely list other [projects] in the area without detailing impacts from each one.” *Id.* at 972. *See also ONRC v. Goodman*, 505 F.3d 884, 893 (9th Cir. 2007). In addition to the fundamental cumulative impacts review requirements noted above, NEPA regulations also require that the agency obtain the missing “quantitative assessment” information. 40 CFR §1502.22.

None of the “cumulative effects/impacts” discussions in the EA for the various resources and impacts contain this required quantification and other detailed reviews required by NEPA.

IV. The EA fails to articulate and identify the relative cost of reconstructing the upper road using agency best practices

As we discussed above, we believe that the proposed use of the “upper road” as an alternative access route to the mine site is unnecessary and in violation of the Roadless Rule. In addition, the cost of the reconstructing the upper road for this purpose would be significant.

The EA fails to articulate what the cost of the proposed upper road and upgrading FS Road 3700-033 would entail over a period of 20 years. The U.S. Forest Service has an obligation to comply with State and Federal regulations including the Clean Water Act. Best Management Practices (BMPs) are used to control non-point source pollution to meet water quality standards. With any road project, the Agency has a duty to follow its own manual – “National Best Management Practices for Water Quality Management on National Forest System Lands” (April 2012).

Road Management Activities are outlined beginning on page 104 in order to “avoid, minimize, or mitigate adverse effects....from road management activities.” There are eleven core BMPs in this category that relate to roads and need to be followed, including:

Limit roads to the minimum practicable number, width and total length consistent with the purpose of specific operations, local topography, geology, and climate to achieve land management plan desired conditions, goals and objectives for access and water quality management...use existing roads when practicable.⁸

FS Road 3700-033 is currently listed as a closed (Level 1/Storage) road on the agency’s INFRA database and slated to be decommissioned and removed from the road system at some point in the future. The current and future maintenance costs for a closed road are low compared to maintaining an open road (Level 2) that would provide for vehicle access to the mine site, potentially including truck

⁸ National Best Management Practices for Water Quality Management on National Forest System Lands” (April 2012). Pg. 105.

and other haul vehicles for a period of up to 20 years. Therefore, the relative maintenance cost of the proposed use of the upper road option would be significant over the lifetime of the project.

The proposed Upper road would be adding mileage and maintenance costs to the Forest's already unsustainable road system. This would happen at a time when the Mt. Baker Snoqualmie National Forest has just completed a two-year public process resulting in decisions on two Access Travel Management Plans (including the Nooksack watershed) that were focused on complying with an agency mandate to reduce their road system to a sustainable level from a maintenance perspective.

Additionally, limited road maintenance funds will be directed toward this project over the next 20 years which will have financial impacts on other road maintenance priorities elsewhere on the Mt. Baker Ranger District where recreational and tribal access should be prioritized.

V. The EA fails to fully review all reasonable alternatives under NEPA and the Forest Plan/NFMA, and minimize impacts and comply with the 1897 Organic Act and Part 228 Regulations

Although the EA professes to comply with the agency's duty to minimize all adverse impacts, that is not the case. As discussed in these Objections, the alternative to repair FS Road 3700-031 was dismissed.

Additionally, the agency never considered or adopted an alternative of seasonal restrictions to protect wildlife, especially listed species. For the northern spotted owl, the EA admits that noise and other impacts will occur during the nesting/breeding seasons for northern spotted owls and marbled murrelets.

“Activities generating noise above ambient noise could impact approximately 18 acres of suitable spotted owl nesting habitat in the early breeding season, from March 1 through July 15. As a result, adverse effects from noise generating activities are expected to occur. This alternative may affect, and is likely to adversely affect the spotted owl due to noise disturbance in the early nesting season.” (EA Pg. 50-51)

“Activities generating noise above ambient noise could impact approximately 28 acres of suitable murrelet nesting habitat during the breeding season, from April 1st through September 23rd. As a result, adverse effects from noise generating activities are expected to occur. This alternative may affect and is likely to adversely affect the marbled murrelet due to noise disturbance in the early nesting season. As a result, adverse effects to nesting murrelets from noise generating activities are expected to occur within a limited portion of the project's suitable habitat. This alternative may affect and is likely to adversely affect the marbled murrelet due to noise disturbance in the early nesting season.” (EA Pg. 51)

Under NEPA, the agency should have considered the alternative of limiting access and related operations to avoid these nesting/breeding seasons. Such an alternative is a “reasonable alternative” that should have been fully considered. NEPA requires the agency to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E); 40 CFR § 1508.9(b).

It must “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. City of Tenakee Springs v. Clough, 915 F.2d 1308, 1310 (9th Cir. 1990). The alternatives analysis is

considered the heart of a NEPA analysis. 40 C.F.R. § 1502.14. The alternatives analysis “should present the environmental impacts of the proposal in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public.” *Id.* The lead agency must “rigorously explore and objectively evaluate all reasonable alternatives” including alternatives that are “not within the jurisdiction of the lead agency.” *Id.*

In this case, the EA failed to consider, at a minimum, the reasonable alternatives of, at a minimum: (1) seasonal wildlife restrictions; (2) helicopter access, instead of using the road through the roadless area; (3) approving fewer years of operation; (4) keeping “roads, structures, and support facilities” out of the Riparian Reserves pursuant to the Forest Plan(s); and (5) exploring the continued use of FS Road 3700031 to provide access to the mine without impacting the roadless area.

For example, regarding the MM (Minerals Management) Standards in the Forest Plan(s), the EA fails to conduct the required analysis to ensure that “no alternative exists” to locating the roads, waste dumps, structures, and other project support facilities outside of Riparian Reserves.

Federal courts have required the Forest Service to comply with all Forest Plan Standards and Guidelines in reviewing and approving mining Plans of Operations submitted pursuant to claims filed under the 1872 Mining Law. *See Hells Canyon Preservation Council v. Haines*, 2006 WL 2252554, at *6-10 (D. Oregon 2006)(Forest Service approval of mining PoO violated the National Forest Management Act, NFMA, when approval violated Forest Plan Standards and Guidelines for Riparian Reserves). In that case, the court held that the Forest Service’s Plan of Operations approvals violated the road density and riparian and fisheries requirements, among other requirements.

In *Gifford Pinchot*, the court specifically held that the EA’s failure to fully review the alternative of keeping “structures, and support facilities” out of the Riparian Reserves, violated not only NEPA but the NFMA/Forest Plan(s). *Gifford Pinchot Task Force v. Perez*, 2014 WL 3019165, **16-19, 39-40 (D. Or. 2014).

Regarding fewer years of operations, the EA states that the project is expected to last 10 years. “The upper road would be maintained as a primitive jeep road for an expected period of 10 years.” (EA Pg. 12) Yet actual operations at the site consists largely of facilitating road access, mine adit/tunnel sampling, and minimal reclamation:

“*Phase I* includes the restoration, use, and maintenance of the upper road and use and maintenance of FSR 3700-033. ... *Phase II* includes mine maintenance and underground sampling activities. *Phase III* would include mine site and access reclamation. Mine site reclamation would include stabilizing and revegetating the mine dumps, permanently closing both portals, and properly closing all drill holes underground.” (EA Pg. 12-13)

There is no compelling need for such operations to be spread over 10 years. Limiting the years of operation will certainly reduce the impacts to wildlife, recreation, and other resources – in line with the agency’s duty to “minimize” all adverse impacts under 36 CFR Part 228. The EA contains no analysis why such a reduction is not reasonable under NEPA.

Regarding helicopter access, it is entirely reasonable to fully review and require such an alternative. That is exactly what the USFS did in Oregon in 1999 in order to minimize road impacts and protect sensitive watersheds.

I have selected Alternative 9. Under Alternative 9, roads would not be developed. Rather, helicopters would be used to haul samples of the ore. The sample would be processed, with the results reported to the Forest Service. Alternative 9 was developed to help resolve the operational and economic uncertainties related to the project. It would better protect the unique and cherished values inherent to the Rough and Ready Creek watershed than the Proposed Plan of Operations or any other mining alternative.

Forest Supervisor, Siskiyou National Forest, Record of Decision, NICORE Project, August 9, 1999 (attached).

Further, BLM recently reviewed and required helicopter access in California, when reviewing drilling operations which required access across sensitive and important lands. *See*, U.S. Department of the Interior, Bureau of Land Management, Environmental Assessment DOI-BLM-CA-D050-2017-0037-EA, October 2017, Perdito Exploration Project; DECISION RECORD FOR ENVIRONMENTAL ASSESSMENT DOI-BLM-CA-D050-2017-0037-EA, May 16, 2018 (attached).

Due to the Roadless Area and other important resources that would be adversely impacted by the proposed road route in the Excelsior EA, this alternative is both reasonable and warranted.

Regarding seasonal use/access restrictions to protect listed and other species, it is standard USFS mitigation to preclude operations during sensitive breeding and/or nesting season. For example, in one recent case in Arizona, the USFS authorized exploratory drilling operations subject to the following restriction:

Drilling operations will not occur from March 1st to August 31st to avoid potential disturbance to the Mexican Spotted Owl (MSO) during its breeding season.”²⁸

Decision Memorandum, Sunnyside Project, USDA Forest Service, Coronado National Forest, Sept. 12, 2014, at 7 (attached).

Procedurally, the agency should have fully consider these alternative under NEPA here. Substantively, in order to meet its duties under the 1897 Organic Act, ESA, NFMA and other laws and regulations, the agency should impose these restrictions as a condition of approval (March 1 to Sept. 23 to account for both Northern Spotted Owl and Marbled Murrelet).

It should be noted that the imposition of such alternatives is not precluded by the fact that the project occurs on mining claims. USFS has duties under the Organic Act and implementing regulations “to maintain and protect fisheries and wildlife which may be affected by the operations.” 36 C.F.R. §228.8(e). The failure to protect wildlife also violates USFS’s duties to “minimize adverse environmental impacts on National Forest surface resources.” 36 C.F.R. §228.8. “The operator also has a separate regulatory obligation to ‘take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.’ 36 C.F.R. §228.8(e).” Rock Creek Alliance v. Forest Service, 703 F.Supp.2d 1152, 1164 (D. Montana 2010) (mine approval violated Organic Act and 228 regulations by failing to protect water quality and fisheries). “Under the Organic Act the Forest Service must ...require [the project applicant] to take all practicable measures to maintain and protect fisheries and wildlife habitat.” *Id.* at 1170.

Regarding limitations on access, in Clouser v. Espy, the Ninth Circuit affirmed the Forest Service's authority to impose significant restrictions on a mining operation, in that case limiting the claimant to access via pack-mule only. Clouser v. Espy, 42 F.3d 1522 (9th Cir. 1994). The court rejected the claimant's argument that such a restriction violated federal mining laws:

In light of the broad language of [Organic Administration Act §] 551's grant of authority, [Organic Administration Act §] 478's clarification that activities of miners on national forest lands are subject to regulation under the statute, and this substantial body of case law, there can be no doubt that the Department of Agriculture possesses statutory authority to regulate activities related to mining—even in non-wilderness areas—in order to preserve the national forests.

Clouser, at 1530. Recent decisions have reinforced the USFS's broad authority over mining. “[T]he Secretary of Agriculture has long had the authority to restrict motorized access to specified areas of national forests, including to mining claims. Public Lands for the People v. U.S. Dept. of Agriculture, 697, F.3d 1192, 1198 (9th Cir. 2012) (upholding denial of access routes to mining claims in travel management plan).

VI. This project should require an Environmental Impact Statement level of analysis under NEPA

The Forest Service opted to prepare an Environmental Assessment rather than a more rigorous Environmental Impact Statement (EIS) for this project. However, Forest Service NEPA regulations identify classes of actions normally requiring Environmental Impact Statements including: “Class 2: proposals that would substantially alter the undeveloped character of an inventoried roadless area or a potential wilderness area.” 36 CFR 220.5(a)(2).

The regulations provide a specific example that is directly relevant to the Excelsior mine redevelopment: “Approving a plan of operations for a mine that could cause considerable surface disturbance in a potential wilderness area.” 36 CFR 220.5(a)(2)(iii).

The area of the roadless area impacted by the proposed unclassified “upper road” is characterized by old-growth forests and is known to be nesting habitat for marbled murrelets and spotted owls, both species listed under the Endangered Species Act.

Thus, USFS's decision not to prepare an EIS was made without the critical information regarding cumulative and other impacts, alternatives, and baseline conditions detailed above. The agency cannot issue a FONSI. Further, as noted herein, the potential significance of project impacts to the roadless area, important wildlife species, and other resources warrants preparation of an EIS.