Bark
PO Box 12065
Portland, OR
97212

In accordance with 36 CFR §218, Bark hereby objects to the Environmental Assessment ("EA") and draft Decision Notice for the Waucoma Timber Sale.

Responsible Official: Richard Periman, Forest Supervisor, Mt. Hood National Forest

Objection Period End Date: July 16, 2020.

Location: West Fork Hood River Watershed, Hood River Ranger District, Mt. Hood National Forest

Objector's Interests & Participation:

Lead objector Bark is a non-profit organization based in Portland, Oregon and has worked to protect the MHNF since 1999. Bark's mission is to bring about a transformation of public lands on and around Mt. Hood National Forest (MHNF) into a place where natural processes prevail, where wildlife thrives and where local communities have a social, cultural, and economic investment in its restoration and preservation. Bark has over 25,000 supporters[1] who use the public land lands surrounding Mt. Hood, including the areas proposed for logging in this project, for a wide range of uses including, but not limited to: hiking, nature study, non-timber forest product collection, spiritual renewal, and other recreation.

Dozens of our members and volunteers have visited the project area and taken extensive field notes about conditions on the ground. Bark has provided the Forest Service with detailed comments at every step of the planning process.

[1] Supporters in this case is defined as significant donors and petition-signees which Bark has identified as being active users of Mount Hood National Forest.

In addition, Bark is an active member of the Hood River Stew Crew and, in that capacity, has been discussing the Waucoma project with the Forest Service for several years in meetings, field trips, emails, and more.

It is important to acknowledge the work that the agency has done with the collaborative groups, and the impact that information requests can have, but we must also acknowledge that this is part of the role of the FS in these groups - to show up for public outreach, collaboration and analysis as part of NEPA and other law, regulation and policy.

Bark comes to these collaborative group meetings and puts work into them hoping to support the projects that come out of the agreed-upon process. It is very challenging when the FS brings projects to a collaborative group that are at the intensity and scale of Waucoma. Another challenge is that Bark (and all other FS partners) represent a unique set of values, and to support projects like Waucoma we must be able to justify the FS's actions ecologically and honestly to our members, and bring our membership along with us through the NEPA process.

We acknowledge that it may seem that Bark is constantly raising questions at the collaborative table. However, our intent is to work collectively to come up with a project that we can at the very least live with. Throughout the collaborative process for Waucoma, we have brought numerous ideas to the table to try and make that happen. It is after fully applying this approach that, with difficulty, we submit this objection.

As required by 36 C.F.R. § 218.8(d), the lead objector's name, address, telephone number and email:

Michael Krochta, Bark
P.O. Box 12065
Portland, OR 97212
503-331-0374, michael@bark-out.org

Requested Relief:

In recognition that the proposed action is has significant adverse ecological impacts, and violates law regulation and policy, Objectors request that the Forest Service resolve this objection by providing information and analysis about temporary roads needed to ensure informed decision making, and select an alternative approach that better meets the project's purpose and need.

Bark submits this Objection for the following reasons:

1) Failure to Take a hard look at impacts of temporary roads violates NEPA

NEPA creates procedural requirements for federal actions "(1) to ensure the agency will have detailed information on significant environmental impacts when it makes its decisions; and (2) to guarantee that this information will be available to a larger audience." *Inland Empire Pub. Lands Council v. U.S. Forest Serv.*, 88 F.3d 754, 758 (9th Cir. 1996). The NEPA process is intended to help public officials make decisions that are based on understanding the environmental consequences, and take actions that protect, restore, and enhance the environment. 40 C.F.R. § 1500.1(c). Additionally, NEPA requires the agency disclose relevant environmental considerations and thereby ensure informed public comment on proposed action and any choices or alternatives that might be pursued with less environmental harm. *Lands Council v. Powell*, 395 F.3d 1019, 1027 (9th Cir. 2005).

In order to ensure NEPA's joint purposes are met, an EA must provide sufficient information for determining whether to prepare an environmental impact statement or a finding of no significant impact. 40 C.F.R. § 1508.9(a), *Klamath Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 996 (9th Cir. 2004). The information presented in the EA must be of "high quality," and include "accurate scientific analysis." 40 C.F.R. 1500.1(b). "The hallmarks of a 'hard look' are thorough investigation into environmental impacts and forthright acknowledgment of potential environmental harms." *National Audubon Society v. Dep't of Navy*, 422 F.3d 174, 185 (4th Cir. 2005), 422 F.3d 174, 185 (4th Cir. 2005).

The Waucoma Proposed Action includes approximately 8 miles of temporary road construction. The locations of these roads are not included in the Proposed Action, nor was analysis of the environmental impacts of the temporary roads. The lack of specific information, coupled with the absence of environmental analysis, does not provide the public or the agency the information necessary to take a hard look at Waucoma's impacts. In reviewing an agency's finding that a project has no significant effects, courts must determine whether the agency has met NEPA's hard look requirement, "based [its decision] on a consideration of the relevant factors, and provided a convincing statement of reasons to explain why a project's impacts are insignificant." *Bark v. United States Forest Serv.*, 958 F.3d 865, 868 (9th Cir. 2020), quoting *In Def. of Animals v. U.S. Dep't of Interior,* 751 F.3d 1054, 1068 (9th Cir. 2014). With information about road building missing from the NEPA analysis, the Final Environmental Assessment and draft Decision Notice do not meet NEPA's requirements.

A) Use of the "condition-based framework" does not meet NEPA's standards

Unlike every other NEPA analysis Bark has ever read, the Waucoma EA does not disclose the proposed locations of temporary roads nor whether they will use the existing road template or be new construction, instead opting to use the controversial "conditions-based management approach." This means that instead of providing a map with proposed locations of temporary roads, the "[e]xact location and temporary road length would be determined on the ground during project implementation, and would be constructed while adhering to the PDC. It is anticipated that approximately eight miles of temporary roads would be constructed." *EA at 57.*

The Hood River Stew Crew, of which Bark is a member, worked hard to bring shared recommendations to the FS related to roads, although it was later hampered by the lack of specificity about road location.[2] The FONSI recognizes

[2] Since the Waucoma draft decision was released, the FS sent a letter addressed to the Hood River Stew Crew. To Bark's understanding, the letter has not been shared to the entire collaborative (only the Steering Committee) due to its inclusion of inaccurate or misrepresented information. For example, the letter says the FS's approach of not mapping temporary roads was described on Aug. 9th 2018. This is not accurate. Bark has email correspondence after the PA was released in late February 2020 with Janeen Tervo (HRRD Ranger at the time) where she states the FS will discuss this change at the March Stew Crew meeting. It appears that the FS appears to be attempting to rewrite history for the sake of the record, which makes it important for Bark to point out that this inaccuracy here.

The letter further talks about preserving FS staff's deliberative process, and that they are not withholding information. It is important to be able to request information that is needed for group decision making. Bark asked for the temporary roads layer in a collaborative group meeting, and the FS said they would not share it. If there's information that the collaborative group cares about that the FS will not share, then this does appear to be "withholding" information. The letter says that FS staff didn't use a temporary roads map in analysis for Waucoma, but goes on to say that they used it to estimate road mileage, and they surely used it to create the "roads likely built" map.

Lastly, the letter depicts Andrew Spaeth's communication with Janeen Tervo, which to Bark read to be accusatory, when it was clear to collaborative members that Andrew was attempting to make sure Janeen Tervo had all the relevant information available to her so she could make the best decision in this case. It was clearly an attempt to avoid future conflict that we are having now. Bark and other collaborative members are currently planning to express support for the work that Andrew Spaeth has done to move the group forward in its decision making, and support for his process in doing so.

"[i]nterested individuals and the Collaborative requested to see temporary roads identified on the proposed action map." *FONSI at 6*. Despite these requests, the Forest Service denied the request to share this information, and asserts that *not* disclosing the map will "provide clear expectations for implementation, and minimize confusion regarding temporary road placement." *Id.* This has caused conflict and an unravelling of trust within the collaborative group.

It is not known where, even generally, road segments will be located, how long they will be, and how they interact with the ecosystem, including the existing road prism. Upon review of the PDC listed by the Forest Service as providing guidance for the location temporary roads, it appears that they provide very few parameters regarding road placement. Despite the FONSI's assertion that "[t]he PDC clearly describe how temporary roads will be placed during project implementation," the applicable PDC vaguely direct where roads would, or would not be, built. Below are the PDC relating to road placement, paraphrased for clarity:

1. They **can** be built in Riparian Reserves but **not** within 100 feet of a stream, seep, wetland or spring **unless** there is a pre-existing road alignment, which can be rebuilt and used. 4- RR-AQF/ HDRO
2. They **can** cross trails. 19-G-REC.
3. They **can** be built on areas with a cross slope greater than 40%, or a grade of 15% for more than 2,000 feet, or a grade over 18% for more than 600 feet **after** the appropriate Forest Service specialist is consulted. 7-RD-ENG.
4. They should **not** obstruct ditch lines, **unless** they can't avoid them. 10-RD-HDRO
5. They would **not** cross any stream and would **not** be hydrologically connected to any stream. Locating temporary roads in the bottoms of ephemeral draws or dry swales **should be** avoided. 13-RD-HDRO/SOIL.
6. They **will avoid** yet disclosed archeological sites. 1-G-ARCH
7. They **will avoid** wet talus areas. 5-G-Aquatics

To be clear, aside from archeological sites, wet talus slopes and areas with hydrological connection to a stream, roads can be built in most places in the project area, provided that some internal consultation, to which the public is not privy, takes place. In addition to being broad and vague, there are several important considerations missing from the PDC. While the EA states that "[t]o minimize impacts, pre-existing alignments would be utilized where possible" there are no corresponding PDC to ensure this happens. There are also no PDC

regarding soil condition, presence of invasive species, or existing road density all of which are resource values negatively impacted by roads.

This approach, and these PDC, do little to "provide clear expectations for implementation, and minimize confusion regarding temporary road placement." In fact, they do the opposite. And, in failing to provide meaningful information for agency analysis or public review, they violate NEPA.

We understand that the Forest Service is trending toward greater use of condition-based analysis and management, and we are very concerned that this is causing unnecessary conflict between the agency and the public. This approach has been the subject of recent lawsuits, including a recent case regarding the Tongass National Forest where the court just invalidated the Forest Service's EIS. See *Southeast Alaska Conservation Council (SEACC) v. U.S. Forest Service*, 2020 WL 1190453, Case No. 19-00006-SLG (D. Alaska Mar. 11, 2020).

While the Prince of Wales project in Alaska was on a larger scale than the Waucoma project, the Forest Service's approach to conditions-based analysis and its plan to rely on post-decision implementation checklists to consider details and site-specific information is similar. When assessing the Prince of Wales EIS, the court found that the conditions-based framework undermines the purpose of NEPA because the Forest Service's approach improperly allows the agency to forgo public scrutiny of actual, site specific actions, essentially creating a blank check for a range of future activities. *SEACC* at *12 ("NEPA favors coherent and comprehensive up-front environmental analysis to ensure . . . that the agency will not act on incomplete information.").

Instead of doubling down on this controversial and legally shaky approach to NEPA analysis, we asked the Forest Service to do what it has done for decades and provide project specific information. Bark and the Stew Crew are not alone in this request. We have included a letter from several national environmental groups to the Forest Service Chief, discussing the court opinion in *SEACC* and asking the Forest Service again to abandon its draft NEPA regulation, 36 C.F.R. § 220.4(k)(proposed), which endorses and encourages the use of condition-based analysis. This condition-based analysis conflicts with NEPA's "hard look" mandate and using it in your NEPA analyses will result in a waste of public, agency and judicial resources.

Resolving this issue is simple. The Forest Service states that it wants to "[e]nsure we are striving to make every possible effort to meet the expectations of the public regarding temporary road location transparency, by sharing the most accurate and complete information available." *FONSI at 14*. Please do so. We know the Forest Service has a map of proposed road locations (subject to changes as

needed).[3] Please share this map with Bark and other members of the Stew Crew and provide an opportunity for public comment on the road placement before you issue your final decision.

B) Failure to take a hard look at the ecological impacts of temporary roads

Added to the NEPA documents' lack of information about the location and length of temporary roads, they failed to provide any analysis about the ecological impacts of temporary roads, thus making a "hard look" at the impacts of the project impossible. *Bark v. United States Forest Serv.*, 958 F.3d 865, 868 ("NEPA requires agencies to consider all important aspects of a problem," quoting *WildEarth Guardians v. U.S. E.P.A., 759 F.3d 1064, 1069–70 (9th Cir. 2014).)* In Section 6.7, the Transportation Analysis specifically excludes temporary roads from its impacts analysis: "This section does not address temporary roads which are discussed in section. 3.2.4.1." *EA at 34*. However, Section 3 simply lays out the proposed action – it does not analyze impacts. Despite the issue of temporary roads being highlighted as a concern in the Collaborative Group for years, the Final EA inexplicably contains no analysis of the extent of environmental impacts from temporary roads. This violates NEPA's requirement that the Forest Service take a "hard look" at environmental impacts as it determines whether these impacts may be significant.

I) Temporary Roads may have significant ecological impacts

This is not an issue of creating more process or paperwork – roads are well known to have serious, long lasting environmental impacts on forest ecosystems. A recent report on forest roads noted that temporary roads have the same types of environmental impacts as system roads, although at times the impacts can be worse if the road persists on the landscape because they are not built to last. Temporary roads often remain much longer than the 10 years anticipated by the Forest Service Manual yet they are constructed with fewer environmental safeguards than modern system roads.[4] As Bark noted in comments, it is well-documented that road construction vastly elevates erosion for many years, particularly in the first two years when the construction causes a persistent increase in erosion relative to areas in a natural condition.[5]

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[3] The map in Appendix A does not resolve this objection point as it provides no usable, site-specific information.

[4] WildEarth Guardians, The Environmental Consequences of Forest Roads and Achieving a Sustainable Road System, March 2020, p 24.

[5] Rhodes, J.J., McCullough, D.A., and Espinosa Jr., F.A., 1994. A Coarse Screening Process for Evaluation of the Effects of Land Management Activities on Salmon Spawning and Rearing Habitat in ESA Consultations. CRITFC Tech. Rept. 94-4, Portland, Or.

Specifically, major reconstruction of unused roads can increase erosion for several years and potentially reverse reductions in sediment yields that occurred with non-use. *Id.*

Road construction is by far the greatest contributor of sediment to aquatic habitats of any management activity.[6] Even temporary road construction can cause resource damage including erosion and sedimentation, exotic species spread and disruption of wildlife.[7] Unpaved roads and stream crossings are the major source of erosion from forest lands contributing up to 90% of the total sediment production from forestry operations.

The only mention of the impacts of temporary roads was in the Response to Comments, which asserted: "Effects analyses of the construction and use of approximately eight miles of temporary roads within the project area were found to be minimal." *Response to Comments at 4*. However, the decision-making record does not support the assertion that such effects analysis were, in fact, done. Not only does the EA fail to discuss the ecological impacts of temporary roads, we dug into the specialists' reports and found very little. The Transportation Specialist's Report does not address impacts from temporary roads, only road maintenance, reconstruction, closure of system roads. Nor do the Silviculture, Fisheries or Soils specialists contain any information about effects from temporary roads.

In fact, the only specialist's report in which we found analysis of temporary roads was the Botany report:

> "This project has a high risk of invasive species infestation. The proposed action includes timber removal, piling of slash and associated actions, such as temporary road construction and road maintenance. These activities create disturbed, bare ground and remove competitive vegetation which may be preventing the growth of invasive species. There would also be rock product material imported to the area for the repair and maintenance of roads. . . Conceivably, all the treatment acres would become more susceptible to some degree of a weed establishment opportunity, as a result of this proposed action. Some acres would be

[6] Robichaud, P.R., L.H. MacDonald and R.B. Foltz. 2010. Fuel management and erosion. Ch. 5 in: W.J. Elliot, I.S. Miller and L. Audin (eds.). Cumulative Watershed Effects of Fuel Management in the Western United States. USDA For. Serv. Rocky Mtn. Res. Sta. Gen. Tech. Rep. RMRS-GTR-231. Fort Collins, CO.

[7] Trombulak, S.C. and C.A. Frissell. 2000. Review of ecological effects of roads on terrestrial and aquatic communities. Conservation Biology 14:18-30.

more susceptible compared to others. The level of disturbance activity determines the risk of weed introduction and infestation."[8]

Despite this being the *only* analysis of the ecological impacts of temporary roads, the PDC regarding temporary roads say nothing about locating them in areas that have less potential to spread invasive species, or including mitigation measures such as those suggested in the specialist's report: "Monitoring and aggressive weed treatment immediately after discovery of new species introduced during project implementation would lessen the impact and spread of new infestations."[9]

II) Effectiveness and implementation of PDC

While the EA and Draft FONSI do not explicitly state that the PDC minimize the environmental impacts of the roads (because they do not discuss the environmental impacts of temporary roads) we can imagine the Forest Service dismissing this objection issue based on this unspoken argument. However, as thoroughly discussed in the WildEarth Guardians roads report, and confirmed by Bark's own post-project monitoring reports,[10] neither project design criteria nor best management practices can guarantee that temporary roads have an insignificant environmental impact as the effectiveness of such measures, and whether they are implemented at all is in question.[11] Furthermore, the design features that are increasingly replacing BMPs for project-level mitigation of road-related environmental impacts are not consistent among projects, but adapted from forest plans and state BMPs, rather than national Forest Service guidelines.[12]

When considering how effective design criteria and mitigation measures are at controlling nonpoint pollution on roads, both the rate of implementation and their effectiveness should both be considered. The Forest Service tracks the rate of implementation and the relative effectiveness of BMPs from in-house audits. More than a hundred evaluations on roads were conducted in FY2014. Of these evaluations, only about one third of the road BMPs were found to be "fully implemented". The monitoring audit also rated the relative effectiveness of the

[8] Botany Report at 7.
[9] *Id.* at 9.
[10] Attached BMP monitoring report (Bark's most recent)

[11] WildEarth Guardians, The Environmental Consequences of Forest Roads and Achieving a Sustainable Road System, March 2020, p 25.

[12] Id. at p 26

BMPs. When treated roads were evaluated for effectiveness, almost half of the road BMPs were scored as either “marginally effective” or “not effective”.[13]

Climate change will further put into question the effectiveness of many road BMPs. While the impacts of climate will vary from region to region more extreme weather is expected across the country which will increase the frequency of flooding, soil erosion, stream channel erosion, and variability of streamflow. The uncertainties about BMP effectiveness as a result of climate change, compounded by the inconsistencies revealed by BMP evaluations, suggest that the Forest Service cannot simply rely on them, or design features/criteria, as a means to mitigate project-level activities. This is especially relevant where the Forest Service relies on the use of BMPs instead of fully analyzing potentially harmful environmental consequences from road design, construction, maintenance or use, in studies and/or programmatic and site-specific NEPA analyses.[14]

III) Knowing the location of Temporary Roads can be essential to understanding their ecological impacts

The reason for not sharing temporary road locations was never shared with the Hood River Stew Crew for the duration of collaborating and planning for this project. As a result, the Stew Crew does not have an understanding of where and how long-term impacts resulting from roadbuilding will occur as part of this project. This is the first vegetation management EA released by the Mt. Hood National Forest in at least a decade that does not include proposed temporary road locations and types (i.e. "existing", non-system, previously closed/decommissioned system, new, etc.).

The Forest Service has repeatedly referred to Project Design Criteria as “sideboards”. Project Design Criteria often include language such as “generally” and “where practical”. These are not actual sideboards because there is nothing about PDCs that says that an impact will not at some point be decided to occur. Relying only on PDCs for temporary roads will mean the public will never know which impacts occur and where, or if there was a better alternative that could have avoided an impact.

At a recent Stew Crew meeting, Bark provided the following brief examples of recent Mt. Hood projects where knowing the locations and types of proposed

[13] Id.
[14] Id. at p. 27.

temporary roads was important to project planning and/or the discussions resulting from what later occurred on the ground:

- **Polallie Cooper EA** (HRRD) – Temporary roads were mapped to cross existing trails, and even use these trails as temporary roads. This led to a more robust discussion in the collaborative about impacts to recreation from this project.
- **Zigzag Integrated** (ZZRD) – A temporary road is currently proposed to be built straight through a known stand of remnant trees and snags. This information was available in pre-scoping and was able to be discussed by the public in a public *pre-scoping* meeting in 2019.
- **Goat Mtn EA** (CRRD) – Temporary roads were proposed to re-open and use previously rehabilitated illegal OHV trails (previously closed with Retained Receipts). This led to discussion and recommendations by the CSP about unauthorized access via reopening illegal OHV trails, and increased access to OHVs from timber sales in general. It also opened the discussion about the appropriateness to undo work recently completed with retained receipts.
- **Jazz EA** (CRRD) – A temporary road was built over a stream to access a unit, and later pit rock was left there which had to be removed after the FS got involved and directed the contractor to go back and fix it. This led to conversation between Bark and the FS about clarity and intent of contract language, and how it translates over from the intent of language within EAs and PDCs.
- **Upper Clack EA** (CRRD) – The CSP used temporary road maps to plan a 2017 Clackamas Stewardship Partners field trip with the FS. 100% of temporary roads that were planned were built. At least one temporary road is still not closed several years after the contract ended.
- **Grove EA** (CRRD) – A temporary road was proposed to be built over stream, which according to the EA was supposed to use drainage via a French drain, but did not include this during implementation. The stream has been left with a road built over it. This was discussed and visited by Bark and the FS, and highlighted in this 2015 article in Street Roots.
- **No Whisky EA** (CRRD) – Temporary road was not closed before contractor equipment was moved offsite, then accessed by OHV users. This led to a discussion about the timing and effectiveness of temporary road closures, and the sale administration that is available onsite.
- **Hunter EA** (CRRD) – Closed system roads that were repeatedly breached were proposed to be used as temporary roads, with "new" temporary roads being proposed to be built off of these breached roads. This led to public

discussion about road closure timelines, effectiveness, and prevention of unauthorized access.[15]

- **Quarry Timber Sale** (2007 Thin EA, CRRD) – Some temporary roads were never closed after being used for the timber sale, resulting in increased access, dumping, invasive weed establishment, soil erosion. No one would have known about this issue if areas were not mapped with temporary roads.
- **Airstrip EA** (BLM, North Fork Clackamas) – A temporary road was proposed to be built straight through a stand of the last remnant old growth trees in the entire Airstrip sale area. This led to the eventual dropping of this road from the proposal.

In Waucoma, the Forest Service is bringing the area to the absolute maximum in terms of Watershed Impact Areas (35% for sub-basin scale) according to Mt. Hood National Forest's LRMP, so knowing location and type of road is important to both the agency and public in their disclosure and shared public understanding of significant impacts.

Some groups on the Stew Crew and Wasco County Forest Collaborative take impacts from roads very seriously, and fear that this issue may take away their ability to have dialogue and act as a non-starter for reaching consensus agreements on future projects. Given that two other Eastzone projects (Grasshopper, Pollywog) are being planned using this same approach, this risk of increased conflict could increase at least threefold if not addressed here.

C) Objection resolution

This objection point can be resolved by releasing a map of the proposed road locations and by all appropriate Forest Service specialists analyzing the impacts of temporary roads to the affected resources, while taking into account the relative effectiveness of project design criteria, and disclosing this information to the public for comments that will be incorporated into the Final Decision.

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[15] A question that was asked by a member of the Stew Crew June 11th meeting about whether general PDCs could work in specific situations. A project on the westside where Bark suggested to the planner that a road-specific PDC be written into the analysis for a road with history of breached closures was mentioned. In this case, the response from the FS was that the existing PDCs would cover it the issue. The result has been that within one year of being used for the timber sale, the road has already been breached after being closed.

There was also point made by a collaborative member that putting temporary roads on contract maps was for appraisal purposes – which is partially true, but not when it comes to defining what specific closed system roads are to be used as temporary roads which require re-closing often as part of a goods-for-services contract.

This is not simply an exercise in creating more paperwork; a more thorough, scientifically accurate analysis could lead to a final decision with more beneficial ecological and social outcomes. By requiring agencies to take a "hard look" at how the choices before them affect the environment, and then to place their data and conclusions before the public, NEPA relies upon democratic processes to ensure that "the most intelligent, optimally beneficial decision will ultimately be made." *Or. Natural Desert Ass'n. v. BLM*, 625 F.3d 1092, 1099-1100 (9th Cir. Or. 2010).

2) Failure to analyze and/or adopt alternative that meets the purpose and need

NEPA requires that all reasonable alternatives receive a "rigorous exploration and objective evaluation…, particularly those that might enhance environmental quality or avoid some or all of the adverse environmental effects." 40 C.F.R. § 1500.8(a)(4), *see also Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d at 1172, (9th Cir. 2008). The discussion of alternatives is intended to provide a "clear basis for choice among options by the decisionmaker and the public." 40 C.F.R. §1502.14. This requirement is critical to serving NEPA's purpose of ensuring fully informed decisions and providing for meaningful public participation in environmental analyses and decision-making. *See* 40 C.F.R. § 1500.1(b), (c). The Forest Service's NEPA regulations do provide that, for those projects with no unresolved conflicts concerning alternative uses of available resources, an EA need analyze only the proposed action and the "no action" alternative; however, this condition is clearly not applicable to the present case. 36 C.F.R. § 220.7(b)(2)(i). Thus, the legal question is whether the Forest Service failed to meaningfully consider any reasonable alternatives to the Proposed Action. *W. Watersheds Project ("WWP") v. Abbey*, 719 F.3d 1035, 1049-1053 (9th Cir. 2013) ("The existence of a viable but unexamined alternative renders an [EA] inadequate.").

A court focuses on the stated purpose of a project to determine whether the Forest Service considered all appropriate and reasonable alternatives. *See Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992). While the EA and FONSI state that the proposed action is the best way to meet the purpose and need of maintaining current and future huckleberry habitat across the landscape, the proposed action includes logging prescriptions that do not support optimal huckleberry growth. Because of this, Bark asked the Forest Service to develop an alternative that reduced the amount of shelterwood logging. Also, in its comment letter, the Stew Crew noted that as an alternative to shelterwood harvests some collaborative members expressed interest in increasing the heterogeneity and complexity of existing homogenous stands by

creating skips and gaps and conducting thinning activities that will promote the development of structure, function, and composition of late seral forests. Instead of meeting this request, the Forest Service pushed ahead with a single alternative that includes actions known to not meet the purpose and need, thus violating NEPA.

A) Shelterwood prescription does not enhance huckleberry production.

The shelterwood prescription brings the canopy down to as little as 15%, and nothing in the record that supports this low level of canopy as promoting huckleberry growth. As noted by several individuals in Stew Crew meetings as well as in Bark's scoping and PA comments, shelterwood logging is not known specifically to enhance huckleberry reproduction. Forestry program staff at Confederated Tribes of the Warm Springs presented findings to the Stew Crew March meeting that in their experience, Shelterwood harvest often results in a lag of increased huckleberry cover and fruiting. This is echoed in Bark's comments, observing that a 2002 study on Huckleberry Management in Mt. Hood National Forest and the Warm Springs Reservation, found that the highest fruit production class values were observed in huckleberry fields with 35-50% canopy cover and 4-7m²/ha of conifer basal area.[16] Likewise, the Gifford Pinchot draft Huckleberry Management Strategy notes that "Huckleberry plants may benefit from the protection of a sparse canopy, such as that provided by dead snags after a wildfire; therefore, management should consider leaving individual stems or groups of trees up to a residual canopy cover of up to 30-50%."[17]

The Botany Report did not discuss these findings, nor the impacts of such a low canopy cover on huckleberry production – indeed as written, the report makes it seem as if there will *not* be stands that have such a low canopy cover: "The proposed action would enhance huckleberry growing conditions by reducing canopy cover within treatment areas to an <u>average of approximately 30% canopy cover within upland stands</u>." *Botany Report at 6* (emphasis added). However, the Response to Comments justifies the shelterwood prescription by suggesting there will be an average of 30% canopy cover across <u>all</u> treated stands – by averaging out the higher canopy cover in riparian reserves with the lower canopy cover in shelterwoods. *Response to Comments* at 2. Using the logic of averages,

[16] Hudec, Jessica, Gifford Pinchot National Forest draft Huckleberry Management Strategy, March 2017 https://pinchotpartners.org/wp-content/uploads/2017/12/Huckleberry-Strategy-04.10.17.pdf, citing Anzinger, D.L. 2002. Big huckleberry (Vaccinium membranaceum Dougl.) Ecology and Forest Succession, Mt. Hood National Forest and Warm Springs Indian Reservation, Oregon. M.S. Thesis, Oregon State University.

[17] Hudec, Jessica, Gifford Pinchot National Forest draft Huckleberry Management Strategy, March 2017, p 9.

half of the stands could have 0% canopy cover, and the other half has 60% for an average of 30%, but none of those stands will be good for huckleberries. As Judge Louis Brandeis famously said, “I abhor averages. I like the individual case. A man may have six meals one day and none the next, making an average of three meals per day, but that is not a good way to live.”

Nothing in the record addresses or changes the fact that bringing the canopy cover down to 15% is known to delay, rather than enhance, huckleberry production compared to variable density thinning.

B) Long-term challenges with shelterwood prescription

The shelterwood prescription could trigger the Forest Plan’s requirements to restock – which is in direct conflict with mid to long-term huckleberry growth. This tension is recognized in the Gifford Pinchot National Forest’s Huckleberry Management Plan: "Complications associated with timber sales include regeneration stocking level and slash disposal requirements and equipment impacts on vegetation and soils. Stands must meet minimum stocking standards following harvest per land management plan requirements; therefore, regeneration planting could be required.” The Mt. Hood Forest Plan considers shelterwood logging to be “even aged management”; if the requirements of FW-361 & 362 for replanting apply to these units, there would be no way to ensure that the newly planted trees do not outcompete the huckleberry.

Another tension regarding the shelterwood units is that more heavily logged stands may take longer to produce huckleberries, yet at the same time, the Waucoma hydrology report says of these stands: “Within an estimated 20 to 40 years they would become hydrologically mature, or ‘recovered’, and no longer considered to be a WIA.”[12] Given that the agency is looking at a longer time frame for huckleberry reproduction in shelterwood units, while simultaneously relying on hydrological recovery of these stands in a short time frame to avoid a significant impact, the hydrological finding are inconsistent with the rationale for achieving the Purpose and Need in shelterwood units.

Finally, the new PDC do not resolve Bark’s concerns, as they do not change the project and add nothing that was not already required. A PDC that “[c]ontiguous shelterwood treatments would be limited to no more than 60 acres and would be separated by blocks of land not classified as created openings as defined in the Forest Plan” simply implements an existing Forest Plan Standard, FW-349, which without an amendment, the Forest Service should be following. The second PDC, that “[t]he final location, intensity, and extent of treatments within proposed units would consider soil, topographic, and stand conditions in order to minimize wind-throw potential” is also something we assume the Forest Service always takes into consideration in its planning.

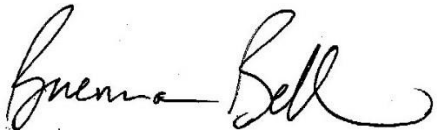
c) Objection Resolution

While shifting the prescription from Shelterwood to variable density thinning may decrease the timber volume produced by the timber sale, it better meets the stated purpose and need of enhancing huckleberry production in some areas. When other feasible alternatives also meet the project's purpose and need, they "should be considered in detail." *WWP v. Abbey*, 719 F.3d at 1052. Further, as other courts have recognized, an alternative may not be disregarded merely because it does not offer "a complete solution to the problem." *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 836 (D.C. Cir. 1972); *Town of Matthews v. U.S. Dep't. of Transp.*, 527 F. Supp. 1055, 1057-58 (W.D. N.C. 1981) (NEPA "does not permit the agency to eliminate from discussion or consideration a whole range of alternatives, merely because they would achieve only some of the purposes of a multipurpose project."). As such, reducing the amount of shelterwood units is a reasonable alternative that should be analyzed and adopted. Amending the action alternative to change shelterwood prescriptions in units 57, 13 & 14, 81, 95, 69 & 70 to include more variable density thinning would resolve this objection.

Conclusion

For the above reasons related to law, regulation and policy, Bark objects to the draft Decision Notice and FONSI and requests that the Forest Service resolve these objections to ensure this project can move forward without any further delays. We are happy to discuss any of these issues more in-depth in preparation for a productive objection resolution meeting.

Thank you,



Michael Krochta
Forest Watch Coordinator, Bark

Brenna Bell
Staff Attorney, Bark