



June 24th, 2022

Sarah Bertel, Objection Reviewing Officer
Deschutes National Forest Supervisor's Office
63095 Deschutes Market Road
Bend, OR 97701

Submitted via email to: objections-pnw-deschutes@usda.gov

Re: OBJECTION to Green Ridge Landscape Restoration Project

To Objection Reviewing Officer, Forest Supervisor Bertel:

WildEarth Guardians respectfully submits this objection to the U.S. Forest Service concerning the agency's environmental assessment (EA) under the National Environmental Policy Act (NEPA) assessing the impacts of the proposed Green Ridge Landscape Restoration Project on the Sisters Ranger District of the Deschutes National Forest. The project area covers 25,000 acres of Forest Service land and includes the Metolius River watershed. The Forest Service proposes logging and other treatments on about 19,448 acres. Additionally, it proposes to decommission 25.5 miles of system roads, close 19 miles of system roads, decommission 3 miles of non-system roads, and construct 10.8 miles of temporary roads. Environmental Assessment at 326. Forest Supervisor Bertel is the objection reviewing officer.

WildEarth Guardians previously submitted timely scoping comments on the Green Ridge Project on October 2, 2017 (hereafter, "Scoping Comments"). We support the agency's moves to prioritize unneeded roads for decommissioning. The proposed project is not clear as to which roads will be decommissioned or how the determination was made. It states that there would be a roughly 19-mile change in level one maintenance roads but does not share this data for any other categorization of roads, nor what categorization these roads are currently under. *See* Environmental Assessment at 325. However, an emphasis is expressed on "addressing hydrologic and aquatic issues through road decommissioning." Environmental Assessment at 25. We suggest the Forest Service add clarity about the specific road activities to inform meaningful public comment.

This is precisely the moment when the Forest Service should seize the opportunity to complete more road decommissioning to transform its sprawling, over-sized, and historically under-funded road system into a resilient, well-maintained road system of the future. The recent Bipartisan Infrastructure Investment and Jobs Act permanently authorized the Forest Service Legacy Roads and Trails Remediation Program and provided vital funding to complete precisely the type of road decommissioning activities that this project entails. Protecting and restoring national forest lands and waters from the Forest Service's immense and failing infrastructure is vital to ensuring these

public lands are resilient to climate change impacts, and to provide the habitat wildlife need when facing the current biodiversity crisis. To capitalize on the recent funding and act swiftly in the face of climate change, we strongly urge the Forest Service to commit to as much road decommissioning as possible in this project decision.

1. Because the project may have a significant impact, the Forest Service should have prepared an environmental impact statement (EIS).

WildEarth Guardians commented that the Forest Service should prepare an EIS instead of an EA due to the significant impacts the project may have on the environment. *See* Scoping Comments at 1. The Forest Service has continued with an EA and Draft Decision Notice. The Council for Environmental Quality's (CEQ) regulation defines an EA as "a concise public document . . . that serves to, *inter alia*, "[f]acilitate preparation of a [EIS] when one is necessary." 40 C.F.R. § 1508.9(a)(3). An EIS is necessary if a project *may* significantly affect the human environment. CEQ's regulations define significance in terms of context and intensity, which includes *inter alia* the scope of beneficial and adverse impacts, unique characteristics of the geographic area, degree of controversy, degree of uncertainty, and degree to which an action may affect species listed or critical habitat designated under the Endangered Species Act. *Id.* § 1508.27 (defining "significantly").

This project may significantly affect the human environment because, *inter alia*, it:

- Will cause significant impacts, both beneficial and adverse. For example, a 10% increase in core habitat area and an expected change in fire risk for 15,402 acres.
- Involves a large geographic of over 19,000 acres with unique characteristics.
- Involves effects on the human environment that are likely to be highly controversial.
- Involves effects that are highly uncertain or involve unique or unknown risks.
- Will decrease the habitat of the rare Lewis's Woodpecker.
- Is "likely...adversely affect" the endangered Northern Spotted Owl.

For these reasons, the Forest Service should prepare an EIS instead of the EA. What's more, an EA is defined as a *concise* public document to *briefly* provide sufficient evidence and analysis to determine whether to prepare an EIS or finding of no significant impact. 40 C.F.R. § 1508.9. This 381-page EA, in essence, is an EIS, covering a wide array of impacts—the analysis of which requires a very comprehensive document that is in no way brief. The Forest Service may not avoid the more stringent requirements for an EIS by naming this analysis an EA.

2. Fails to address the agency's duty to identify the minimum road system as part of this project.

WildEarth Guardians commented that the Forest Service should identify the minimum road system as part of this project. *See* Scoping Comments at 7. The Forest Service has failed to do so and did not address their need to identify the minimum road system. Instead, the Forest Service simply states that identification of the minimum road system is part of the travel analysis process. Environmental Assessment at 11. Under subpart A of its travel rule, the Forest Service has a substantive duty to address its oversized road system, including identifying a "minimum road system needed for safe and efficient travel and for the protection, management, and use of National Forest

System lands.” See 36 C.F.R. § 212.5. This underlying substantive duty must inform the scope of and be included in the agency’s NEPA analysis.¹ After more than 15 years since finalizing the subpart A rules (2001), the Forest Service can no longer delay in addressing this duty. The Forest Service should revise its statement of purpose and need to include the need to identify a minimum road system.

To identify the minimum road system, the Forest Service must consider whether each road segment the agency decides to maintain on the system is needed to meet certain factors outlined in the agency’s own regulation.¹⁹ Consider whether each road segment is needed to:

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

36 C.F.R. § 212.5(b)(1). In assessing specific road segments, the Forest Service should also consider the risks and benefits of each road as analyzed in the travel analysis report and whether the proposed road management measures are consistent with the recommendations from the travel analysis report. To the extent that the final decision in this project differs from what is recommended in the travel analysis report, the Forest Service must explain that inconsistency. See, e.g., *Smiley v. Citibank*, 517 U.S. 735 (1996) (“Sudden and unexplained change . . . or change that does not take account of legitimate reliance on prior interpretation . . . may be ‘arbitrary, capricious [or] an abuse of discretion’”) (internal citations omitted). At the very least, the Forest Service must explain why it is not identifying the minimum road system as part of this project decision. Without more, the Forest Service fails to respond to WildEarth Guardians’ comments and fails to comply or even address its own Travel Management Rules.

3. The Forest Service did not carefully consider the direct, indirect, and cumulative impacts.

We previously submitted comments that the Forest Service should carefully consider all impacts of the project and express these to the public. See Scoping Comments at 4. However, at many points, the Forest Service did not carefully consider the impacts of this proposed project. Several examples are provided in the following paragraphs.

NEPA requires the Forest Service to “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment.” 40 C.F.R. § 1500.2(d). A critical part of this obligation is presenting data and analysis in a manner that will enable the public to thoroughly review and understand the analysis of environmental consequences. NEPA procedures must insure

¹ See Memorandum from James Peña, Regional Forester, to Forest Supervisors on Monitoring Travel Management NEPA Decisions for the Minimum Road System (Sept. 6, 2016) (Scoping Attachment D) (“Ensure that travel management proposals analyzed under the National Environmental Policy Act (NEPA) are addressed in the purpose and need statement.”).

that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most importantly, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail. 40 C.F.R. § 1500.1(b). The Data Quality Act expands on this obligation, requiring that influential scientific information use “best available science and supporting studies conducted in accordance with sound and objective scientific practices.” Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub.L. No. 106-554, § 515.

Slash Debris

We previously commented that the Forest Service should consider the impacts of logging byproducts commonly left at logging sites. *See* Scoping Comments at 3. Although logging removes trees, it leaves behind flammable “slash debris,” including branches, twigs, and pine needles that are not usable for lumber and which act like kindling in forest fires. *See, e.g.*, Scoping Comment, Attachment E (noting that economically viable fuel reduction logging will often harvest larger trees but generate more surface-fuel residues and explaining that not treating surface-fuel by-products can actually increase fire intensity and severity when a wildfire does occur). The Forest Service states that slash from logging operations will either be crushed by equipment during the process or piled and burned upon completion. The impacts of the flammable crushed slash material left behind are not considered, nor are the potential impacts of additional burning, or how this slash may actually increase the flammable material in the forest—especially in light of the numerous temporary logging roads that increase the risk of human-caused wildfire in the project area. Environmental Assessment at 315.

Logging also removes the forest canopy cover that normally would provide cooler shaded conditions and creates hotter, drier conditions on the forest floor that can allow a fire to spread faster. *Id.* Compare that to large fires and patches of intense fire, which create an abundance of biologically essential standing dead trees (snags) and naturally stimulate regeneration of vigorous new stands of forest. Snag forests provide some of the best wildlife habitats in forests. *See, e.g.*, M.A. Moritz, *et al.* The Forest Service’s failure to consider these impacts of the project is arbitrary and capricious.

Noise Pollution & Disruption of Wildlife

Additionally, the Forest Service only minimally considers the impacts of the noise associated with the treatments proposed, especially how the noise pollution from proposed activities will disrupt wildlife. Environmental Assessment at 68-71. There are seasonal constraints for some species and a standard buffer zone that does not take into consideration nearby species with sensitive hearing that may be impacted outside of this buffer zone. *Id.* at 148. Logging is known to create “hazardous noise” for humans working onsite, due to this, workers experience hearing loss at a higher rate than any other profession.² Similarly, the noise produced from logging has adverse impacts on the wildlife. A recent study found that factors such as an animal being primarily nocturnal and their use

² Sean Lawson, Elizabeth Masterson, *Timber, Noise, and Hearing Loss: A Look into the Forestry and Logging Industry*, National Institute for Occupational Safety & Health Science Blog (May 24, 2019), <https://blogs.cdc.gov/niosh-science-blog/2018/05/24/noise-forestry/>.

of hearing to aid in hunting make an animal more vulnerable to the negative impacts of noise.³ Both of these traits match the endangered Northern Spotted Owl, which is located in the project area.⁴

Site-Specific Analysis

We previously commented on the importance of site-specific analysis. The Forest Service must conduct site-specific analysis as a part of its analysis. *See* Scoping Comments at 4. This includes explicitly delineating where system and unauthorized roads currently exist and the total mileage of each, which roads or road segments will be constructed as temporary roads, which roads will be decommissioned or closed, and the resulting impacts of such activity on important Forest resources. We previously commented that omitting this information would preclude meaningful public comment on the roads aspect of the project. *Id.* The Forest Service did not provide a list of all roads or road segments that will be impacted by this project. Detailed, site-specific information is essential to establishing an accurate baseline for comparing any proposed action alternatives.

Ensure Protection of Old and Mature Forests

On April 22, 2022, President Biden signed an Executive Order titled “Executive Order on Strengthening the Nation’s Forests, Communities, and Local Economies.” 87 Fed. Reg. 24,851 (April 27, 2022). In it, President Biden sets forth his policy to conserve old-growth and mature forests, explaining that “[c]onserving old-growth and mature forests on Federal lands . . . is critical to protecting these and other ecosystem services [including carbon storage] provided by those forests.” *Id.* Rather than cut down old and mature forests, President Biden states, “[i]t is the policy of my Administration, in consultation with State, local, Tribal, and territorial governments, as well as the private sector, nonprofit organizations, labor unions, and the scientific community, to . . . conserve America’s mature and old-growth forests on Federal lands.” *Id.* The Forest Service must consider and explain how the proposed Green Ridge Project complies with this policy. There are 815 acres of identified Old Growth (MA-15) in the project area. Environmental Assessment at 6. The project includes treatments in Late Successional Reserve based in part on the East of the Cascades - Guidelines to Reduce Risks of Large-Scale Disturbance standards and guidelines (NWFP C12-C13). Environmental Assessment at 6. There are 9,782 acres of Late Successional Reserve within the project area. Large trees make important contributions to the structural and spatial diversity of forests; provide security for wildlife (see Forest Plan Amendment to WL-54); provide habitat for many animals and plants when large trees die; and are becoming increasingly important for wildlife population persistence as the climate changes.

On June 23, 2022, Secretary Tom Vilsack signed a memorandum to clarify the U.S. Forest Service’s direction on climate policy.⁵ The memo outlines “actions to restore forests, improve resilience, and address the climate crisis,” and recognizes that “forests on Federal lands . . . provide a vast network

³ Mark A. Ditmer et al, Assessing the Vulnerabilities of Vertebrate Species to Light and Noise Pollution: Expert Surveys Illuminate the Impacts on Specialist Species, Table 1 (Integrative and Comparative Biology, Vol. 61, Issue 3, Sept. 2021).

⁴ *Spotted Owl*, TheCornellLab, https://www.allaboutbirds.org/guide/Spotted_Owl/lifehistory

⁵ U.S. Dept. of Agriculture, Secretary’s Memorandum 1077-004, Climate Resilience and Carbon Stewardship of America’s National Forests and Grasslands (June 23, 2022), *available at* <https://www.usda.gov/directives/sm-1077-004> (last accessed June 24, 2022).

of natural infrastructure that is increasingly important for mitigating and adapting to the effects of climate change.” *Id.* This memo highlights the importance of protecting mature and old-growth forests and trees. However, the memo falls short by downplaying logging’s role in further contributing to the climate crisis. It states “[a] primary threat to old-growth stands on national forests is no longer timber harvesting, but rather catastrophic wildfire and other disturbances resulting from the combination of climate change and past fire exclusion.” *Id.* The USDA’s memo sets up a false “either-or” dichotomy; in reality, logging *and* climate change along with past fire exclusion continue to threaten old and mature forests on federal lands. This site-specific project presents an opportunity to correct the farce of logging trees to save the forest from climate change by accurately identifying logging as a cumulative and additive threat to the climate crisis.

President Biden’s 2022 Executive Order, Secretary Vilsack’s memorandum, and Guardians’ related concerns are all “based on new information that arose after the opportunities for comment.” 36 C.F.R. § 218.8(c). The Executive Order was signed April 22, 2022, well after the close of any comment period for this project. Secretary Vilsack’s memorandum was issued June 23, 2022, also well after the close of any comment period.

Climate Change and Forest Roads

WildEarth Guardians previously commented asking the Forest Service to consider the intensification of impacts associated with roads due to climate change. *See* Scoping Comments at 6. The Forest Service did not carefully consider the direct, indirect, and cumulative impacts of this. Climate change is a major challenge for natural resource managers because of the magnitude of potential effects and the related uncertainty of those effects. A robust analysis under NEPA of the forest road system and its environmental and social impacts is especially critical in the context of climate change.

Climate change intensifies the impacts associated with roads. For example, as the warming climate alters species distribution and forces wildlife migration, landscape connectivity becomes even more critical to species survival and ecosystem resilience.⁶ Climate change is also expected to lead to more extreme weather events, resulting in increased flood severity, more frequent landslides, altered hydrographs, and changes in erosion and sedimentation rates and delivery processes.⁷ Many National Forest roads are poorly located and designed to be temporarily on the landscape, making them particularly vulnerable to these climate alterations.⁶ Even roads designed for storms and water flows typical of past decades may fail under future weather scenarios, further exacerbating adverse ecological impacts, public safety concerns, and maintenance needs.⁸ Climate change predictions affect all aspects of road management, including planning and prioritization, operations and

⁶ Scoping Attachment A at 9-14.

⁷ *See, e.g.,* Halofsky, J.E. et al. eds., USDA, Forest Service, Pacific Northwest Research Station, *Adapting to Climate Change at Olympic National Forest and Olympic National Park*, PNW-GTR-844 (2011), pages 21-27 (Scoping Attachment G). ⁶ *See, e.g., id.* at 36-38.

⁸ *See, e.g.,* Strauch, R.L. et al., *Adapting transportation to climate change on federal lands in Washington State*, *Climate Change* 130(2), 185-199 (2015) (noting the biggest impacts to roads and trails are expected from temperature-induced changes in hydrologic regimes that enhance autumn flooding and reduce spring snowpack).

maintenance, and design.⁹

The Forest Service has a substantive duty under its own Forest Service Manual to establish resilient ecosystems in the face of climate change.¹⁰ More broadly, the Forest Service has a mission to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The agency's own climate change science identified above demonstrates how climate change places ecosystems in our national forests at risk. Thus to fulfill its mission, the Forest Service must address the risks of climate change when managing activities involving roadwork on our national forests.¹¹

In sum, the Forest Service should carefully, and comprehensively consider the direct, indirect, and cumulative impacts of this project including the impacts on wildlife from noise, slash-debris impact on fire risk, climate change's impact on fire risk, and forest roads, and the protection of old-growth forests. We urge the Forest Service to revise its analysis to consider and disclose these impacts.

4. Fails to ensure temporary roads will, in fact, be temporary.

The Forest Service proposes to construct 10.8 miles of temporary roads. Environmental Assessment at 326. Temporary roads must be closed within 10 years of completion of a project, per 16 U.S.C. 1608(a), unless the Forest Service re-evaluates the road and determines it to be necessary for the minimum road system. During the project, however, and for an additional 10 years after completion of the project, the temporary roads will continue to have very real impacts on the landscape. For example, temporary roads will continue to allow for harassment of wildlife, littering, fires, invasive plant distribution, and negative impacts on aquatic and riparian habitats, as well as the fish that depend on that habitat.

Fails to Provide the Necessary Assurances

WildEarth Guardians commented that the Forest Service should ensure that temporary roads constructed as a part of this project will, in fact, be temporary. *See* Scoping Comments at 10. The Forest Service did not express a plan nor a timeline to decommission roads after the completion of the process. Instead, it is merely stated that upon completion, temporary roads will be destroyed. Environmental Assessment at 29.

The Forest Service should ensure that the temporary roads will, in fact, be temporary by committing to decommissioning all temporary roads within 10 years following the completion of this project and identifying monitoring and enforcement to confirm that commitment. Based on its history of failing to implement its own decisions, we are very concerned that the Forest Service

⁹ Scoping Attachment F at 35.

¹⁰ *See, e.g.*, FSM 2020.2(2) (directing forests to “[r]estore and maintain resilient ecosystems that will have greater capacity to withstand stressors and recover from disturbances, especially those under changing and uncertain environmental conditions and extreme weather events”); FSM 2020.3(4) (“[E]cological restoration should be integrated into resource management programs and projects . . . Primary elements of an integrated approach are identification and elimination or reduction of stressors that degrade or impair ecological integrity.”).

¹¹ USDA, Forest Service, *National Roadmap for Responding to Climate Change* at 26 (2011), available at <http://www.fs.fed.us/climatechange/pdf/Roadmapfinal.pdf>, page 4 (outlining the agency's plans to respond to climate change through assessing risks and vulnerabilities, engaging to seek solutions, and managing for resilience).

lacks any mechanism to verify or enforce its claims that the temporary roads will be closed following project completion.

Do Not Add Previously Decommissioned Roads to the System

Additionally, the Forest Service “anticipated” that many roads will be on previously disturbed land. This is not further explained and has the potential to include previous “temporary” roads or decommissioned roads. *See* Environmental Assessment at 29. The Forest Service should explain to the public which prior decisions decommissioned these roads and why. It must explain why the justification for decommissioning no longer is a concern. If they were unauthorized roads, the location and design of the roads likely would not meet the Forest Service’s basic road engineering standards. If these were temporary roads, they are subject to the National Forest Management Act’s requirement to close and re-vegetate the roads within 10 years after completion of their intended use. 16 U.S.C. § 1608(a). If they were closed or decommissioned in order to meet the road density standards or other resource concerns, this information must be disclosed. The agency must provide the original reason for decommissioning these roads. Without this information, the public is precluded from meaningful comments.

Forest Service policy directs the agency to carefully consider and document the road management objectives, environmental impacts, and social and economic benefits associated with any proposed addition before adding roads to the system. *See* Forest Service Handbook 7703.26(1). It also directs the agency to consider travel analysis and long-term road funding opportunities and obligations as part of any decision to add road miles to the system. *Id.* 7703.26. *See also* FSM 7715.03(7) (noting that “Ranger Districts should avoid adding routes to the Forest transportation system unless there is adequate provision for their maintenance”). For roads that were previously identified for decommissioning in a NEPA decision, the Forest Service must assess the road management objectives, environmental impacts, and social and economic benefits associated with that road before identifying it for use as a temporary road and later adding it to the system as a closed road.

Guardians urges the Forest Service to provide assurances that the temporary roads will be decommissioned within ten years of project completion, and should not add previously decommissioned roads back into the system.

5. Fails to ensure compliance with the National Forest Management Act.

WildEarth Guardians commented that the project must be consistent with the governing Forest Plan. 16 U.S.C. § 1604(i). The Forest Service must explain how the proposed project activities will be consistent with the Forest Plan. Additionally, for the proposed project-specific amendments, the Forest Service must explain why these amendments are appropriate as project-specific amendments and why they are not significant. Under the Forest Service Manual, a forest plan amendment is significant if it would “significantly alter the long-term relationship between levels of multiple-use goods and services originally projected” or “may have an important effect on the entire land management plan or affect land and resources throughout a large portion of the planning area during the planning.” *See* Forest Service Manual 1926.52.

The selected plan, alternative three, would require an amendment to the forest plan as it would reduce forest cover to below 30% in some locations that provide hiding cover for mule deer. Environmental Assessment at 30. As assessed in our scoping comments, this amendment does not have proper justification. The Forest Service must apply the requirements of the 2012 planning rules identified above that are implicated by each forest plan variance it seeks. In applying the requirements, the Forest Service must use the best available science and explain any relevant monitoring data (existing or collected to assess this project). In addition to the substantive requirements identified by the Forest Service (*see* Environmental Assessment at 346), the agency should also consider the 2012 planning rule's ecological sustainability provision. 36 C.F.R. § 219.8(a)(1) (“maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity, taking into account: . . . (iv) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as . . . climate change; and the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change.”). This substantive provision of the 2012 planning rules weighs heavily against amending the Forest Plan to *further* reduce the thermal cover that is necessary for mule deer habitat.

The Forest Service should not amend their Forest Plan hiding cover to below 30%, as it does not properly justify the basis for the amendment, nor does it clearly and comprehensively discuss the impacts on mule deer if this amendment is implemented. The proposed decrease in hiding cover from 40% of mule deer summer range in the project area to 29% may have significant impacts.

6. Fails to demonstrate compliance with the Endangered Species Act.

WildEarth Guardians previously commented that the Forest Service must ensure that its proposed logging and hauling activities will not harm listed wildlife or degrade its critical habitat. *See* Scoping Comments at 11-12. The Forest Service's EA states that the project is “likely to adversely affect” the endangered Northern Spotted Owl (NSO), which is protected under the ESA. (155). Section 7 of the Endangered Species Act (ESA) imposes a substantive obligation on federal agencies to “ensure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of” habitat that has been designated as critical for the species. 16 U.S.C. § 1536(a)(2); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 524 F.3d 917, 924 (9th Cir. 2008). The proposed project will remove the habitat for flying squirrels, the NSO's primary prey species. Environmental Assessment at 174. Moreover, the chosen alternative will result in a “drastic decrease in the capability of the landscape to develop additional habitat for the spotted owl.” *Id.* The EA states that the adverse effects under Alternative 4 would be less than the adverse effects of the selected Alternative 3.

Moreover, we previously commented encouraging the Forest Service to be transparent about any consultation process and affirmatively post all consultation documents, including any Forest Service Biological Evaluations or Assessments, any letters seeking concurrence, and any responses

or Biological Opinions from FWS. *See* Scoping Comments at 12. Without these records, the public is unable to assess the agency's analysis of impacts on wildlife and habitat in light of FWS's expert opinion. Providing this information will allow the public to view these critical documents and other documents in the project record without the need to submit a formal Freedom of Information Act request. Without this information being publicly available during the objection period, we are unable to meaningfully comment on the agencies' determinations or analyses. The Forest Service has not made these records publicly available and is still in consultations with the FWS regarding the impacts on listed species. Environmental Assessment at 353.

The Forest Service should not take actions that will adversely affect endangered species such as the Northern Spotted Owl and should make a consultation with the FWS regarding the impacts on listed species available to the public.

7. Fails to demonstrate compliance with the Clean Water Act.

We previously commented that the Forest Service must ensure that the project will comply with the CWA by not causing or contributing to a violation of Oregon's water quality standards. *See* Scoping Comments at 12. In regards to the CWA, the Forest Service states that Best Management Practices will be selected and incorporated for the protection of Oregon Waters in compliance with the Clean Water Act. Environmental Assessment at 311. However, reliance on Best Management Practices, without assessing the application or effectiveness of these mitigation efforts in relation to the particular waters at issue, is insufficient to demonstrate compliance with the CWA. Under the CWA, states are responsible for developing water quality standards to protect the desired conditions of each waterway within the state's regulatory jurisdiction. 33 U.S.C. § 1313(c). Waters that do not meet water quality standards are deemed "water quality-limited" and placed on the CWA's § 303(d) list. The CWA requires all federal agencies to comply with water quality standards, including the governing state's anti-degradation policy. 33 U.S.C. § 1323(a), *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146 (9th Cir. 1998). The Forest Service's EA lacks sufficient detail and site-specific information to meaningfully evaluate compliance with the CWA.

Conclusion

The Deschutes National Forest's current road system is oversized and unaffordable. We strongly support a thoughtful, strategic approach to improving public access to the forest, reducing negative impacts from forest roads to water quality, aquatic habitats, and wildlife habitats, and improving watersheds and forest resiliency by returning expensive, deteriorating, and seldom used forest roads to the wild. We respectfully request an objection resolution meeting to discuss the suggested resolutions outlined above and summarized below, and to hear from the Forest Service about whether the agency might be amenable to changes to improve this draft decision.

Suggested Resolutions:

1. The Forest Service should draft an EIS regarding the project.
2. Identify a minimum road system as a part of this project.
3. Carefully, and comprehensively consider the direct, indirect, and cumulative impacts of this

project including the impacts on wildlife from noise, slash-debris impact on fire risk, climate change's impact on fire risk and forest roads, and the protection of old-growth forests.

4. Ensure that temporary roads will in fact be temporary by committing to decommissioning temporary roads within 10 years, and not reconstructing previously decommissioned roads.
5. Ensure compliance with the National Forest Management Act by not amending the Forest Plan to reduce hiding cover for mule deer to below 30%.
6. Ensure compliance with the Endangered Species Act by not taking any actions that would adversely affect listed species such as the North Spotted Owl.
7. Demonstrate compliance with the Clean Water Act by providing site-specific data and analysis.

Sincerely,



Erin Doyle
Summer Legal Intern
WildEarth Guardians
erindoyle@lclark.edu

References to Attachments from Guardians' Scoping Comment

*These documents were previously submitted as attachments to Guardians' scoping comments and should already be part of the Forest Service's administrative record for this project.

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

Scoping Attachment D: Memorandum from James Peña, Regional Forester, to Forest Supervisors on Monitoring Travel Management NEPA Decisions for the Minimum Road System (Sept. 6, 2016).

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

Scoping Attachment E: M.A. Moritz, *et al.*, Learning to coexist with wildfire, 515 Nature 7525 (2014).

Scoping Attachment F: J.L. Campbell, *et al.*, Can fuel-reduction treatments really increase forest carbon storage in the western US by reducing future fire emissions? *Front Ecol Environ* (2011), DOI 10.1890/110057.