



OPAL CREEK ANCIENT FOREST CENTER

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Dear Duane Bishop,

Opal Creek Ancient Forest Center, a private inholder of 15 acres at the end of the Willamette National Forest FS road 2209, formally objects to the draft Decision Notice and Finding Of No Significant Impact (DN) for the *2020 Fire Affected Road System Risk Reduction Project*.

CONTENT REQUIREMENTS

1. Objector's Name, Address and Telephone Number:

Opal Creek Ancient Forest Center
721 NW 9th Ave. Suite 236
Portland OR 97209
Phone 503.892.2782

Address of Inholding:

42000 North Fork Rd. SE, Lyons, OR, 97358

2. Verification of Authorship:

On behalf of Opal Creek Ancient Forest Center by Augustus Gleason and Nathan Reynolds

Augustus Gleason

Facilities Director, Opal Creek Ancient Forest Center

Email: agleason@opalcreek.org,



Nathaniel D. Reynolds

Executive Director, Opal Creek Ancient Forest Center

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3. Identification of the lead objector should multiple persons file the same objection:

Opal Creek Ancient Forest Center

4. Project's name, name and title of the responsible official, and the names of the affected National Forest and Ranger District:

The draft Decision Notice and Finding Of No Significant Impact (DN) for the *2020 Fire Affected Road System Risk Reduction Project*. Responsible official is Acting Forest Supervisor Duane Bishop, for the Detroit Ranger District of the Willamette National Forest.

5. Reason for, or specific issues related to the project, remedies that would resolve the objection, and supporting reasons for the reviewing officer to consider;

Objection Summary:

Opal Creek narrowly objects to the draft Decision Notice and Finding Of No Significant Impact pertaining to the final 3.2 mile section of FS 2209, which provides critical access to our education center, located within our 15-acre private inholding. Given the complex mix of uses along this section of road, the EA and DN do not, as presented, provide enough clarity for, or substantiate the treatment proposed. This section of FS 2209 has been and will continue to be an important instructional part of the forest ecology and management curriculum our students receive, and hence needs further cooperative partnership engagement between the WNF and Opal Creek, and joint oversight for determining which trees legitimately constitute an "imminent danger" and should be cut, versus those standing snags that would naturally remain in place for decades, and reveal and instruct how fire and fire recovery is a normal component of forests in the Western Cascades. Additionally, the

determination of how snag-felling should be physically implemented, following constraints of the Scenic Recreation Area prescriptions, should also be jointly developed in partnership with Opal Creek, given the opportunities for forest management instruction and curriculum along this section of road.

Background:

The WNF recently reclassified this road to the correct Maintenance Level (ML) of 2 (high clearance vehicles/closed to public), which was the level specified in Opal Creek Wilderness Legislation. Previously, the Forest Service had mis-inventoried the road as a ML-1 (Closed) for an indefinite period, and co-mingled management of our inholder's access road with the public use of the road as a recreational trail. As a result, Opal Creek has, for decades, solely funded, maintained, and repaired this road, culverts and bridge infrastructure for passage of vehicles, which has created immense financial challenges for Opal Creek. We have been the sole provider of safe vehicle access along this road for educators, firefighters, search/rescue personnel, mining waste cleanup, and forest ecology researchers. The recent correction of FS road classification will hopefully correct our joint understanding of infrastructure repairs and maintenance required, and will affect the treatment of trees and snags surrounding both the road and critical infrastructure.

It is important to clarify that this 3.2-mile section of FS 2209 ML-2 road will in the future be accessible by inholders, for administrative use, and for other authorized users, but will be closed (per the originating legislation) to public vehicles. However, it is our understanding the road will continue to be used as a recreational trail for public use, per the originating legislation and the SRA plan.

These complex joint uses, including road repair and maintenance responsibilities for both partners, are inadequately addressed in the EA and DN, and have never been conditioned or clarified in a road-use permit or a permanent easement between the WNF and Opal Creek. Furthermore, the use of this portion of FS2209 road as part of forest ecology and management curriculum is fundamental to our educational offering and commercial operations, yet that is not addressed in either the EA/DN or the SRA management plan prescriptions. Finally, the conflicts between public trail use and authorized non-public vehicle access along the exact same route have never been satisfactorily analyzed. In summary, this EA and DN are inadequate, and fail to comprehensively analyze or address the complex conditions and unresolved partnership participation rights along this 3.2 mile section of FS 2209 road.

Remedy:

We ask the WNF to simply remove this 3.2 mile section of FS 2209 from the *2020 Fire Affected Road System Risk Reduction Project*, and to cooperatively address the real issues of road maintenance and repair, hazard tree selection and felling, mixed public trail vs. authorized non-public vehicle access, and the forest ecology and management curriculum and education conducted along this road. For this

section of FS 2209, these issues can be adaptively addressed via other standard FS administrative mechanisms.

Supporting Reasons:

A. FS 2209 unresolved partnerships/permits/easements for road maintenance and repair

Opal Creek and the Forest Service are currently working through historical challenges that remain incomplete since the enactment of the Opal Creek Wilderness Act, the Scenic Recreation Area management plan, and the legislative intent for our inholder access to provide education and conduct research. The documents we cited in our previous comments highlight ongoing areas of concern. These include the Opal Creek Wilderness Act, the 2002 Environmental Assessment and Decision Notice for the SRA Management Plan, the SRA Advisory Committee goals, as well as multiple WNF road inventories and classifications.

The 3.2 miles of FS 2209 between the last gate and Opal Creek's inholding is a private access road that has not been used by the Forest Service vehicles in more than 2 decades. In our initial comment, we noted the road was inventoried by the Willamette National Forest as ML-1 (Closed). We also noted that the proposed treatment passes through our inholding (which is not a FS road) and continues up Battle Ax trail, which has *actually* been a closed road since 1980. These portions were originally listed in the CE, and some were subsequently removed from that treatment proposal after our comments on that proposed action were reviewed. Most of the surrounding roads in this landscape are mining roads that predate the Forest Service itself. Many now visible way trails additionally predate colonial existence, providing complexity to modern road inventory and management prescription.

The FS's EA and DN reports the need for public safety, emergency and safe access for fighting fires. Yet, as inholders, we have not seen the FS drive or use this section of road in over 20 years. Even during the 2020 Beachie Creek Fire, they opted to use other roads. In contrast, Opal Creek's community and employees have consistently provided safe access to trails and recreation opportunities of the Willamette National Forest. We provided safe access for ODF crews and the CCC who helped protect our property during the fire. We provided access to all of our community members who lived and worked there, outdoor school participants, and the public – all while rockslides, heavy snow, and fallen trees might need immediate response regardless if in the middle of the night or day. Parents trusted Opal Creek for the safe access. Opal Creek has been the sole maintainer, funder, and builder of the infrastructure on this section of road for decades.

We do not believe the USFS has responded in an appropriate or timely manner to Opal Creek as a private inholder needing emergency road maintenance, access, or infrastructure. This is based

on our experience and history when Opal Creek operations have been under duress, and were forced to take matters into our own hands and finances. During the mining cleanup 2014/2015 Opal creek built 3 bridges with no FS input, consideration, funding, or concern for the affected commerce of Opal Creek. Further, the culvert washed out of Mill Creek in 2018 and snowed in employees in 2018/19, with no response from the FS.

We do acknowledge the FS helped install culverts in 2014/15 to a section of the road, and had minimal input and progress while the SRA advisory committee was meeting. However, these culverts were to the standards and designs for a ML-1 (closed road) or trail, further indicative of the error in classification and funding provided by the FS to properly maintain this section of road, and the progress never reached the goals outlined in the Opal Creek Wilderness Act or SRA Management Plan.

We acknowledge the Forest Service often relies on private inholders, like Opal Creek, to fund and maintain safe access, releasing the burden to consistently respond to emergencies of private access needs. Additional examples of our partnership include the initial sighting and reporting of the Beachie Creek fire ignition from Opal Creek's onsite community members, and the successful evacuation and life flight of an injured hiker out of the Jawbone Flats field in 2020. Disguising this EA/DN as a need to provide safe ingress and egress for the FS and others in case of emergency, fails to acknowledge the work and help that Opal Creek and other capable and qualified partners have already accomplished.

We believe, given the management complexities with this road, there are other forward-looking administrative tools to strengthen our partnership that can be used to address the felling of hazard trees on an as-needed basis when they constitute a true imminent threat, thus this section of FS 2209 should be removed from this project.

B. Hazard Tree Selection and Felling

This 3.2 miles of road has many administrative constraints that are outlined in the SRA management plan: it runs right along the eligible wild and scenic river of the Little North Santiam, it has historic artifacts scattered throughout, and has harvest protections and scenic view maintenance that will keep logs from being removed after being cut. We have observed in many areas that windthrows have caused more damage than the fire. Additionally, hazardous fuel loads are already potentially at the allowable threshold. It has not been adequately identified in this analysis how the FS will proceed in these cases, or what methods will be used to ensure accountability. With the protections to cut and leave dangerous trees throughout this section of road, it will create a more than significant impact to our risk of future fire. If all acceptable thresholds of hazardous fuel loads are reached for the entire 3.2 miles of road leading to our inholding, we are at a much higher risk of losing our main

evacuation routes than if snags are kept standing. We understand science and forest management point towards keeping post-fire snags standing for forest and wildlife health, and believe public safety will not be dramatically advanced by felling trees along this road that present no imminent threat. We believe this is a second reason this section of FS 2209 should be removed from this action.

C. Mixed Public Trail vs. Authorized Non-public Vehicle Access

If this section of FS 2209 were administered only as a public recreational trail, which is how most members of the public will be accessing it in the future, then no hazard tree treatment would be required at all. Non-public vehicle access along this road will be restricted to authorized users who are aware of the risks, carry equipment and tools and have responsibilities for keeping the road clear for passage of vehicles. Authorized users are in uniform agreement that only a few burned trees along this road constitute an imminent danger, and these small hazards can be addressed via other administrative methods. Therefore, the lack of any exposure of public vehicles to hazard trees along this road is a third reason this section of the FS 2209 should be removed from the decision notice.

D. Forest ecology and management curriculum and education:

Opal Creek's administrative mission is to provide forest ecology and management curriculum and we use this specific portion of FS 2209 as a classroom for our students. We teach that fire is a natural part of the life history of forests in the Western Cascades, thus the very trees that are slowly decaying and declining after the fire are a critical part of our research and our instruction. We understand the need to address and mitigate hazards for burned trees and snags that truly present an imminent threat, but know many of these snags will remain standing for decades. We believe Opal Creek and the FS could cooperatively undertake an annual risk assessment of hazard trees along this section of the FS 2209, and address and treat trees as they actually become an imminent threat. One position of the FS regarding the work proposed in this EA and DN is that the entire footprint of the EA and DN need to be implemented rapidly to achieve contracting and financing efficiencies. While we certainly understand this concept, we again point out that the longstanding relationship between the FS and Opal Creek allows our partnership to explore opportunities other than the unilateral approach proposed in this EA and DN to treat hazard trees. This factor is a fourth reason this section of FS 2209 should be removed from the decision notice.

6. Description of the connection between prior specific written comments on the project and the content of the objection:

A. FS 2209 unresolved partnerships/permits/easements for road maintenance and repair

In previous comments, Opal Creek described how FS 2209 leads directly to the Opal Creek inholding, commented on the Maintenance Level of this portion of the FS 2209 road, and stated that Opal Creek and the Forest Service need to discuss joint responsibility for this road. We believe the Forest Service has recently taken substantive steps by changing the Maintenance Level of this road, and believe that action taken occurred in direct response to our previous comments. However, this recent reclassification is not highlighted or addressed anywhere in the recently released EA or DN. In fact, the response from the FS was deflection, noted under “issues raised during scoping” pg. 5 ; “Comments that raised concerns but did not discuss effects that may result from the proposed action, were outside of the scope of this project, or are already addressed by the design of the project were considered by the responsible official but will not be analyzed further.” This reclassified section of road was then re-grouped with the 5 mile section of FS road 2209 which is classified as an ML-3. This reclassification of a ML-1 “closed” road to an ML-2 creates a significant impact in the FS decision on how hazard trees along this road will be treated, but to then note this change will not be addressed further, illustrates how our commercial operations and economic viability are not adequately assessed in this EA and DN. By way of example, to date Opal Creek has paid over a million dollars to keep this road open for authorized non-public vehicle users, without a formal road-use permit or easement from the FS. We expect there will be times we will be required to invest in the maintenance and repair of this FS road, but there needs to be administrative clarity on what this work entails, what we are permitted to do, and how the financial responsibility is shared when work takes place. This EA and DN address hazard trees alongside roads in consideration of the road’s use, yet does not allow Opal Creek voice’s in cooperative road assessment, management, maintenance or repair for a road that is critical to our access, our commercial operations and our economic viability. We originally commented these considerations need to be included in this EA/DN work, but they were not. Therefore, we now object to the road’s inclusion in this project, and promote that these important partnership considerations can be better addressed with other administrative tools available to the WNF and Opal Creek partnership as well as the recreational public.

B. Hazard Tree Selection and Felling

In our most recent comment, we noted there is nothing protecting large DBH trees that are dead, and questioned how the FS will address or handle these large DBH trees that pose no imminent threat. The response from the Forest Service was to cite the danger tree selection criteria, and the *Post-fire Assessment of Tree Status and Marking Guidelines for Conifers in Oregon and Washington*, which researches “delayed mortality” and notes the report and research should not be used for actual danger tree selection, but for understanding the potential delayed mortality when determining a danger tree. This is a misunderstanding of

our comment. We have read these documents and are well aware of the tree selection criteria. Our concern is that there are many trees well over 24" in DBH that will be rapidly cut as a result of this DN, though they may pose no threat for decades, if ever. The EA cites many times that a 3-5 year window of death is of great concern and immediate danger, yet no information is provided for large diameter trees that are dead and/or dying that will easily stand well over 5, 10, and 20 years – in which case they pose no imminent threat. Opal Creek knows scientific research reports that the threat after 5 years is undeterminable right now. We also note we are already in the beginning of post-burn year 3, yet few snags have fallen on account of being burnt or weakened by the fire. In previous comments, Opal Creek noted the 2020 Beachie Creek Fire dropped more trees across this 3.2 mile section of FS 2209 by convective fire winds of that event than from the fire itself. If the FS does not consider or use some of the science, then how is the best available science being brought into the course of action? Please refer to [Persistence of fire-killed conifer snags in California, USA Lindsay M. Grayson¹, Daniel R. Cluck² and Sharon M. Hood^{1*}](#) and add this research to your criteria in determining what is classified as a danger tree, as our recent comment suggested. Please also note the research is also that of Sharon M. Hood who was involved in the [Post-fire Assessment of Tree Status and Marking Guidelines for Conifers in Oregon and Washington](#) “delayed mortality” referred to in the Forest Service response to our most recent comment to the EA. That science the Forest Service chooses to use intentionally leaves out highly-relevant research on snag persistence in determining actual threat levels. However, both of these research documents are published and located on the FS website, and with the same researcher involved.

In addition, Opal Creek previously commented that we would like clarity on the priority and condition of trees selected for treatment. Log diameter is a major factor in determining threat level for site fuel load thresholds, and we believe the Forest Service needs to clarify how they intend to manage fuel loads along this 3.2 mile section of FS 2209, given the complexity of treatment required. Increasing the risk of future fire ignition in a high fuel load area is not an option for Opal Creek. We need assurances that will require additional oversight to ensure these safety measures are met. As inholders, we need to clearly understand our commercial operational risks and economic viability. Our previous comments noted we wanted these concerns included in this analysis, but the EA/DN does not take our concerns into account.

For these reasons, we therefore now believe it is appropriate that this EA/DN project should not include this 3.2 mile section of FS 2209. We promote that Opal Creek’s hazard-tree selection, felling, and fuel loading risk-management concerns could be more appropriately and more thoroughly addressed through other administrative partnership pathways with the WNF.

C. Mixed Public Trail vs. Authorized Non-public Vehicle Access

In previous comments, Opal Creek noted that the previous thresholds for public use in the Opal Creek Wilderness and SRA that were established in the SRA Management Plan may no longer be appropriate or relevant. We proposed that the appropriate way to reconcile these access limitations would be to re-activate the SRA Advisory Committee. These original access constraints included, or should have included, a transportation plan for the SRA. To our knowledge, however, no transportation plan has ever been completed. The lack of this transportation plan means that the Mixed Public Trail vs. Authorized Non-public Vehicle Access along this 3.2 section of FS 2209 remains un-analyzed. The current EA/DN areas proposed for treatment are predicated on public vehicle access, yet none occurs on this section of the road. Our previous comments argued for the consideration of this issue in this analysis, but the EA/DN does not address it. Accordingly, we feel this 3.2 mile section of the road should be removed from this project proposal as there are other more appropriate WNF administrative pathways in which this issue could be considered, deliberated and resolved.

D. Forest ecology and management curriculum and education:

Finally, In previous comments, Opal Creek has noted that we conduct scientific research into forest ecology, and described how that research translates directly into our curriculum for both forest ecology and forest management. Snag persistence is exactly the type of forest ecology research and instruction that Opal Creek conducts, adding to the already rigorous work Sharon Hood and many others are doing. Opal Creek and Forest Ecology researchers have already established WNF scientific research permits and conducted initial data collection in the forests alongside this section of the FS 2209 road. If trees and snags are cut along this portion of the road as a result of the EA/DN, that research design and sampling effort will be lost as a result of the FS's unilateral action. In addition and as previously noted, this 3.2 mile section of FS 2209 functions as an outdoor classroom for our students and is a critical part of our educational instruction. Unilateral tree-clearing in this area by the FS will diminish our organization's commercial and economic viability, as well as incrementally diminish the economic resiliency of Marion County. Our previous comments promoted the idea that these considerations should be addressed in this EA and DN, but they were not. These decision documents are inadequate as a result. Therefore, we now promote that this 3.2 mile section of FS 2209 should be removed from this project. Our concerns could be far better addressed via other WNF administrative partnership pathways.

CONCLUSION:

Opal Creek and the Willamette National Forest have made important steps since the Beachie

Creek fire of September 2020, but we still have important discussions and decisions that lie ahead of us. In all four of these specific examples detailed above, we believe this EA and DN are simply the wrong decision tool for the complex interaction of uses and interests that occur along this 3.2 mile section of FS 2209 that has been recently corrected to ML-2. We initially provided comments believing our concerns could be addressed in this NEPA action, but now understand this partnership, our commercial and economic operations, and the complex mixed-use demands of management along this 3.2 section of FS 2209 require more rigorous and adaptive conversations than this NEPA process will allow. Accordingly, we object, and as a remedy, simply request this 3.2 mile section of FS 2209 be removed from this project.

Respectfully,
Augustus Gleason
Nathan Reynolds