



CAROLLO LAW GROUP

Dominic Carollo
Managing Attorney

dcarollo@carollolegal.com • 541-957-5900

PO Box 2456, Roseburg, OR 97470
2315 Old Hwy 99 S., Roseburg, OR 97471

December 9, 2022

Via Email Only: objections-pnw-umpqua@usda.gov

Alice Carlton, Forest Supervisor
David Andersen, North Zone District Ranger, Responsible Official
Attn: Archie Creek Danger Tree Project
Umpqua National Forest
2900 N.W. Stewart Parkway
Roseburg, OR 97471

**Re: Objection to Archie Creek Danger Tree Project Proposed Decision Notice
and Environmental Assessment**

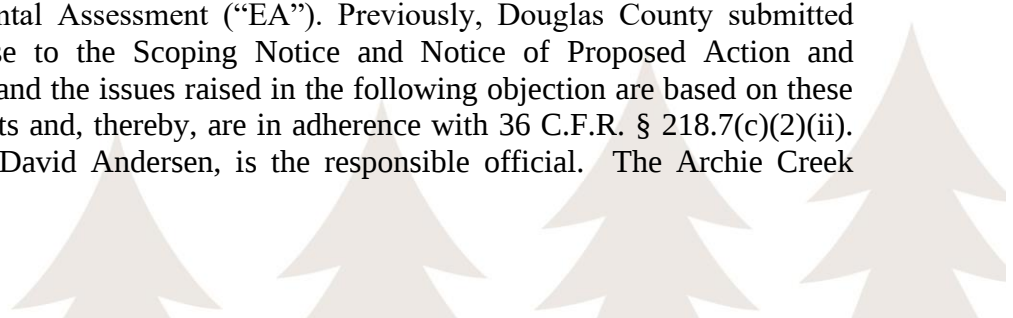
Objector:

Douglas County Board of Commissioners
1036 S.E. Douglas Avenue, Room 217
Roseburg, Oregon 97470
Phone: 541-440-4201

Objector's Designated Representative:

Dominic M. Carollo
Carollo Law Group LLC
2315 Old Hwy 99 South
P.O. Box 2456
Roseburg, OR 97470
Phone: 541-957-5900

On behalf of the Douglas County Board of Commissioners ("Douglas County"), and pursuant to 36 C.F.R. § 218.7, please accept this objection to the proposed draft Decision Notice and Finding of No Significant Impact for the Archie Creek Roadside Danger Tree Mitigation Project and Final Environmental Assessment ("EA"). Previously, Douglas County submitted written comments in response to the Scoping Notice and Notice of Proposed Action and Preliminary Effects Analysis, and the issues raised in the following objection are based on these previously submitted comments and, thereby, are in adherence with 36 C.F.R. § 218.7(c)(2)(ii). North Zone District Ranger, David Andersen, is the responsible official. The Archie Creek



Roadside Danger Tree Mitigation Project (“Archie Creek Roadside Project”) occurs on the North Umpqua Ranger District in the Umpqua National Forest.

I. General Statement of Reasons for Objection.

As explained in Douglas County’s previously submitted comments, Douglas County encourages the Forest Service to expand the size and scope of the Archie Creek Roadside Project. Specifically, Douglas County urges the Forest Service to analyze and adopt an alternative permitting the removal of danger trees beyond 1.5 tree height lengths of the road edge, the removal of trees prone to windthrow over the next 20 years, the removal of green trees within the project area to create defensible firefighting space, the addition of more roads—and more road miles—to the project, and amending the tree selection criteria to permit removal of any trees showing evidence of insect infestation.

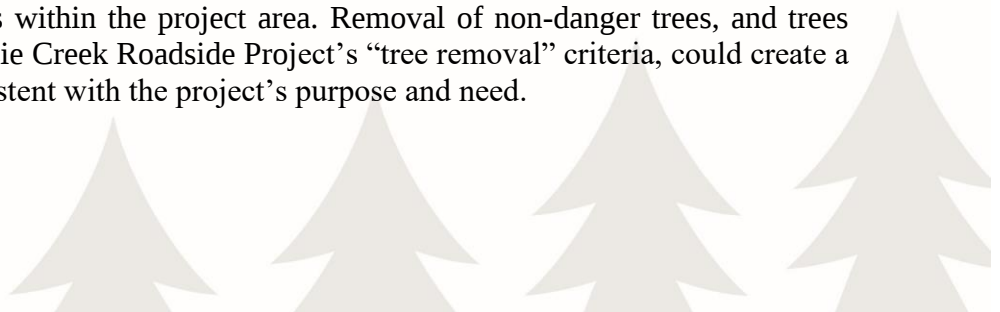
Douglas County’s comments explained why the Archie Creek Roadside Project is insufficient to improve safety conditions and alleviate wildfire risks—two of the Archie Creek Roadside Project’s purposes. Douglas County objects to the Forest Service’s failure to analyze alternatives that may better achieve the Archie Creek Roadside Project’s purpose and need, and objects to the Forest Service’s failure to evaluate Douglas County’s comments.

II. EA Should be Amended to Consider Additional Alternatives.

One of the stated primary purposes of this project is to lower the risk of catastrophic wildfire, and improve resiliency, by reducing fuel loadings near roads within the Archie Creek Fire’s perimeter in the Umpqua National Forest. Douglas County generally supports this objective. An inadequately managed forest leaves the surrounding County and private lands at risk of wildfires, which perpetually threaten the health, safety, and livelihoods of Douglas County residents. It is a well-understood reality in natural resource and wildland fire management that coarse woody fuels can increase fire prevalence, burn rates, severity, and spread.

Douglas County provided multiple proposals seeking to reduce fire risk consistent with this purpose and need, advising the Forest Service to consider these proposals, either in full, individually, or in combination, and adopt the proposals in the final Decision Notice. The proposals offered by Douglas County differed from the proposed action in the following ways:

- Increased the size of the road buffer created by the Archie Creek Roadside Project to create more defensible space to prevent or slow future wildfires. The proposed action acknowledges that it does “not create a fuel break in the traditional sense[.]”
- Increased the number of trees removed alongside roads within the Archie Creek Roadside Project. To reduce the spread and severity of future wildfires Douglas County proposed to remove additional trees within the project area. Removal of non-danger trees, and trees falling outside the Archie Creek Roadside Project’s “tree removal” criteria, could create a true “fuel break,” consistent with the project’s purpose and need.



- Amended the tree selection criteria. Douglas County also proposed that the tree selection criteria be amended to stop or slow the spread of wood borers and bark beetles. This also would help to create a fuel break and improve forest health and resilience to future wildfire.

Another stated purpose of the Archie Creek Roadside Project is to prevent tree strike and improve access and road integrity within the National Forest. Douglas County's comments and proposals also strike at the heart of these purposes and needs. Along with the three proposals mentioned above, Douglas County proposed the following:

- Increase the number of roads treated within the Archie Creek Roadside Project. Persons utilizing the Umpqua National Forest will frequently travel roads affected by the Archie Creek Fire but which will not be treated by the Archie Creek Roadside Project under the proposed action. The threat of tree strike, impeded access, and road integrity will continue to be at issue on these roads.

The Environmental Assessment did not evaluate an alternative containing any portion of the proposals forwarded by Douglas County despite the fact that such an alternative would have produced a reasoned choice. *See Cent. Sierra Env't Res. Ctr. v. U.S. Forest Serv.*, 916 F. Supp. 2d 1078, 1088 (E.D. Cal. 2013) ("NEPA requires agencies to '[r]igorously explore and objectively evaluate all reasonable alternatives' and explain why potential alternatives excluded from this detailed study were not part of the analysis."). "Consideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process," and "any proposed federal action involving unresolved conflicts as to the proper use of resources triggers NEPA's consideration of alternatives requirement, whether or not an EIS is also required." *Bob Marshall All. v. Hodel*, 852 F.2d 1223, 1228-1229 (9th Cir. 1988). Given the purposes and needs of the Archie Creek Roadside Project, the Forest Service's decision to write off Douglas County's proposals without evaluation is quintessentially arbitrary and capricious. *See Env't Prot. & Info. Ctr. v. Blackwell*, No. CIVS041027WBSGGH, 2005 WL 8176926, at *8 (E.D. Cal. May 5, 2005) (Forest Service erred where it only considered "no action" and "proposed action" alternatives, and the "no action" alternative did not meet the project's goal of improving the landscape's resilience to fire); *Env't Prot. Info. Ctr. v. U.S. Forest Serv.*, 234 F. App'x 440, 443 (9th Cir. 2007) (Forest Service erred because the EA only evaluated "proposed action" and "no action" alternatives and the agency defined the project's objectives so narrowly that the "proposed action" was the only alternative that could satisfy the objectives); *Hausrath v. United States Dep't of the Air Force*, 491 F. Supp. 3d 770, 800 (D. Idaho 2020), *appeal dismissed sub nom. Hausrath v. United States Air Force*, No. 20-36036, 2021 WL 2207189 (9th Cir. Jan. 28, 2021) (agency erred because the "no action" alternative did not meet the objectives of the project, and therefore was not a sufficient alternative); *Blue Mountains Biodiversity Project v. U.S. Forest Serv.*, 229 F. Supp. 2d 1140, 1147 (D. Or. 2002); *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999).

Douglas County objects to the Forest Service's decision not to consider alternatives which would have created fuel breaks and improved safety conditions along roads within the burn perimeter of the Archie Creek Fire. The Forest Service's acknowledgement that the proposed action would not create a fuel break in the traditional sense, that approximately 28 percent of the Umpqua National Forest has been affected by wildfire, that reburns have been relatively common

within the National Forest over the past 20 years, and that spotted owls are unlikely to occupy home ranges with 50 percent or more loss of habitat due to fire all suggests that the Forest Service should have considered alternatives which take a more aggressive approach to alleviating wildfire risk and improving forest safety. Moreover, the “no action” alternative that was evaluated could not meet the project’s objectives of improving safety, road integrity, and fire resilience in the Umpqua National Forest. Therefore, the Forest Service should have considered the alternatives proposed by Douglas County.

In summary, while Douglas County supports the Forest Service treating the project area to reduce the risk of catastrophic wildfire and improve safety within the Umpqua National Forest, the proposals submitted by Douglas County are superior to the proposed action, and well within the bounds of a reasonable alternative, because they would create fuel breaks and improve safety and access across a greater range of the Umpqua National Forest. As such, Douglas County requests that the Deciding Official revise the decision to evaluate and select an alternative which encompasses the proposals submitted by Douglas County.

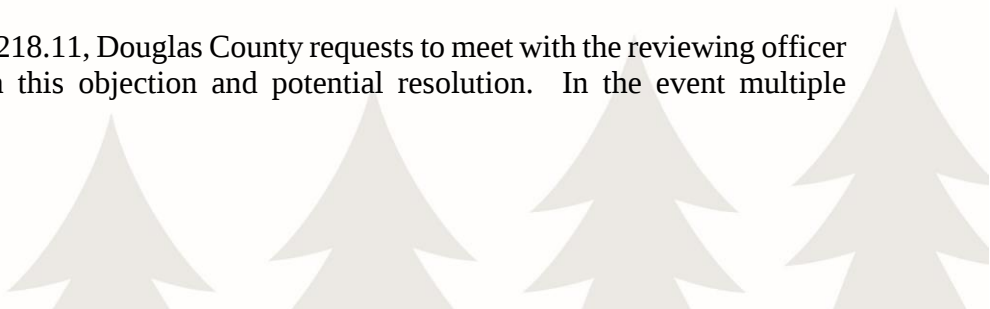
III. Further Consideration of Douglas County’s Comments is Required.

Douglas County urged the Forest Service to consider a range of alternatives to the proposed action in the EA. The Forest Service did not respond to these comments. The EA lacks any information explaining why expanding the buffer created by the Archie Creek Roadside Project, removing additional trees, treating additional roads, and amending the tree selection criteria would fail to satisfy the purpose and need of the project.

Where an agency is presented with significant comments it must provide a “satisfactory explanation ... including a rational connection between the facts found and the choice made[.]” *Motor Vehicle Mfrs. Ass’n. of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). While Douglas County’s comments presented a range of alternatives relevant to the purpose and need of the Archie Creek Roadside Project, and explained that the Forest Service’s past management of the Umpqua National Forest contributed to the catastrophic Archie Creek Fire and ongoing public health and economic crises in Douglas County, the EA does not address any of Douglas County’s comments. Instead, the EA generally acknowledges the existence of some comments inconsistent with the proposed action but fails to adequately respond to the comments. The EA points to sections of the analysis in “response” to comments, but the analysis is still limited to a “no action” alternative and a “proposed action” alternative. Therefore, the analysis is non-responsive to Douglas County’s comments, which are not encapsulated by either the “no action” or “proposed action” alternatives. As such, Douglas County urges the Deciding Official to evaluate and respond to Douglas County’s comments in the manner required by the Administrative Procedure Act.

IV. Request for Resolution Meeting.

Pursuant to 36 C.F.R. § 218.11, Douglas County requests to meet with the reviewing officer to discuss the issues raised in this objection and potential resolution. In the event multiple



Archie Creek Roadside Project Objection

December 9, 2022

Page 5

objections are filed on this decision, the County requests that the resolution meeting be held with all objectors present.

Sincerely,

CAROLLO LAW GROUP LLC

A handwritten signature in black ink, appearing to read "DMC", with a horizontal line extending from the end.

Dominic M. Carollo
Special Counsel to Douglas County

DMC/wtb