



**Sent via online portal**

December 19, 2022

District Ranger Molly Juillerat  
Willamette National Forest  
Middle Fork Ranger District  
46375 Highway 58  
Westfir, OR 97492

**Re: Cedar-Gales Roadside Risk Reduction Project**

Dear District Ranger Juillerat:

WildEarth Guardians respectfully submits these comments regarding the U.S. Forest Service's proposed Cedar-Gales Roadside Risk Reduction (Cedar-Gales) Project in the Willamette National Forest. The Forest Service proposes to cut and remove standing, fire-damaged trees along approximately 90 miles of road. The Forest Service also proposes additional removal of fallen trees where Forest Plan standards for fuels are exceeded or where visual quality objectives will not be met. We urge the Forest Service to ensure that only those trees that pose an imminent safety hazard are targeted for removal.

WildEarth Guardians is a nonprofit conservation organization with offices in Washington, Oregon, and five other states. WildEarth Guardians has nearly 200,000 members and supporters across the United States and works to protect and restore wildlife, wild places, wild rivers, and the health of the American West. WildEarth Guardians and its members have specific interests in the health and resilience of public lands and waterways. Please add our organization to the contact list to receive any future public notices regarding this project.

We have the following comments to share:

**I. The Forest Service should publish the GIS data for the project.**

In order to better understand the proposal, we respectfully request the Forest Service provide the GIS data for the Cedar-Gales Project on the project's webpage. We understand this is something other forests in Region 6 are doing. For example, the Forest Service recently announced the North Fork Smith Restoration Project on the Siuslaw National Forest and included the GIS data

for the project on its website.<sup>1</sup> Providing this data allows the public to have the same information as the agency and should lead to a more productive public engagement process.

## II. Comments on the Proposed Action

### A. Fire-killed and Injured Tree Felling

According to the scoping proposal, the Forest Service relied primarily on two documents to determine which trees should be cut as part of this project. The first is the *Region 6 Field Guide for Danger-Tree Identification and Response along Forest Roads and Work Sites in Oregon and Washington* (Filip 2016) and the second is the *Post-fire Assessment of Tree Status and Marking Guidelines for Conifers in Oregon and Washington* (Hood 2020). Importantly, Hood 2020 cautions that this document “should not be used as hazard or danger tree guidelines” and “does not account for the probability of tree failure after fire, only the likelihood of death.”<sup>2</sup> And Filip 2016 notes that documents such as these do not replace controlling regulations and policies.<sup>3</sup> We respectfully request that the Forest Service disclose how it used these non-binding documents to develop the proposed action and cite to the specific regulations or policies that support the proposed action.

The scoping proposal states that it relied on the above studies to determine whether a “tree is either dead or likely to die in the next 3 years.”<sup>4</sup> However, the fact that a tree is dead or likely to die within 3 years “does not account for the probability of tree failure after fire.”<sup>5</sup> In Filip 2016, the Forest Service used three levels of failure potential for so-called danger trees:

- Low
  - Trees or their parts are defective or decayed, but it would take considerable effort to make them fail. These trees or parts have a **low** probability of failure **within 10 years**.
- Likely
  - Trees or parts are defective or decayed, but it would take moderate effort to make them fail. These trees or parts have a **high** probability of failure **within 3 to 5 years**.
- Imminent
  - Trees or their parts are so defective or decayed that it would take little effort to make them fail. These trees or parts have a **high** probability of failure **within one year**.<sup>6</sup>

The scoping proposal does not refer to these various levels of probability in any detail. Rather, the Forest Service generally states that areas that are a high priority for treatment are those areas “[w]here 25% or more of the tree basal area was killed or injured by the fire” and “there remains

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<sup>1</sup> U.S. Forest Serv., North Fork Smith Restoration – Terrestrial, <https://www.fs.usda.gov/project/?project=59122>.

<sup>2</sup> Hood 2020 at 2 (emphasis in original).

<sup>3</sup> Filip 2016 at 13.

<sup>4</sup> Scoping Proposal at 4.

<sup>5</sup> Hood at 2.

<sup>6</sup> Filip. at 25 (emphasis in original).

a high concentration of trees which are likely to fall onto roads.”<sup>7</sup> These high priority treatment areas were seemingly identified using the “normalized burn ratio vegetation mortality tool”<sup>8</sup> but this tool is not described in the scoping proposal and it is unclear whether use of this tool is consistent with or a departure from the studies the Forest Service relied on.

This is important because Filip 2016 underscores that determining *failure potential* depends upon the species of tree that was burned.<sup>9</sup> Having a 25% threshold for tree basal area killed/injured that applies across the board may cast too wide a net by not accounting for the species of tree involved. This is a particular concern because recent hazard tree removal projects such as this have demonstrated the potential for cutting many trees that are, in fact, not hazardous. For instance, recent testimony to the Oregon Senate Natural Resources and Wildfire Committee indicated that a state project similar to the one proposed here was “irresponsibly removing trees along roads and properties that burned” in wildfires in 2020.<sup>10</sup> A certified arborist with hazardous tree assessment qualifications testified that his evaluation of trees marked for removal along Highway 22 near Gates and elsewhere in the Santiam Canyon revealed “very little in the way of imminent hazards to the public.”<sup>11</sup>

And the Forest Service has been reversed in the courts, including in the Willamette National Forest, for approving projects similar to Cedar-Gales.<sup>12</sup> In *Cascadia Wildlands*, the Court enjoined the Forest Service from categorically excluding the Willamette 2020 Fires Roadside Danger Tree Reduction Project from NEPA review. Important to the Court’s analysis was the fact that the Forest Service approved “the felling of trees that are not in any imminent danger of failing on the rationale that felling them now will avoid problems down the road.”<sup>13</sup> There appears to be a similar rationale for this project.<sup>14</sup> We urge the Forest Service to develop this proposal so that trees that do not pose an imminent safety risk are not marked for cutting.

## **B. Roads Proposed for Treatment**

The Forest Service also seeks input on whether there is an access need along roads within the project area. According to the scoping proposal, roads that are closed or being considered for decommissioning were not included in the project.<sup>15</sup> We think this is a mistake and not in accordance with the Forest Service’s obligations to address its oversized road network.

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<sup>7</sup> Scoping Proposal at 6.

<sup>8</sup> *Id.*

<sup>9</sup> See e.g., Filip at 28 (differentiating failure potential of fire-damaged trees between true fir, hemlocks, spruce and hardwoods on the one hand and Douglas-fir, pine, cedar, juniper, and larch on the other).

<sup>10</sup> Cassandra Profita, *Lawmakers investigate reports of irresponsible tree-cutting after wildfires*, OPB (Apr. 29, 2021), <https://www.opb.org/article/2021/04/29/lawmakers-investigate-reports-of-irresponsible-tree-cutting-after-wildfires/>.

<sup>11</sup> *Id.*

<sup>12</sup> See e.g., *Cascadia Wildlands v. Warnack*, Civ. 6:21-cv-12227-MC (D. Or. Nov. 5, 2021).

<sup>13</sup> *Id.* at 10.

<sup>14</sup> Scoping Proposal at 2 (“...while there may be a very low probability of a tree falling directly onto any one person or vehicle, the consequences may be fatal and the collective long-term risk warrants mitigation”).

<sup>15</sup> *Id.* at 5.

Over twenty years ago, the Forest Service recognized the challenges related to its oversized and deteriorating road system. In 2001, the Forest Service promulgated the Roads Rule (referred to as “subpart A”).<sup>16</sup> The Roads Rule created two important obligations for the agency. One obligation is to complete a Travel Analysis Report and identify unneeded roads to prioritize for decommissioning or to be considered for other uses.<sup>17</sup> Another obligation is to identify the minimum road system needed for safe and efficient travel and for the protection, management, and use of National Forest system lands.<sup>18</sup>

In 2015, the Forest Service took the first step and completed a travel analysis report for the Willamette National Forest, which the agency called its “Road Investment Strategy” (RIS).<sup>19</sup> According to the RIS, the Forest Service manages about 6,550 miles of road, 200 bridges, and 60,000 culverts on the Willamette National Forest.<sup>20</sup> The majority of this large road system was built for logging in a span of just 30 years, between the 1960s-1980s.<sup>21</sup>

The next step under subpart A is to consider the valid portions of the RIS and begin to identify and implement the minimum road system in the analysis of site-specific projects of the appropriate geographic size under NEPA.<sup>22</sup> The minimum road system is the road system the Forest Service determines is needed to:

- “meet resource and other management objectives adopted in the relevant land and resource management plan”;
- “meet applicable statutory and regulatory requirements”;
- “reflect long-term funding expectations”; and
- “ensure that the identified system minimizes adverse environmental impacts associated with road construction, reconstruction, decommissioning, and maintenance.”<sup>23</sup>

According to the RIS, there are almost 800 miles of roads in the Willamette National Forest that are unlikely to be needed for future management, do not provide significant public access and could be analyzed for decommissioning.<sup>24</sup> Another 750 miles of road that are currently open could be analyzed for closure.<sup>25</sup> We urge the Forest Service to identify the minimum road system

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<sup>16</sup> 36 C.F.R. part 212, subpart A. 66 Fed. Reg. 3206 (Jan. 12, 2001).

<sup>17</sup> 36 C.F.R. § 212.5(b)(2).

<sup>18</sup> *Id.* § 212.5(b)(1). Forest Service directives further specify that strategies for danger tree management along system road must include the agency’s requirement to identify the minimum road system. FSM 7700, Ch. 30, R6 Supplement 7730-2007-2 at 5.

<sup>19</sup> U.S. Forest Serv., *Willamette National Forest Road Investment Strategy* (Sept. 2015).

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Id.*

<sup>22</sup> See Memorandum from Leslie Weldon to Regional Foresters on Travel Management, Implementation of 36 C.F.R., Part 212, Subpart A (Mar. 29, 20212) (Weldon Memo), page 2 (directing forests to “analyze the proposed action and alternatives in terms of whether, per 36 CFR 212.5(b)(1), the resulting [road] system is needed”).

<sup>23</sup> 36 C.F.R. §212.5(b)(1).

<sup>24</sup> RIS at 24.

<sup>25</sup> *Id.*

for the project area and to prioritize unneeded roads for decommissioning as required by agency regulation and directives.<sup>26</sup>

The impacts from roads to water, fish, wildlife, and ecosystems are well documented in scientific literature. The following is just a small list of examples:

- Increased sedimentation in stream beds has been linked to decreased fry emergence, decreased juvenile densities, loss of winter carrying capacity, and increased predation of fishes, and reductions in macro-invertebrate populations that are a food source to many fish species (Rhodes et al. 1994, Joslin and Youmans 1999, Gucinski et al. 2000, Endicott 2008).
- Roads can act as barriers to [fish] migration (Gucinski et al. 2000). Culverts in particular often interfere with sediment transport and channel processes such that the road/stream crossing becomes a barrier for fish and aquatic species movement up and down stream.
- Where both stream and road densities are high, the incidence of connections between roads and streams can also be expected to be high, resulting in more common and pronounced effects of roads on streams (Gucinski et al. 2000).
- Roads and trails impact wildlife through a number of mechanisms including: direct mortality (poaching, hunting/trapping) changes in movement and habitat use patterns (disturbance/avoidance), as well as indirect impacts including alteration of the adjacent habitat and interference with predatory/prey relationships (Wisdom et al. 2000, Trombulak and Frissell 2000).
- Forman and Hersperger (1996) found that in order to maintain a naturally functioning landscape with sustained populations of large mammals (such as elk), road density must be below 0.6 km/km<sup>2</sup> (1.0 mi/mi<sup>2</sup>).

In order to eliminate or reduce the impacts to fish and wildlife, the Forest Service must take steps to reduce environmental impacts related to its road system.

Local communities and visiting recreationists are also impacted by the oversized, under-maintained and underfunded road system. Since roads are not regularly maintained or upgraded, they are highly susceptible to storms. Small culverts become plugged with debris, forcing water over the road and often resulting in the road getting washed out. Gullies can form along roadbeds making it difficult to drive a car on the road. This “storm damage” can eliminate access and often takes years to fix, if it ever gets fixed at all. In order to ensure access to beloved trails, campsites, fishing and swimming holes, etc., the Forest Service should target limited road maintenance funding to high-priority recreation/community access roads.

We believe that decommissioning roads and other road-related activities to improve water quality and aquatic organism passage can move the forest towards a more economical and storm resilient road system. The Forest Service should determine whether roads that are closed and/or considered for decommissioning are unneeded within the project area and should therefore be scheduled for decommissioning as part of this project.

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<sup>26</sup> FSM 7700, Ch. 30, R6 Supplement 7730-2007-2 at 5.

Finally, there are approximately 3.62 miles of road where the operational maintenance level in the scoping notice does not match either the operational or objective maintenance level contained in the National Forest System Roads geodatabase. We ask the Forest Service to clarify the existing operational level of these roads and whether the agency has met the objective maintenance level for them or intends to. If the agency has not achieved the objective maintenance level or has decided to change the objective maintenance level, we request that the Forest Service disclose that and explain its reasoning for such changes.

Road Number	Operational Maintenance Level <sup>†</sup>	Objective Maintenance Level <sup>†</sup>	Operational Maintenance Level (Cedar-Gales Scoping)	Miles
1832108	2	1	2	0.04
1832395	2	1	2	0.22
1832405	2	1	2	0.13
1835243	1	1	2	0.38
1835249	2	1	2	0.39
1928708	2	1	2	0.05
1934746	2	1	2	1.56
2422306	2	1	2	0.85
<b>Total</b>				<b>3.62</b>

<sup>†</sup>From National Forest System Roads geodatabase:

<https://data.fs.usda.gov/geodata/edw/datasets.php>.

### C. Fuel Reduction and Tree Removal

The Forest Service states that where there are high concentrations of fallen trees along fire-affected roads, some removal and disposal would be completed to meet forest plan standards and guidelines. More specifically, the Forest Service claims that fallen trees “will only be removed where there are high concentrations of fuels that exceed the fuel standards of the Forest Plan or where visual quality objectives will not be met by leaving trees on site.”<sup>27</sup> We request that the Forest Service specifically identify the reason that fallen trees are being removed (i.e., excessive fuels vs. visual quality).

### III. The Forest Service should prepare a robust environmental analysis under NEPA.

The Forest Service should prepare a robust environmental analysis for the Cedar-Gales Roadside Risk Reduction Project, ensuring that it takes NEPA’s required “hard look.” The agency may not ignore topics if the information is uncertain or unknown. Where information is lacking or uncertain, the Forest Service must make clear that the information is lacking, the relevance of the information to the evaluation of foreseeable significant adverse effects, summarize the existing science, and provide its own evaluation based on theoretical approaches.<sup>28</sup>

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<sup>27</sup> Scoping Proposal at 6.

<sup>28</sup> 40 C.F.R. § 1502.22.

**A. The Forest Service should clearly articulate the statement of purpose to include its duty to identify the minimum road system, and provide support for the claimed need.**

The Forest Service must shape the project's purpose and need statement according to applicable statutory and regulatory requirements. When the agency takes an action "pursuant to a specific statute, the statutory objectives of the project serve as a guide by which to determine the reasonableness of objectives outlined in an EIS."<sup>29</sup> The Forest Service has a substantive duty to address its oversized road system.<sup>30</sup> This underlying substantive duty must inform the scope of and be included in the agency's NEPA analysis. It has been two decades since the agency finalized the subpart A rules and the Forest Service can no longer delay in addressing this duty.

**B. The Forest Service should accurately define the official road network as the baseline for the NEPA analysis.**

The baseline and no-action alternative can differ.<sup>31</sup> Current management direction does not compel the Forest Service to recognize decommissioned roads and unauthorized roads as part of the road system. Disclosure of the number and location of decommissioned routes and unauthorized routes, as well as the impacts of those routes, is a necessary component of the no-action alternative. But it is separate and distinct from the identification of the baseline, which should be the official open route system.

In addition, it is helpful for public understanding to have clearly articulated which roads proposed for closure and decommissioning are already not drivable by the public due to lack of maintenance, road wash-outs and storm damage. "On paper" there may be over 6,050 miles of system roads but "in the forest" those roads may not be open due to administrative decisions or simply because of the physical reality (washouts, poor roads, vegetation, etc. eliminating access). It is incumbent upon the Forest Service to accurately describe the road network now, what is planned for the future and why those steps will be taken.

**C. The Forest Service must consider a broad array of impacts related to forest roads in its NEPA analysis.**

*Impacts from Forest Roads*

As stated above, the best available science shows that roads cause significant adverse impacts to National Forest resources. Erosion, compaction, and other alterations in forest geomorphology and hydrology associated with roads seriously impair water quality and aquatic species viability. Roads disturb and fragment wildlife habitat, altering species distribution, interfering with critical

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<sup>29</sup> *Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 866 (9th Cir. 2004).

<sup>30</sup> See 36 C.F.R. 212.5.

<sup>31</sup> See e.g., FSH 1909.15, 14.2; Council on Environmental Quality's (CEQ) Forty Most Asked Questions (1981), #3 (explaining "[t]here are two distinct interpretations of 'no action'"; one is "'no change' from current management direction or level of management intensity," and the other is if "the proposed activity would not take place").

life functions such as feeding, breeding, and nesting, and resulting in loss of biodiversity. Roads facilitate increased human intrusion into sensitive areas, resulting in poaching of rare plants and animals, human-ignited wildfires, introduction of exotic species, and damage to archaeological resources.

We will look to see if the Forest Service outlines a range of activities focused on reducing road impacts, as part of its draft environmental analysis. These activities should include road maintenance, installation of BMPs, culvert replacements, hydrologically-disconnecting roads from streams, fish passage improvements, appropriate road closures (sometimes seasonal) and road decommissioning which can all be beneficial to wildlife, water quality, aquatic species and forest users if properly considered and implemented. As this project moves forward, we ask that the Forest Service ensure that activities on the ground result in changes to the current net negative impacts from these roads.

### *Climate Change and Forest Roads*

Climate change intensifies the impacts associated with roads. The Forest Service must include existing and reasonably foreseeable climate change impacts as part of the affected environment, assessed as part of the agency's hard look at impacts, and integrated into *each* of the alternatives, including the no action alternative. The Forest Service has a substantive duty to establish resilient ecosystems in the face of climate change.<sup>32</sup> The Forest Service should analyze in detail the impact of climate change on forest roads and resources. Removing culverts, improving stream/road crossings, upgrading culverts are all very important activities that can increase resiliency to climate change impacts. We encourage the Forest Service to consider climate change impacts – especially related to increasing storm intensity – to ensure that culverts are large enough and/or stream crossings are appropriately designed.

### **Conclusion**

As conservationists and visitors to the Willamette National Forest, we use the roads and trails but also recognize the harm that aging and unmaintained roads cause. The Forest Service's current road system is oversized for current uses, unaffordable with current budgets and causing significant harm to wildlife and aquatic species. In addition, unmaintained roads are impacting access when storms take out roads.

A road system that is too large for current budgets can lead to unplanned road closures, often to key recreational destinations, because of lack of road maintenance. We are certain that with thoughtful planning and clear communication, the Willamette National Forest staff can identify a minimum road system that is balanced. This endeavor to identify and manage a sustainable road network is one of the most important efforts the Forest Service can undertake to restore aquatic

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<sup>32</sup> 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”).



systems and wildlife habitat, facilitate adaptation to climate change, ensure reliable recreational and community access, and lower operating expenses.

If you have questions, please contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Talbott", written over a horizontal line.

Ryan Talbott  
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WildEarth Guardians  
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