OBJECTOR'S NOTICE OF OBJECTION, STATEMENT OF ISSUES AND LAWS, AND REQUESTED REMEDIES

NOTICE OF OBJECTION

July 14th, 2023
Reviewing Officer, Forest Supervisor,
Malheur National Forest
Attn: 1570 Appeals and Objections
P.O. Box 909
John Day, Oregon 97845

RE: Blue Mountains Biodiversity Project's objection to the Draft Decision Notice and Finding of No Significant Impact for the Emigrant Creek Aspen Project Environmental Assessment

Dear Objection Reviewing Officer,

Blue Mountains Biodiversity Project (BMBP) hereby formally submits the following objections to the Malheur National Forest's Emigrant Creek Aspen Project Environmental Assessment and Draft Decision Notice. BMBP has secured the right to submit objections and thereby participate in the pre-decisional administrative review process for this project. BMBP has submitted timely written scoping comments regarding this project and extensive comments on the Preliminary Environmental Assessment.

Decision Document
Draft Decision Notice [and] Finding of No Significant Impact for the Emigrant Creek Aspen Project Environmental Assessment

Date Decision published
May 31, 2023

Responsible Official
Joshua Giles, District Ranger, Emigrant Creek Ranger District, Malheur National Forest

Description of the Project

From the Draft Decision Notice:
The purpose of this project (EA at 1-3) is to improve and restore aspen communities within the boundary of the Emigrant Creek Ranger District of the Malheur National Forest.
This action is needed because of a general decline in aspen stand health has been observed across the Emigrant Creek Ranger District for many years.
The Aspen project supports management goals defined in the Malheur and Ochoco National Forest Plans….
Aspen is one of the most biologically diverse ecosystems in the forested lands and is an extremely important habitat type for a variety of wildlife species….
The Selected Alternative (Proposed Action)
…At the site-specific treatment level, an implementation checklist assessment will be completed and document the location and current condition of aspen stands to help determine the potential treatments needed to address the factors limiting the health and vigor of aspen. Management will be based on the results of the assessment and utilize adaptive management principles to apply

actions to maintain or improve conditions for the aspen community. Proposed activities may include one or more of the following treatments:
Conifer Encroachment Treatments…Conifer removal by mechanized equipment….Aspen regeneration treatments….[and] Aspen Regeneration Protection Treatments….(See pages 5-8 of the Draft Decision Notice.)

Location

The Selected alternative will treat [manage] aspen stands within the boundary of the Emigrant Creek Ranger District of the Malheur National Forest. The project area consists of all aspen habitat on the Emigrant Creek Ranger District. The Emigrant Creek Ranger District is located in Harney, Crook, and Grant Counties in eastern Oregon.

Appellant's Interests

Blue Mountains Biodiversity Project has a specific interest in this decision, which has been expressed through participation throughout the NEPA process. BMBP supporters visit much of the affected area for hiking; camping; relaxing; bird, wildlife, and wild flower viewing; photography; hunting; and more. The value of the activities engaged in by BMBP volunteers, supporters, and staff would be damaged by the implementation of this project regarding the loss of large conifer trees.

BMBP is a non-profit organization that works to protect Eastern Oregon National Forests. Staff, volunteers, and supporters of BMBP live in various communities surrounding the Malheur National Forest and use and enjoy the Forest extensively for camping; hiking; drinking water; swimming; hunting; fishing; general aesthetic enjoyment; gatherings; viewing flora and fauna; gathering forest products; and other purposes, such as gathering edible and medicinal plants and mushrooms.

Request for meeting

BMBP requests a meeting with the Forest Service to discuss matters in this objection and seek resolution of concerns through negotiation before the Malheur Forest Service makes a final decision on the Emigrant Creek Aspen Project.

Specific issues addressed in this objection

NEPA (National Environmental Policy Act) violations, including: proposing actions inconsistent with achieving the stated purpose and need for the project; failure to provide an adequate range of alternatives, including the absence of a baseline condition "No Action" alternative; failure to adequately analyze direct, indirect, and cumulative impacts of the project; and use of the Region 6 Forest Plan amendment to allow logging of large conifers equal to or greater than 21" dbh, which is currently being challenged in court; failure to disclose scientific controversy; inaccurate use of the science; and the need to use an Environmental Impact Statement.

Violations of the National Forest Management Act (NFMA) and the Malheur Forest Plan: Potential violations of the Malheur National Forest Plan include violations of Forest Plan goals and standards and violation of the Eastside Screens 21" dbh limit for logging large trees, concerning the contested problems with the Region 6 Eastside Screens amendment; violations of the Region 6 Eastside Screens amendment itself; potential violation of INFISH/PACFISH Riparian Habitat Conservation Area goals and Riparian Management Objectives; and potential violation of Forest Plan Management Area standards and goals, including wildlife corridor

connectivity and Late and Old Structure forest goals. We also have objection concerns regarding consistency with ensuring the viability of Management Indicator species.

We also have objection concerns regarding potential Endangered Species Act violations regarding potentially causing an upward listing trend for ESA-listed Threatened fish species and Sensitive aquatic species and Sensitive plants.

Clean Water Act potential violations include failure to demonstrate that the proposed actions will not further impair or retard water quality.

We also remain concerned that the Forest Service is not taking the need seriously for retaining forest carbon sequestration and storage to reduce extreme climate change, in this case by contributing to the planned Region-wide logging loss of already scarce large live trees that sequester and store the most carbon for up to hundreds of years.

BMBP objects to the Emigrant Creek Aspen Project for the following reasons:

I. The Emigrant Creek Aspen Project violates the National Environmental Policy Act

The Emigrant Creek Aspen project violates the National Environmental Policy Act in the following ways: inconsistency with the stated "purpose and need" of the project; failure to provide an adequate range of alternatives, including not analyzing a baseline "No Action" alternative; failure to adequately analyze direct, indirect, and cumulative impacts of the project; failure to take the requisite "hard look" at project impacts required by NEPA; failure to disclose scientific controversy; and inaccurate use of the science.

Inconsistency with the stated purpose and need of the project

The Emigrant Creek Aspen project is not consistent with all the purpose and need goals as expressed in the Environmental Assessment. The Emigrant Creek Aspen project Environmental Assessment includes the following statement that constituted the purpose and need for the project on p. 1-3: "The purpose of this project is to improve and restore aspen communities within the boundary of the Emigrant Creek Ranger District of the Malheur National Forest.

This action is needed because a general decline has been observed across the Emigrant Creek Ranger District for many years."

We are generally supportive of this purpose and need for the aspen project. We have field surveyed aspen stands on the Malheur in cooperation with the Malheur Forest Service to identify where aspen restoration is needed and to identify sources of aspen decline, including browsing of aspen sprouts by cattle, water diversions upstream of aspen for cattle that dried out aspen stands, and competition of generally small conifers with aspen for light and water. We have also seen a Malheur Forest Service slideshow highlighting successful aspen recovery from non-commercial thinning of conifers and commercial thinning of conifers up to 21" dbh, while leaving all large and old trees. Large and old live trees are generally few due to past over-logging of large trees over about a century in the Blue Mountains National Forests. Cattle grazing is also a major cause of aspen decline, which necessitates fencing the cattle out effectively long enough for the aspen to reach a sustainable height and vitality. Unfortunately many of the aspen exclosures to cattle have fences that have fallen down or have been breached by cattle due to lack of maintenance, resulting in severely degraded aspen stands with few sprouts or live trees. Therefore, while we agree with the general purpose of the Emigrant Creek Aspen Project, we oppose the unnecessary

logging of large trees in aspen stands planned and flaws in the public process planning for this project.

Our comments on the preliminary Environmental Assessment clearly explain the reasons for our objection regarding the inconsistency between the stated purpose and need and the narrow focus of proposed aspen restoration on commercial logging, including removal of large trees:

Purpose and Need:

In order to enable "aspen stands to produce a vigorous population" and "maintain and enhance quaking aspen stands", it is necessary to address all significant root causes of aspen decline, especially livestock browsing of aspen sprouts, livestock and road degradation of streams and water retention, and water diversions to livestock ponds that prevent streams and higher water tables from reaching aspen. By contrast, removing conifers from aspen stands is more like treating symptoms than causes, as conifers encroach on drier ground. Further, as the Malheur Forest Service has already demonstrated, it is not necessary to remove large and old conifers in order to sufficiently restore aspen and meet the stated purpose and need for the project.

I was convinced that removal of smaller (usually well under 21" dbh) conifers is beneficial to aspen stands by a Malheur National Forest slideshow that showed full recovery of aspen stands that was accomplished without felling conifers >/=21" dbh. Further, there is a major conflict between stated Forest Plan standards and goals to preserve and increase the abundance of large and old trees and this project's proposal to log all conifers in aspen stands, or only leaving two to three large trees, including logging large conifers >/= 21" dbh, most of which would also be >/=150 years old or at least over 100 years old. (EA Comments, p. 1, par.s 1 & 2)

There is currently a lot of federal funding flowing into Forest Service coffers to do wild fire risk reduction, so the agency should be able to spare some funds (such as earmarked restoration funding) to implement aspen restoration without logging large trees. This aspen restoration would still provide local employment without logging large trees, as has been done successfully many times on the Malheur National Forest since the passage of the Eastside Screens 21" dbh logging limit in 1995. The PEA fails to disclose that substantial aspen restoration success has been accomplished on the Malheur without logging and removing large conifers, and often without felling or girdling large conifers.

The lack of success seen for aspen restoration on the Malheur and the Emigrant Creek District is mostly due to lack of livestock exclusion fencing or lack of exclusion fence maintenance, unless the aspen grove is already too far gone to revive without root separation or coppicing, which has not been practiced often. The failure to fully restore aspen stands is hardly ever due to the presence of large trees, since most tree density across the District and the Malheur is only small trees up to 9" dbh or up to 14" dbh in fewer situations. This is due to past over-logging of large and old trees and on-going mature tree logging up to 21" dbh greatly diminishing large and mature tree size classes across the District and the Forest. Thus the perceived "need" to log large trees in aspen stands is very hard to justify to any degree that is credible. "Encroachment" by large trees in aspen stands is hard to rationalize when most conifers >/= 21" dbh are at least over 100 years old and are likely to be over 150 years old, the current definition of old growth. (last 2 paragraphs of p. 3 of our EA comments)

….While girdling and felling large trees and leaving them instead of removing them are preferable to logging and removing the large tree structure entirely, we are still not convinced that

felling large live trees is needed. We ask that girdling large trees should be minimized, and preferably confined to large trees that are in the process of becoming snags already, based on greatly diminished live crowns. However, large trees with diminished live crowns are also not much of a threat to over-shading of aspen stands. Ponderosa pine and Western larch have been identified by Malheur staff to have such high, small crown expanse when they are large (and often old) that they are not a significant threat to vigorous aspen regeneration. Thus large and/or old Ponderosa pines and Western larch should not be girdled or felled at all. (1st full par. of p. 4 of our EA comments)

Given that most "encroaching" conifers in aspen stands are small and young, less than 10" dbh, significant widespread aspen restoration could be accomplished with non-commercial thinning and prescribed burning. It's not convincing at all when the Forest Service simply states, with no supporting analysis: "Not treating encroaching conifers of all sizes would not meet the purpose and need to improve and restore aspen communities." (PEA p. 2-1) Based on our extensive field surveying across the Emigrant Creek District and the Malheur, this is simply not true. Large tree logging is definitely not necessary to "meet the purpose and need to improve and restore aspen communities." Further, most aspen stands probably don't require commercial logging to "improve and restore aspen communities." (p. 7 of EA comments, first full par. 2)

How would "encroaching" conifers be defined? It is highly unlikely that conifers of any species are "encroaching" on the aspen at >/= 21" dbh, which would generally be at least over 100 years old and mostly over 150 years old. This means that the majority of large conifers would have been historically present in the aspen stands before widespread effective fire suppression. Wild fire suppression has probably also contributed to aspen decline, but "encroaching" conifers would likely only be up to about 10-14" dbh from widespread wild fire suppression. (p. 7 of EA comments, 3rd to last par.)

Root causes of aspen decline also need to be addressed, including removing livestock ponds upstream from aspen stands and doing broader riparian restoration as part of the project, such as by roughening the flood plain with felled conifers to retain more moisture, rather than removing felled trees. (EA comments, p. 14, 2nd to last par.)

The inconsistency between the stated purpose and need and the planned management actions is based on an overly narrow construction of the purpose and need, as illustrated by this comment:

There is no guarantee that the removal of large conifers would result in successful aspen restoration, as most often the root causes of aspen decline are not caused by large conifer trees, but by livestock browsing of sprouts and loss of adequate water retention in aspen stands due to livestock or drought. (p. 3 of EA comments, full par. 4)

Resolution

BMBP has commented on its objection to the Malheur National Forest's (MNF) Emigrant Creek Aspen Project regarding inconsistency between the stated purpose and need for the project and proposed management actions on pages 1, 3, 4, 7, and 14.

Failure to provide an adequate range of alternatives

The Emigrant Creek Aspen Project Environmental Assessment included an inadequate range of alternatives.
Our comments were clear in recommending other viable action alternatives, although only one alternative was analyzed and adopted by the Forest Service:

Further, there is a major conflict between stated Forest Plan standards and goals to preserve and increase the abundance of large and old trees and this project's proposal to log all conifers in aspen stands, or only leaving two to three large trees, including logging large conifers >/= 21" dbh, most of which would also be >/=150 years old or at least over 100 years old.

The PEA fails to analyze the significance of this conflict and violation of Forest Plan standards and goals to log conifers without size or age limits in aspen stands across the entire District. Further, the EA fails to include a feasible and reasonable action alternative to restore aspen stands significantly without logging trees >/= 21" dbh or trees with old growth characteristics. (EA comments, p. 1, par.s 2 & 3)

Public Involvement:

There is no PEA acknowledgement of our suggested action alternative of not logging or felling large and old trees within aspen stands, which still allows for significant and widespread successful aspen restoration. We commented in scoping that no large trees >/=21" dbh or old conifers should be felled or removed from aspen stands. Large trees within aspen stands are known to triple biodiversity in aspen stands. Large and old conifer trees were historically present in many aspen stands and provide perches and large snags for nesting of large birds and cavity denning for mammals like martens. The large conifer down logs provide micro-habitat niches that protect aspen sprout regeneration and can space out conifer growth. Live large conifer trees, snags, and logs also provide micro-climate habitat for plant diversity within the aspen stand and can also stabilize stream banks and create structural complexity for wildlife. Large down wood also increases water retention in aspen stands through down wood moisture retention and some shading, including for flood plains, stream water, springs, and wet meadows. Water retention increases the biodiversity of aquatic and riparian wildlife and plant species and other wildlife species that need moisture. Plants such as fungi, and riparian-associated and riparian obligate plants, as well as invertebrates such as snails, need high water tables and abundant down wood. Many Sensitive and rare plant and wildlife species are associated with riparian areas, including aspen stands, and need to be protected from the effects of conifer clear-cutting or virtual clear-cutting. (EA comments, p. 2, 3rd full par.)

Logging large trees ostensibly for aspen restoration is a significant issue based on footnote 4 of PEA p. 1-8: Large tree logging is a significant EA issue that is "well defined, relevant to the proposed action, and within the ability of the agency to address through alternative management strategies." The alternative of not logging or felling large trees as part of aspen restoration is within the ability of the agency to address as an alternative management strategy. (EA comments, p. 4, 1st full par.)

Re: Effects of Removing Large Conifer Trees on Future Snags and Issues Eliminated from Detailed Study, EA p. 1-9:

The two sentence description of "Effects of Removing Large Conifer Trees on Future Snags" has no quantified analysis for a foreseeable "reduction of snags and future down wood across the district" if the proposed (and only) alternative is chosen. There is no analysis to compare the

effects of the proposed action to compare with a No Action alternative—the effects of status quo management. There is also no analysis for direct, indirect, or cumulative effects to wildlife species and their habitat, carbon sequestration and storage, and recreational values from removing or felling large trees. The PEA is in violation of NEPA requirements regarding inadequate analysis and inadequate range of alternatives. (EA comments on p. 4, par. 2)

Decision Framework:

The "Decision Framework" language in the PEA (p. 1-10) clarifies that there should be more than one alternative. See the wording in the first paragraph of p. 1-10: "The decision regarding which combination of actions to implement will be determined by comparing how each objective of the project purpose and need is met by each of the alternatives and the manner in which each alternative responds to the key issues raised and public comment received during the analysis." This decision framework does not allow for the provision of only one alternative, as the language "each of the alternatives" and "each alternative" was used consistently, indicating the use of more than one alternative. Yet the Emigrant Creek Aspen Project PEA only considers the proposed alternative, not multiple alternatives. No other alternatives were offered despite our objection to logging large conifers as part of proposed aspen restoration, even though: "The alternative the Responsible Official determines will provide the best achievement of prospective results in regard to purpose and need, while considering the issues and public comment, will be selected for implementation." (Underlining emphasis is ours.) (EA comments, p. 5, 3rd par.)

Alternative B, non-commercial sized thinning only, should have at least been analyzed for effectiveness on a site-specific basis. A compromise could have been made for higher diameter limits where the average density of conifers is of a higher diameter, such as 12" dbh or 14" dbh. Detailed analysis probably would have revealed that many or most of the aspen stands could be thinned only up to 10-12" dbh or even 9" dbh and still achieve successful aspen restoration. Considering such an alternative could have pared down the number of aspen stands that would involve commercial-size tree logging. Site-specific analysis would be helpful to the public to determine what amount of acreage and number of aspen stands would only be non-commercially thinned or burned, and how many acres and what number of aspen stands would be commercially logged or receive some other management, such as coppicing or root separation. Then the public could consider whether that level of commercial logging would be acceptable to them. (EA comments on pages 6 –last 2 par.s, & the 1st par. of p. 7)

Resolution:

BMBP has commented on its objection to the MNF's inadequate range of alternatives in the Environmental Assessment and requested a broader range of alternatives, including a No Action alternative, in our comments. See our comments quoted and cited above.
* To remedy this problem, the Forest Service would either have to reissue a new Environmental Assessment offering a full range of alternatives as required by NEPA for public review and comment, including a "No Action" baseline alternative, or better meet our concerns expressed in related comments as follows:
*Cancel the planned commercial logging of large conifer trees equal to or greater than 21" dbh.
*Retain all live conifer trees 21" dbh and greater, regardless of species, to retain needed future large structure, which is at a great deficit in the project area compared to historic conditions.
*Change more sale units to only non-commercial-size thinning instead of commercial logging wherever most conifer density is only small trees up to 10-12" dbh, unless this has already been done.

*Drop any commercial logging in aspen sale units or parts of sale units that have never been logged, if any.
*Drop commercial-size logging and all heavy equipment use within the RHCA buffers. Keep heavy equipment out of streams, wet meadows, wet floodplains, and other vulnerable riparian areas. Only operate heavy equipment from existing roads or landings outside of RHCAs.
*Don't re-open currently closed roads. We are especially concerned that roads should not be reconstructed or re-opened that are already grown over or were closed for ecological protection reasons, including roads within riparian buffers or that are hydrologically connected to streams.

Failure to include a No Action alternative by which to evaluate the effects of action alternatives:

The following comments address the unusual omission of the standard "No Action" alternative as a baseline for existing conditions by which to compare the effects of the action alternatives (although there is also no range of alternatives offered in the EA.) This is a clear violation of NEPA and disregards the purpose of including a No Action alternative:

Alternatives Considered but Eliminated from Detailed Analysis:

The No Action alternative not meeting the stated purpose and need for a project is not unusual or disqualifying for a No Action alternative, as the No Action alternative is meant to be a non-action alternative to create a baseline by which to judge the effects of action alternatives. Thus the No Action alternative should not be dismissed from detailed analysis in an EA because it does not meet the stated purpose and need. Instead the No Action alternative is used to reflect the status quo so that the public and agencies can decide if it is preferable to adopt an action alternative or not, and to be able to see what effects would be different from current management. An inadequate range of alternatives, with only one action alternative and no "No Action" alternative results in an agency-biased process that withholds information to the public as to comparative effects and other approaches that could have significant positive outcomes.

The Emigrant Creek FEA and relies on 36 C.F.R. § 220.7(b)(2)(i)–(ii) to support its decision not to analyze a no action alternative. These regulations read:

> "(b) ***An EA must include the following:***
> (2) Proposed action and alternative(s). The EA shall briefly describe the proposed action and alternative(s) that meet the need for action. No specific number of alternatives is required or prescribed.
> (i) When there are no unresolved conflicts concerning alternative uses of available resources (NEPA, section 102(2)(E)), the EA need only analyze the proposed action and proceed without consideration of additional alternatives.
> (ii) The EA may document consideration of a no-action alternative through the effects analysis by contrasting the impacts of the proposed action and any alternative(s) with the current condition and expected future condition if the proposed action were not implemented."

After reading the Emigrant Creek Aspen Restoration Project Final Environmental Assessment ("FEA") and Draft Decision Notice, it is unclear which regulation the Forest Service is relying on in not analyzing the typically required no action alternative. The FEA states that "[a] no action alternative that would not treat aspen stands was considered by eliminated from detailed analysis

because it does not meet the purpose and need." (FEA p. 2-1). However, the Service attempts to justify its decision by citing three separate regulatory sections, making it unclear exactly what authority it is relying upon for the decision to not include a no action alternative.

If the Service is simply relying on the failure of a no action alternative to meet the project's purpose and need, it is worth noting that "[i]nformed and meaningful consideration of alternatives—including the no action alternative—is … an integral part of the statutory scheme." *Bob Marshall All. v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988). "Moreover, consideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process." *Id.* at 1228–29. This is true in the sense that a no action alternative provides a meaningful environmental baseline against which to compare the effects of proposed action alternatives. As such, it provides value aside from its potential to meet the purpose and need of a project, and shouldn't be excluded from analysis for its failure to do so.

The Service may alternatively believe that there are "no unresolved conflicts concerning alternative uses of available resources," meaning "the EA need only analyze the proposed action and proceed without consideration of additional alternatives." 36 C.F.R. § 220.7(b)(2)(i). Without any support provided to back up the claim of unresolved conflicts, this hardly seems like adequate justification to not perform such an integral process required by NEPA in the Ninth Circuit. The exemptions from analyzing additional alternatives are intended to be narrow ones, as the evaluation of alternatives is "the heart of the NEPA analysis" itself. (Council on Environmental Quality, *A Citizen's Guide to the NEPA*, at 16 (Dec. 2007), *available at* https://ceq.doe.gov/docs/get-involved/Citizens_Guide_Dec07.pdf). At the very least, there exist conflicts in how the agency should employ its resources in the pursuit of aspen restoration. Of particular note are large tree "resources" on the Malheur National Forest, which are placed at risk by the proposed action alternative. The no action alternative would allow the agency and the public to gain a better understanding of the current health and prevalence of these large trees, providing a useful baseline against which to analyze the effects of the proposed action alternative on these vitally important trees.

Finally, it appears that the Service is actually relying on an incorrect interpretation of 36 C.F.R. § 220.7(b)(ii) for its decision to not evaluate a no action alternative. This is evident from the underlined emphasis the Service included in its copying of the regulations listed above. The underlining of the word "may" in this regulation indicates that the Service believes that if *may or may not* include an evaluation of no action alternative in an EA. However, this is not what the regulation actually means. As clearly stated in 36 C.F.R. § 220.7(b), "[a]n EA **must** include" certain things, and one of those is a no action alternative, unless a very narrow exception applies. What 36 C.F.R. § 220.7(b)(ii) actually allows for is a different way to analyze a no action alternative, by including its evaluation within the effects analyses for each individual resource, rather than in a standalone "No Action Alternative" section of the EA. As such, the Service must evaluate a no action alternative, but may be allowed to do so in a slightly more condensed version than would otherwise be required in the standard NEPA process. The fact that the Service has interpreted this regulation to allow no evaluation of a no action alternative is a violation of NEPA.

Alternatives Considered in Detail:

(Note that this Forest Service caption above assumes multiple alternatives considered in detail, since that is the standard practice by the Forest Service and a range of alternatives is required by NEPA.)

This is an inadequate range of alternatives, with no "No Action" alternative for comparing effects, and no alternative that would leave all large conifers >/= 21" dbh and those with old growth characteristics. The Forest Service is ignoring the successful restoration of aspen stands has been accomplished without logging large conifers >/= 21" dbh since the 1995 establishment of the 21" dbh limit under the Eastside Screens. (EA comments, p. 7)

Much of the stock language for the PEA consistently assumes more than one alternative offered, as that is required by NEPA and is accustomed practice by the Forest Service. For example, on p. 2-6: "Information in the Table 2 displays the alternatives and briefly summarizes the proposed activities in comparative form." (underlining emphasis ours) (EA comments, p. 10, par. 3)

Not doing commercial logging and mature and large tree removal would eliminate or reduce many impacts to wildlife species' habitat, riparian ecosystems, carbon sequestration and storage, recreational values, soil integrity, etc. Yet this was not considered in analysis due to there being only one action alternative, no analysis of a "No Action" alternative, and very inadequate analysis in general, with little or no quantification of negative effects and no detailed cumulative effects analysis for wildlife species, recreational values, carbon sequestration and storage, etc.—all in violation of NEPA. (EA comments, p. 14, 2nd par.)

Our other comments on an inadequate range of alternatives in the EA can be found written on page 3, 2nd to last and 3rd to last par.s, and p. 4, par. 2, quoted below.

Resolution

BMBP has commented on its objection to the MNF's inadequate range of alternatives in the Environmental Assessment and requested a broader range of alternatives, including a No Action alternative, in our comments. See our comments quoted and cited above.
* To remedy this problem, the Forest Service would either have to reissue a new Environmental Assessment offering a full range of alternatives as required by NEPA for public review and comment, including a "No Action" baseline alternative, or better meet our concerns expressed in related comments as follows:
*Cancel the planned commercial logging of large conifer trees equal to or greater than 21" dbh.
*Retain all live conifer trees 21" dbh and greater, regardless of species, to retain needed future large structure, which is at a great deficit in the project area compared to historic conditions.
*Change more sale units to only non-commercial-size thinning instead of commercial logging wherever most conifer density is only small trees up to 10-12" dbh, unless this has already been done.
*Drop any commercial logging in aspen sale units or parts of sale units that have never been logged, if any.
*Drop commercial-size logging and all heavy equipment use within the RHCA buffers. Keep heavy equipment out of streams, wet meadows, wet floodplains, and other vulnerable riparian areas. Only operate heavy equipment from existing roads or landings outside of RHCAs.
*Don't re-open currently closed roads. We are especially concerned that roads should not be reconstructed or re-opened that are already grown over or were closed for ecological protection reasons, including roads within riparian buffers or that are hydrologically connected to streams.

Failure to adequately analyze direct, indirect, and cumulative effects

The Emigrant Creek Aspen Project EA demonstrates failure to adequately analyze environmental effects of the project throughout the document, including omissions and distortions such as the following addressed in our comments:

The decision to eliminate effects to Wildlife from detailed analysis is unprecedented, as far as I know, throughout the 32 years I have been monitoring the Blue Mountains National Forests and reading the Forest Service Environmental Assessments and Environmental Impact Statements. Effects to wildlife are a key issue under the National Forest Management Act and cannot be simply dismissed from detailed analysis in NEPA documents. This omission is outrageous and suggests a lack of agency concern for wildlife biodiversity and viability. See "Issues Eliminated From Detailed Study" on PEA p. 1-9, that acknowledges that effects to wildlife "was eliminated from detail[ed] study for this analysis", mentioning wildlife friendly fences as if fences would be the only negative effect to wildlife, which is absurd. (EA comments, p. 5, par. 2)

It's obvious that there is insufficient analysis for wildlife species effects. There is no discernable rationale for assuming that the probability of wolf occurrence in or near aspen is "low" when deer and elk in the project area, their main prey, would likely disproportionately use aspen stand areas by meadows for grazing, browsing, elk calving, and fawning, as that is some of the best habitat for them. What "protection measures" would be placed to reduce disturbance? The analysis fails to anticipate measurable effects to prey species for wolves because it is not in-depth, detailed analysis. Other analysis for effects to Gray wolves on other Forests routinely discuss the relationship between effects to elk and deer as part of the effects to Gray wolf, their main predator other than humans and cougars. Eliminating all or most conifers in some of the aspen stands could reduce enough hiding cover to displace deer and elk—especially for fawning or calving. (EA p. 12, last par. into p. 13, 1st par.)

Pileated woodpecker section:

Seasonal restrictions and thinning "prescriptions" would not protect Pileated woodpecker active nests and nesting habitat since they require at least 60% canopy closure for nest security. Pileated woodpeckers need and use old growth habitat outside of Dedicated Old Growth and Replacement Old Growth areas for nesting. There is no detailed analysis or scientific support in the PEA to justify the claim that: "…there are no direct, indirect, or measurable cumulative effects to Pileated woodpeckers. As with the other PCEs, [the] Emigrant Creek RD aspen project would not contribute to a negative trend in population viability for Pileated woodpeckers." (PEA p. 3-8) (EA comments, p. 14)

Analysis issues are arbitrarily confined to the effects of design criteria for the proposed action and to effects of removing large trees on future snags— see Table 2, p. 2-6. This approach completely omits detailed analysis on effects to wildlife; stream, spring, and wet meadow functioning; recreational values; plant biodiversity; soil integrity, etc. Just analyzing mitigation measures such as design criteria in Appendix B and otherwise only considering effects to future snags signals that the proposed alternative can only be tweaked in minor ways, but will be implemented regardless of public concerns, and at the expense of foregoing other effective and desirable alternatives. (EA comments, p. 10, par. 2)

All we're asking is to not commercially log within RHCAs and not to log, fell, or remove large conifers >/=21" dbh and not to turn most of the large conifers into snags through girdling, in

order to perpetuate carbon sequestration and storage and provide long-term large tree structure habitat for wildlife. We agree that some small to mature conifer thinning, felling, or girdling can be beneficial for regenerating aspen stands. Large conifers >/= 21" dbh, however, are the tree size least likely to be "encroaching" on aspen and the tree size least contributing to conifer density in the stands due to past over-logging of large and old trees. It's frustrating that the lack of in-depth analysis is being used to ram through the only objectional parts of the aspen restoration plan. Detailed analysis would have made the problems with removing or felling large, live conifers clear. Detailed analysis would also illuminate the conflicting need to retain and increase large and mature trees in accordance with Forest Plan standards, goals, and guidelines, and best available science. (EA comments, p. 18, par. 2)

There is no quantification of effects in the PEA, such as how much Sensitive plant species are still declining or recovering; how many Sensitive plant populations with how many individual Sensitive plants still persist in the project area, across the District and on the Forests for each species; and population trends since 1990. What happened to the Malheur botanists and their documentation of Sensitive plant populations, including Sensitive plant survey results? Usually Malheur Sensitive plant effects analysis has been much better informed—up until now. (EA Comments, p. 20, par. 2)

Other comments addressing direct and indirect effects analysis can be found on EA comment pages: 2, last par.; 3, 2nd, 4th, & 3rd to last par.s; 4, 1st & 2nd par.; 19, par.s 2, 4, & 5; 22, last par.; and 23, 1st par.

The following comments are specific to inadequate cumulative effects analysis:

The necessary detailed effects analysis for the effects of removing large conifer trees is not disclosed at all in the EA or in the appendices A and B. Eliminating effects to wildlife from detailed analysis is a gross violation of NEPA analysis requirements that does not pass the test of the three indicators cited on EA p. 1-9. Wildlife are affected significantly cumulatively by removal of conifer trees across the District, especially by removal of already scarce large and/or old conifers that are still at an extreme deficit compared to historical conditions. There are current and planned timber sales across the Malheur greatly increasing that deficit of large and old forest structure to the detriment of many wildlife species—from hazard tree and selective large tree logging. There are many pending timber sales across the Malheur and other Blue Mountains National Forests that are currently in a holding pattern, apparently waiting for litigation to be resolved regarding more widespread large tree logging under the 2021 Eastside Screens amendment. This aspen restoration proposed action would further aggravate the loss of large and old trees to logging and would likely set a precedent for other Malheur NF Districts and other Forests. Thus the cumulative effects are likely to be significant, but are not considered in the PEA. (EA comments, p. 5, par. 1)

There is no species-specific cumulative effects analysis for wildlife species, violating NEPA analysis requirements for NEPA documents, including EAs. Short-changing or eliminating detailed, in-depth effects analysis biases conclusions toward "no cumulative impacts" and "no significant impacts" and is being used to ram through this project regardless of public concerns. The intention of NEPA's requirement for in-depth, detailed analysis is to avoid negative ecological impacts or to design effective mitigation measures. For example, "since there would be no measurable impacts [which might have been discovered through in-depth analysis] there

are no cumulative impacts." (Table 3, p. 3-7. The bracketed clause is ours.) (EA comments, p. 13, last par. through p.14, 1st par.)

There is inadequate cumulative effects analysis for removal of large conifer trees, as it fails to consider the cumulative effects of logging large, live conifers needed for wildlife habitat, carbon sequestration and storage, nutrient cycling, and recreational values across the entire District. The cursory PEA statements skip abruptly from brief identification of issues to mitigation, conveying a "just trust us" attitude by not analyzing the effects of the reduction of snags and down wood. (EA comments, p. 4, 2nd to last par.)

Past, Present, and Reasonably Foreseeable Actions: (usually addressed as Cumulative Effects)

Just a listing of past, present, and foreseeable projects is not adequate under NEPA to fulfill the analysis of cumulative effects required. For instance, there is no cumulative effects analysis in the PEA for effects to wildlife habitat; specific wildlife species; soil integrity; recreational values; old growth habitat; and large tree carbon sequestration and storage needed to reduce extreme climate change effects. Other effects analysis in the PEA is mostly very cursory with no in-depth analysis and few or no science citations supporting conclusions. The climate change analysis is often misleading and incredibly biased toward logging. (EA comments, p. 11, 1st par.)

The cumulative effects would not all be positive if large tree logging and felling is included and commercial logging is allowed in the RHCAs.

We are very concerned that including large tree removal in aspen stands across the entire District would set a precedent for other districts across the Malheur and other Blue Mountains National Forests. Without large tree felling and removal and commercial logging within RHCAs, this aspen restoration project would be mostly an ecologically sound project with the proper project design criteria that we would be happy to support. Instead we are being forced to oppose the project due to unnecessary and ecologically destructive large tree logging, felling, and removal. More than 3,000 acres of aspen stands with the removal of many large and/or old trees could have significant negative effects for wildlife and plant diversity and Riparian Habitat Conservation Area ecological integrity and processes. (EA comments, p. 18, par.s 3 and 4)

More of our comments on inadequate cumulative effects analysis can be found written on EA comment pages: p. 2, last par.; p. 12; p. 19, par.s 4-5; p. 22; p. 23, 1st par.

<u>Resolution:</u>

BMBP has commented on its objection to the MNF's failure to adequately analyze direct, indirect, and cumulative effects of the Emigrant Creek Aspen Project on a range of receptors, including potential project effects to existing and future large tree structure; Pileated woodpecker, Northern Flicker, Williamson's Sapsucker and White-headed woodpecker foraging and nesting habitat; any Sensitive plant populations; soil impacts; snag habitat for bird species; and effects of commercial logging in RHCAs to meeting Riparian Management Objectives.
See our comment quotations and citations in the paragraph above and references to inadequate analysis in comments quoted in other sections of this objection.

To resolve this objection, an EA needs to be prepared that adequately analyzes direct and indirect effects of the Emigrant Creek project, and cumulative effects of the project in

combination with past, ongoing, and reasonably foreseeable future actions to NEPA standards, with a public comment period to enable informed public comment and agency review.

An Environmental Impact Statement is Needed for the Emigrant Creek Aspen Project

Many of our comments above address the deficiency of the environmental effects analysis in the Emigrant Creek Aspen Project EA. Much of the inadequate analysis is the same in the Final EA as in the Preliminary EA, with only a few exceptions, which are noted where analysis has been improved. Our EA comments below highlight the significance of the inadequate effects analysis with regard to our primary concerns and why an EIS is needed for full disclosure of potential effects, a full range of alternatives, and other attributes of a complete Environmental Impact Statement. Further the scale of this project, over an entire Ranger District, should warrant the preparation of an EIS, with the requisite 45 day public comment period and 45 day opportunity to file objections.

Our related EA comments:

While we are concerned by the depletion of large future snags and logs planned, we are also concerned by loss of large live trees that would otherwise sequester carbon and provide wildlife habitat structure for up to hundreds of years, as well as storing carbon later in large snags and logs. Live large trees provide important wildlife habitat structure, not just large snags and logs. Wildlife species dependent on abundant large live trees include Pileated woodpecker, a Management Indicator species; American marten, a Vulnerable-ranked Management Indicator species; Bald eagle; Northern goshawk, a Management Indicator species; primary cavity excavating species including Sensitive-listed Lewis' woodpecker and Management Indicator species Williamson's sapsucker, Northern Flicker, and White-headed woodpecker; Great Gray owl, a focal species; and Pacific fisher, a Sensitive-listed species. Yet none of these species are analyzed as individual species for large tree habitat needs and the effects to them of removing large live conifer trees, or the effects to other large tree-dependent species. This is a glaring omission of in-depth and detailed analysis. This project cannot legitimately go forward without a greatly revised new Environmental Impact Assessment or an EIS with far more in-depth analysis, a full range of alternatives, and a 30 day or 45 day comment period.
(EA comments, p. 4, last par.)
{Please note that the above 30 day comment above was meant to pertain to a new Environmental Assessment and the 45 day comment period referenced was meant to pertain to a new Environmental Impact Statement, which we think is essential for this project. In either case, a new 45 day objection period following the Draft Decision Notice or the Draft Record of Decision would be required.}

Resolution:

The Emigrant Creek Ranger District staff must prepare an Environmental Impact Statement for this Aspen Project, with the requisite 45 day comment period and 45 day objection period.

Inaccurate use of the science

There are at least two instances in the Emigrant Creek Aspen Project EA of analysis not reflecting the full range of best available science or using science inaccurately. Examples of

failure to use the full range of best available science and inaccurately using science from our comments:

Why is there a limit of only 100 square feet basal area per acre for conifers in aspen stands? Large trees should be excluded from that limitation. On what science is this based? There is no science citation provided to support this limit. Why would four large conifers per acre (which are also likely to be old) be a trigger for logging at least one of the large trees per acre? Again, there is no science citation or analysis disclosed to support these limits. This determination seems to be clearly biased toward logging large trees—especially since there are no limits on size or age or tree species affected. In most or all cases, girdling or felling of large trees would not be necessary to significantly "improve and restore" the aspen stands. (EA comments, p. 7, last par.)

The Forest Service should consider and follow the "large body of literature [that] exists in which timber harvest activities were found to impair water quality and aquatic ecosystem functions" (PEA pp. 3-4, 1st par.) rather than one study and unquantified "recent studies" that concur with that study's finding that "partial harvesting of areas near streams and rivers with the implementation of BMPs can be conducted without degradation of aquatic ecosystems." (Emphasis ours) Further, the plan to remove all conifers except for possibly 2 to 3 large trees per acre (if they exist) would not be "partial harvest" but clearcutting or virtual clearcutting. So the consequences of this proposed clearcut or near-clearcut conifer removal would not necessarily be the same as that found in the Jones, Krupa and Tate (2013) results. In addition, the PEA fails to disclose recent scientific findings that BMPs and INFISH/PACFISH buffers may not always be sufficient for riparian and aquatic ecosystem protection, as assumed. There is no guarantee in the PEA that there would be no commercial logging within RHCA buffers. We are strongly opposed to commercial logging within RHCA "no logging" buffers and to excessive felling or girdling of conifers—especially large trees—within RHCA buffers. (EA comments, p. 12, 1st full par.)

As the Forest Service should know perfectly well, 200 feet of conifer removal on all sides of aspen stands is excessive and unnecessary. Instead, the buffer for aspen regeneration should extend further (but not 200 feet—more like 100 feet or less) with southern aspects, and not as far with northern aspects due to different shading effects, and likewise further (not 200 feet) for southwest or west aspects and less for northeast and east aspects. There have been discussions on Malheur field trips and a Forest Service aspen restoration slideshow of the differences in conifer removal based on aspect, yet now these are being ignored.

Most aspen restoration projects so far have been more conservative, with those on the Deschutes determining the configuration of historic aspen stand extent through soil sampling and following that pattern. Aspen are often in narrow stringers along streams where the water table is higher, so not historically 200 feet wide. In wet meadows and along moist river floodplains, aspen may have a broader extent of historical aspen stands. We advocate for doing the requisite soil sampling to determine the historic extent of aspen stands in order to configure restoration based on natural patterns. Aspect should also be taken into account for conifer felling, girdling, non-commercial thinning, or removal. Conifer felling should be confined to the footprint of the historic aspen stand, with consideration of water table limits to aspen. We request a more nuanced approach to aspen restoration that is more likely to be successful and would avoid unnecessary forest destruction.

Root causes of aspen decline also need to be addressed, including removing livestock ponds upstream from aspen stands and doing broader riparian restoration as part of the project, such as

by roughening the flood plain with felled conifers to retain more moisture, rather than removing felled trees.

Removing all conifers except potentially two to three large trees per acre or 20 feet of basal area per acre of large trees is also unnecessary and does not represent "thinned" stands or "thinning prescriptions", as planned logging would instead result in conifer clearcuts or virtual clearcuts with all the ecological harm that entails. These harms include further loss of large and old forest structure, intensive soil impacts, loss or water retention, and impaired forest health regarding the destruction of mycorrhizal fungal communities. Yet Table 3 language refers to conifers within 200 feet of aspen as being "thinned". There is also reference to "modifying thinning prescriptions." This is inaccurate and misleading.
(EA comments on the 2nd half of p. 14 and into the 1st par. of p. 15)

Resolution

BMBP has commented on its objection to the MNF's inaccurate use of the science in the Emigrant Creek Aspen project analysis. See our comment citations and quotations in the paragraphs above.

In order for the Emigrant Creek Aspen project to comply with NEPA, the Forest Service needs to incorporate the full range of best available science and use the science accurately, with professional integrity in analysis in a new EIS available for public comment for the Emigrant Creek Aspen project, to better and more accurately inform public comments, agency review, and decision-making.

Failure to Disclose Scientific Methodology and Unincorporated Specialist Reports

Our comments explain this objection:

Project Record:

The analysis in all of the listed Specialist Reports is omitted in the Preliminary Environmental Assessment. I would have to travel from Portland all the way to the Emigrant Creek District office in Hines to look through the Specialist Reports (assuming they exist)—a round trip that would entail at least a nine hour drive each way through winter weather conditions such as snow and ice. This is definitely a deterrent to the public for actually reading the Specialist Reports, which are not clearly identified as all being available in the "Record" "available for review at the Emigrant Creek Ranger District Office…." (PEA, p. -10) These 13 Specialist Reports should have been at least summarized in the PEA, with analysis disclosed for how assumptions are supported and how specific science citations informed decision-making. NEPA also requires disclosure of scientific methodology used to support analysis assumptions, which is not disclosed in the PEA. NEPA also requires disclosure of scientific controversy and use of best available science, which is hard to determine for the PEA with such inadequate and missing analysis.
(EA comments, p. 5, last par. into p. 6, 1st par.)

Why is there a limit of only 100 square feet basal area per acre for conifers in aspen stands? Large trees should be excluded from that limitation. On what science is this based? There is no science citation provided to support this limit. Why would four large conifers per acre (which are also likely to be old) be a trigger for logging at least one of the large trees per acre? Again, there is no science citation or analysis disclosed to support these limits. This determination seems to be clearly biased toward logging large trees—especially since there are no limits on size or age or

tree species affected. In most or all cases, girdling or felling of large trees would not be necessary to significantly "improve and restore" the aspen stands. (EA comments, p. 7, last par.)

Failure to Disclose Scientific Controversy

The Emigrant Creek Aspen project violates NEPA by failing to disclose significant scientific controversy. This failure to disclose significant scientific controversy leads to consequent suppression of scientific evidence and perspectives supporting other management, or non-management, as opposed to the Forest Service's proposed action alternative, in the Emigrant Creek EA.

Examples of our comments regarding Emigrant Creek EA failure to disclose scientific controversy include the following:

Climate Change:

As usual, the Forest Service is using stock approved language to artificially minimize the contribution of logging to climate change by omitting relevant science, such as the finding that logging is the primary contributor to greenhouse gas emissions in Oregon. The analysis systematically downplays the cumulative effect basis of global warming. The Forest Service evidently seeks to evade responsibility for minimizing greenhouse gas emissions and retaining and increasing forest carbon sequestration and storage.

Science stressing the need for forest protection from logging is carefully omitted, while science included in the climate change section is extremely biased toward logging, such as McKinley et al. 2011, based on Forest Service interpretation of that study. Commercial logging and so-called "fuels" reduction do not mimic the effects of natural disturbances, as they reduce carbon sequestration and storage and cause very unnatural negative impacts to soils, plant diversity, wildlife, and carbon/nutrient cycling. Large trees sequester and store more carbon than newly established trees, as the Forest Service should know perfectly well, based on a lot of peer-reviewed recent science not disclosed in the PEA climate change analysis.

The analysis regarding the timber industry and biomass conversion is extremely biased (p. 3-29, par. 3) through omission of competing science and failure to disclose scientific controversy over the effects of logging and conversion of trees to wood products and energy sources regarding contributions to global warming.

Commercial logging does not necessarily reduce fire risk, especially when it involves heavy removal of mature and large trees, which are more resistant to fire and often regenerate into more flammable dense, spindly thickets of young trees.

The recent study finding that all the fuel reduction logging across the western U.S. has not resulted in any significant reduction in fire incidence, severity, or extent is omitted in this discussion, as well as the recent study that found "fuel reduction" or "fire risk reduction" logging to statistically not be effective in most places by the time a wild fire actually occurs.

The climate change analysis also neglects to disclose that standing live trees that would grow into old growth would sequester and store carbon for up to centuries, rather than the few decades (at most) of carbon storage in wood products, although this is well established in the science.

(EA comments on pages 25-26)

Resolution:

Blue Mountains Biodiversity Project has commented on the Forest Service's failure to disclose scientific controversy in the Emigrant Creek Aspen EA. See our comments quoted and cited in the paragraph above.

To resolve this objection, the Forest Service must thoroughly disclose existing scientific controversy over agency assumptions and management plans in an Environmental Impact Statement or Environmental Assessment available for public review and comment. The Forest Service needs to use the full spectrum of best available science reflected in the controversy to guide management plans and to provide for a broader selection of action alternatives and changes in management direction.

Further, the Forest Service needs to disclose scientific methodology used in a new EIS or EA (preferably an EIS) and adequately summarize the findings of issue reports within the new EIS or EA. See our comments quoted above under "Failure to Disclose Scientific Methodology and Unincorporated Specialist Reports."

II. The Emigrant Creek Aspen project violates the National Forest Management Act

The Emigrant Creek Aspen project violates the National Forest Management Act in the following ways:

Forest Plan violations in the Emigrant Creek Aspen project include potential violations of Forest Plan standards by further setting back attainment of INFISH/PACFISH Riparian Management Objectives under the Eastside Screens and not following management guidance for wildlife connectivity corridors and Late and Old Structure stands. The Forest Service is violating the 21" dbh limit for logging large trees under the Eastside Screens by using the Region 6 amendment to that part of the Eastside Screens, yet is not incorporating restrictions embedded in the Region 6 amendment, such as not to log large trees =/+ 21" dbh that have old growth characteristics.

Violation of the Forest Plan goals and Eastside Screens regarding large live tree logging and felling:

The Forest Service is violating the 21" dbh limit for logging large trees under the Eastside Screens by using the Region 6 amendment to that part of the Eastside Screens, which is currently being contested in court by multiple environmental protection organizations, including ours. Yet based on our reading of the Draft Decision Notice, the Forest Service is not incorporating restrictions embedded in the Region 6 amendment, such as not to log large trees =/+ 21" dbh that have old growth characteristics.

For instance, the 2021 amendment specifies that, "[m]anagers should retain and generally emphasize recruitment of old trees and large trees, including clumps of old trees." (2021 Large Diameter Tree Amendment Decision Notice p. 4). Further, "[i]f there are not enough old trees to develop LOS conditions, large trees should be retained…." *Id.* However, the Emigrant Creek Aspen Project's proposed action alternative would clearly not meet the requirements of this guideline, as the management flowchart incorporates a ceiling on the number of large conifer trees that may be left rather than a floor. *See* Draft DN p. 10 ("Up to 3 large trees/acre or 20 sq ft BA of large trees may be left in aspen stand.") This management decision necessarily **does not** retain or emphasize the recruitment of large trees, as it may in fact require the logging of these large trees until there are only "up to 3" per acre (or only 20 sq ft BA) on a landscape that is

already suffering from the lack of large trees. Without even considering the implications of relying on the legally dubious 2021 Large Diameter Tree amendment (FEA p. 1-4), which may directly invalidate portions of this Project once a final legal decision in the two current cases is made, there are serious questions about whether or not the Project as designed would meet even the requirements of this less stringent guideline.

Our comments on the EA supporting this objection include the following:

We are greatly concerned by the large scale, District-wide logging or felling of existing large and/or old conifers in the aspen stands. The PEA fails to consider the cumulative logging of large and old trees across the District with this planned removal or felling of large trees, and inevitably, old trees. There appears to be no restriction in the PEA on logging or felling large and old trees, contrary to the Eastside Screens and even the 2021 amendment to the Eastside Screens. (EA comments, p. 2, last par.)

Further, there is a major conflict between stated Forest Plan standards and goals to preserve and increase the abundance of large and old trees and this project's proposal to log all conifers in aspen stands, or only leaving two to three large trees, including logging large conifers >/= 21" dbh, most of which would also be >/=150 years old or at least over 100 years old.

The PEA fails to analyze the significance of this conflict and violation of Forest Plan standards and goals to log conifers without size or age limits in aspen stands across the entire District. Further, the EA fails to include a feasible and reasonable action alternative to restore aspen stands significantly without logging trees >/= 21" dbh or trees with old growth characteristics. (EA comments p. 1, par.s 2 & 3)

We identified large tree logging as a key issue for analysis in our scoping comments, yet this significant issue is not analyzed in the PEA. We are deeply concerned by the sacrifice of large trees critical to carbon storage and sequestration to reduce climate change impacts and to large tree wildlife habitat structure already at a deficit, as part of aspen restoration. Large tree logging is not necessary for significant aspen restoration success.

Large tree logging also presents a conflict with Forest Plan goals to retain and increase large and old trees. This conflict could be resolved, since significant, widespread, successful aspen restoration is not contingent on removal of large conifer trees. Yet the Forest Service failed to disclose our concern regarding the removal and reduction of large trees, and failed to suggest an action alternative that would avoid this loss while still restoring most or all aspen stands. (EA comments, p. 3, 2nd & 3rd par.s)

It is misleading to claim in the EA that the 2021 amendment to the Eastside Screens "emphasizes recruitment of old and large trees," when in fact the guideline (as opposed to an enforceable standard) will inevitably lead to logging of many large conifer trees and inevitably, old trees, since they won't all be cored to determine age. This would not ensure retention of existing large and old trees, as well as reducing future large and old growth trees by removing them. All tree species are at risk at .>/= 21" dbh. This is an obvious instance of misleading the public. Deception should not be allowed in a NEPA document. (EA comments, p. 1, par. 6, into p. 2, 1st par.)

Notably, the Regional Forester's Forest Plan amendment of 2021 to limit and reduce the retention of large conifer trees >/= 21" dbh is already being litigated at least by two different environmental

organizations, which may prevail over the Forest Service amendment rammed through during the Covid pandemic with little public process and virtually no scientific support. (EA comments, p. 2, 2nd par.)

Apparently there is no size limit on conifer removal in violation of the Eastside Screens and even in violation of the Region 6 2021 amendment violating the 21" dbh limit for logging by not specifying protection of trees >/=21" dbh with old growth characteristics. As we expected, the Forest Service is now starting to allow a barrage of unmitigated logging of large trees regardless of size and old growth characteristics—at least on the Malheur National Forest. There is nothing reassuring about the 2021 amendment being only a voluntary guideline and requiring review of the consequences—no doubt after years of unrestricted logging of large and old trees. We all know how devastating the consequences will be from past unrestricted logging of large and old trees. Yet now with far fewer large and old trees left, plus climate change-driven wild fires, droughts, and heat waves, the consequences will be even more dire. Yet the lack of limitations on logging large trees in this aspen project indicates that the Forest Service really doesn't care about the mass extinctions of wildlife species and unraveling of forest ecological processes that would ensue—not what I would have expected from the Emigrant Creek Ranger District staff. One seemingly benign project allowing unrestricted logging of large trees will lead to other, larger timber sales sacrificing large and old trees. (EA comments, p. 8, par. 1)

Based on Scenario 2 (PEA pp. 2-2 to 2-3), there appears to be no restrictions on logging large or old trees if they exceed 20 square feet of basal area per acre if snag requirements for snag abundance are met (although the Forest Plan standards for snag abundance are outdated and deficient.) This lack of restrictions by size and age is in violation of both the Eastside Screens and the Forest Service 2021 amendment to the Eastside Screens. Such lack of restrictions on logging by age and size is also in violation of existing Forest Plan goals, standards, and guidelines requiring retention and increase over time of large and old trees. (EA comments, p. 8, par. 3)

Given the continuing deficit in large tee structure for wildlife and carbon sequestration and storage, all large trees should be retained in order to meet the management objectives of conserving large trees and following Forest Plan goals and guidelines to increase the abundance of large trees. Notably, the PEA concedes the following in regard to large tree retention: "Managers in our area agree that all conifers should be removed in treated aspen stands, <u>except for those that must be retained to meet other management objectives (e.g. large tree conservation or stream shading)</u>." (PEA p. 3-3) We agree strongly that large trees—<u>all</u> of them—must be retained to meet other multiple management objectives, including for wildlife habitat; stream shading; future large snag and wood structure; recreational values; soil nutrient cycling; and critically, to reduce global warming through natural forest carbon sink processes, extending the length of large and mature tree carbon sequestration and carbon storage through snag and log stages as long as possible by retaining all large trees and most mature trees.
(EA comments, p. 11, 3rd to last full par.)

<u>Resolution</u>:

To resolve this objection, the Forest Service needs to cancel the logging and felling of large conifers =/> 21"dbh as part of this Emigrant Creek Aspen Project and retain all large conifers >/= 21"dbh. We are also opposed to girdling of large trees =/> 21" dbh live trees, as the live large trees will continue to sequester carbon and provide wildlife habitat diversity in aspen groves and will eventually become large snags and logs that continue to provide large tree/old growth

structure for wildlife habitat and provide continued carbon storage to reduce extreme climate change effects.

A Malheur wildlife biologist in a collaborative meeting I attended said that there is science confirming that retaining large (and old) tree structure within aspen groves triples the level of wildlife diversity within aspen stands, yet this has somehow been forgotten or ignored by Malheur Forest Service staff.

INFISH/PACFISH Violations of the Eastside Screens

The Forest Service is in potential violation of Forest Plan standards and guidelines for riparian area (RHCA) protection, snag density, and protection of soils through proposed actions. The Forest Plan requires adherence to INFISH or PACFISH requirements, including moving toward attainment of Riparian Management Objectives (RMOs). These RMOs and water quality could be impaired or set back for attainment through commercial logging within RHCAs and heavy equipment use within RHCAs.

Our comments on potential Forest Plan violation regarding failure to demonstrate adherence to INFISH logging buffers and Riparian Management Objectives clearly state our concerns. See BMBP comments quoted and cited below:

Apparently the proposed action would also violate "no logging" RHCA buffers in wet meadows, next to streams and next to springs or seeps. This violates the Eastside Screens regarding INFISH buffers and moving toward riparian management objectives. (EA comments, p. 1, par. 5)

The large conifer down logs provide micro-habitat niches that protect aspen sprout regeneration and can space out conifer growth. Live large conifer trees, snags, and logs also provide micro-climate habitat for plant diversity within the aspen stand and can also stabilize stream banks and create structural complexity for wildlife. Large down wood also increases water retention in aspen stands through down wood moisture retention and some shading, including for flood plains, stream water, springs, and wet meadows. Water retention increases the biodiversity of aquatic and riparian wildlife and plant species and other wildlife species that need moisture. Plants such as fungi, and riparian-associated and riparian obligate plants, as well as invertebrates such as snails, need high water tables and abundant down wood. Many Sensitive and rare plant and wildlife species are associated with riparian areas, including aspen stands, and need to be protected from the effects of conifer clear-cutting or virtual clear-cutting. (EA comments, p. 2, 2nd to last par.)

Re: the Figure 2 Management Area map on PEA p. 1-7, the overlap of aspen stands across the District with stream drainages is striking, as well as overlap with special Management Areas, although that overlap is hard to determine from the map. Thus we are also concerned by heavy commercial logging impacts within RHCA buffers and special Management Areas, including the loss of large tree structure and live large trees—upon implementation and into the future, which is also not analyzed in any depth in the PEA. (EA comments, p. 2, last par., into p. 3, 1st par.)

Notably, the PEA concedes the following in regard to large tree retention: "Managers in our area agree that all conifers should be removed in treated aspen stands, <u>except for those that must</u>

be retained to meet other management objectives (e.g. large tree conservation or stream shading)." (PEA p. 3-3) We agree strongly that large trees—all of them—must be retained to meet other multiple management objectives, including for wildlife habitat; stream shading…. (from EA comments, p. 11, 3rd to last full par.)

Resolution

BMBP has commented on the Emigrant Creek Aspen project's potential violations of INFISH Riparian Management Objectives and RHCA no logging buffers. See our comments cited and quoted above.

To resolve this objection, the Forest Service needs to:
*Drop commercial logging and heavy equipment use within RHCA buffers except for non-commercial conifer thinning only up to 21" dbh for aspen stand recovery only where really needed. Any commercial-size thinning must retain conifers providing streambank stability and primary shading and leave all girdled or felled trees within the RHCA buffers for snags or down wood, which can also be used to keep cattle out of the aspen stands and improve floodplain roughness. Any commercial-size logging must confine heavy equipment use to existing open roads and landings and take place outside of RHCA buffers, based on INFISH/PACFISH buffers.
*Drop all re-opening of closed roads and construction of any 'temporary' roads within, or adjacent to, RHCAs.
*Drop any planned heavy logging equipment stream drainage crossings and avoid heavy equipment use within RHCAs by only girdling and hand-felling (only up to 21" dbh) and leaving felled trees and snags in place, along with working off open roads or landings adjacent to the RHCAs.

Forest Plan Management Area Guidance Violations

Re: Violation of Wildlife Connectivity Corridor Management Goals and Late and Old Structure Management Area Goals

Wildlife Connectivity Corridors:

We are opposed to commercial logging and excessive "non-commercial" size thinning in wildlife connectivity corridors. We want the Forest Service to drop all commercial logging and limit non-commercial thinning in connectivity corridors, as it defeats the purpose of leaving denser areas to allow for movement of old growth-associated wildlife species, as well as native ungulates using these areas as security cover, and to provide greater habitat security in these areas compared to intensively managed stands outside these corridors.

Our comments regarding violation of wildlife connectivity corridor management goals can be found below, with some of the wildlife corridor connectivity comments quoted above under other sections and below, under "climate change". We also expressed concern regarding provision of sufficient deer fawning and elk calving security cover, such as is often provided by wildlife connectivity corridors and within RHCAs. Many of our Late and Old Structure comments are quoted above under the section for "Violation of the Forest Plan Goals and Eastside Screens regarding large live tree logging and felling." See our additional comments below:

Connectivity and LOS (late old structure) section:

Cottonwood stands:

Management proposed for Cottonwood stands is not even mentioned in the PEA until p. 3-11 of Table 3, with no description given of the perceived need to log conifers within Cottonwood or the effects of doing so. Cottonwoods often co-exist with large and old conifers. As with aspen, the conifers are not the root cause of Cottonwood decline, which is mainly attributable to livestock browsing of Cottonwood seedlings and could also be due to sites drying out from heavy logging or drought. We are strongly opposed to "removing large structure out of aspen or Cottonwood stands" even when snag and down wood densities would be maintained and "meet desired conditions," as there is an existing huge deficit in large trees (now calculated to be only about 3-4% of the entire Forests in the Blue Mountains—see David Mildrexler's study) and across most of the Forests there is a deficit in large snags and logs, especially in drier Districts such as Emigrant Creek, compared to historic conditions.

Connectivity and LOS:

All large trees >/= 21" dbh should be retained, including, but not limited to, within connectivity corridors and LOS stands. There is no evidence or detailed analysis presented in the PEA to justify the conclusions that "there would be no change in late-old structure" when "large trees may be removed out of the aspen stands" or that "there would be enough large trees in the surrounding area to maintain LOS." (p. 3-11, Table 3)*

*Note: Since our comments were written based on the text of the EA, the Draft Decision Notice clarified that "No trees over 21" will be cut inside existing (LOS) stands. (EA at 2-2)" (Draft Decision Notice, p. 6) We appreciate this clarification. However, we are still concerned that this may not be followed in all the aspen stands across multiple Districts, as someone would have to first do old growth counts per acre in the aspen stands to ascertain if the stands have acres that qualify as LOS (Old Growth stands), and such prior surveying seems unlikely to occur based on lack of staff time and funding. Thus implementation of logging could easily miss the requirement to not log large trees in aspen stands that qualify as LOS, but that are not mapped as such.

We also have additional concerns about logging any large trees in aspen stands, as stands that could soon become LOS (based on 10 live trees =/> 21" dbh per acre) would be prevented from becoming Late and Old structure stands, which are at a huge deficit compared to historical conditions and are badly needed for wildlife habitat and carbon sequestration and storage. Further, we should be protecting old growth structure in general, including isolated old growth live trees, snags, and logs, and small patches of LOS structure that may not have the required 10 live large trees per acre, but have needed large snag and log habitat.

We are concerned that loggers would have the "prescription" management instructions to only leave up to 2 to 3 old or large trees in each aspen stand, so this result could easily happen across most or all of the aspen stands, cumulatively preventing aspen stands from persisting as, or becoming Old Growth (LOS) structure for decades, or eliminating most existing old growth structure (especially live large trees, but also large trees felled as hazard trees) from the aspen stands across the District.

We are also concerned that large tree retention would be limited to more "fire tolerant" tree species, even though large trees across species are more resistant to fire due to thicker bark and higher live crowns. Tree species diversity should be preserved for differing unique characteristics and wildlife habitat elements (such as more shading and water retention, or more frequent

provision of abundant snags and logs for wildlife, as with Grand fir) and for avoiding mass insect epidemics spreading through homogenous, single species stands, since most defoliating insects and diseases or pathogens (such as mistletoe) are specific to particular tree species.

Our following EA comments express some of our additional concerns:

EA comments, continued:

It is not clear that "LOS would be maintained as required" [*see above], so the conclusion of "no measurable direct, indirect, or cumulative effects will occur" is indefensible, as there is no detailed and quantified analysis supporting this. We are especially concerned that the management direction is to only leave two to three large trees per acre (or only 20 square feet of basal area per acre) and remove, fell, or girdle all the rest of the conifers, apparently regardless of the amount of old growth structure in the stand. This management direction could easily eliminate the LOS status of a conifer stand by only leaving 2 to 3 large conifers per acre when LOS is defined by at least 10 large trees per acre plus snags and logs.

We are not just concerned about losing the LOS status of Dedicated or Replacement Old Growth stands, but also losing LOS structure, including large live trees, across the District. Since aspen often overlap Riparian Habitat Conservation Areas (RHCAs), there may be a disproportionate amount of old growth structure that was protected from past logging. This means that a disproportionate amount of old growth structure may be lost with the logging of all or almost all conifers in the aspen stands across the District.

There is no mandatory language to even ensure that two to three large live conifers are retained, let alone ten live large trees per acre, which is required for the stand to be considered LOS. This planned reduction of LOS (old growth) stands violates multiple elements of the Forest Plans, including the Eastside Screens and Forest Plan goals. (EA comments, pp. 16-17, 4 paragraphs)

Resolution:

*Don't commercially log within wildlife connectivity corridors overlapping aspen stands planned for restoration. We understand that commercial thinning in wildlife connectivity corridors can be done in accordance with thinning only to the upper third of stand potential, as specified in the Forest Plan, but we are shocked and concerned about the current eastern Oregon-wide landscape-scale of commercial logging and by its heightened intensity to the point of virtual clearcutting on an unprecedented scale and pace. Non-commercial thinning can be used instead of commercial logging in wildlife connectivity corridors.

*Drop all removal or felling of any large trees or large snags, and any removal of large logs, regardless of the tree species. Don't girdle live large conifers. Non-commercial thinning can be used instead of commercial logging in wildlife connectivity corridors up to 10" dbh.

*Drop the acres of commercial-size logging or felling within wildlife connectivity corridors, as under extreme climate change, these corridors would be what is available to wildlife species dispersing to find more suitable habitat in higher elevations or further North as droughts dry up more low elevation or southern habitat and wild fire intensity increases. Being able to disperse to more suitable habitat is critical to species surviving climate change.

Other Management Area Standards, Goals, and Guidelines Violations:

Our EA comments below express our concerns. Since there was no in-depth analysis regarding the effects of large tree logging, girdling, and felling across these Management Areas overlapping aspen stands across the Emigrant Creek Ranger District, there was no consideration as to whether logging, felling, and/or girdling large live trees would be inconsistent with these Management Areas' standards and goals. This points to the need for in-depth analysis of environmental effects that is lacking in this Aspen project's EA analysis.

Management Areas:

Felling and/or removing large and/or old conifer trees from aspen stands would especially violate goals of the following Management Areas: Big Game Winter Range (which needs thermal cover from severe storms for elk and deer); Dedicated Old Growth; Visual Corridors; Wildlife Emphasis; Wild and Scenic River (which is limited to non-commercial thinning in this proposal); Riparian Habitat Conservation Areas; Old Growth; Developed Recreation; Visual Management Retention; and the Silver Creek Recreational River Corridor. There should be no felling or girdling of large and/or old trees across the District, including those Management Areas, based on their MA goals, standards, and guidelines. There should be no commercial size logging in any of the Inventoried Roadless Areas (fortunately aspen management is restricted to non-commercial thinning in the IRAs.) The Roadless Area Rule includes not logging large and/or old trees, and includes prohibition of all commercial size logging or felling of mature and large trees. IRAs should not be managed in any ways that defeat the goals of preserving natural conditions in the IRAs for wildlife and semi-primitive recreation. (EA comments, p. 2, 2nd to last full par.)

Resolution for Other Management Area Standard, Goal, and Guideline Violations

Without EA or EIS detailed analysis as to the consistency or inconsistency of logging, felling, and/or girdling large trees, our comments above under "Management Areas" specify our proposed resolution of not logging, felling, or girdling live large conifers in the Management Areas specified in those comments. Otherwise, the aspen-related logging, felling, and/or girdling of live large conifers could violate those overlapping Management Areas' standards, goals, and/or guidelines, except for the following exceptions acknowledged in our comments:

Inventoried Roadless Areas, Research Natural Areas, and Wild and Scenic Rivers:

We support there being no commercial logging or road building in the Inventoried Roadless Areas affected by this aspen restoration project, in accordance with the Roadless Area Rule. We support aspen restoration in IRAs being confined to non-commercial thinning of small trees only—up to only 9" dbh, and by hand only, which is stated in the PEA statement at p. 3-20, last sentence. We would like confirmation that trees over 9" dbh would not be thinned and that thinning would be by hand only.

We support no management of aspen stands in Research Natural Areas and Wild and Scenic River corridors except for non-commercial thinning up to 9" dbh only, with hand thinning only. (EA comments, p. 23)

Road Concerns regarding re-opening of any miles of currently closed roads:

Our comments regarding road impacts to riparian area integrity and water quality and to wildlife species sensitive to disturbance explain our position: See also our comments regarding deer and elk security concerns. We appreciate the Draft Decision Notice specifying that "No temporary roads will be authorized." However the Draft Decision Notice did not clarify whether or not currently closed roads would be re-opened for this aspen project.

See our quoted comments opposing re-opening of closed roads in various sections of this objection. These include comments regarding management within the RHCAs, above under NFMA Violations.

Resolution

BMBP has commented on our concerns re: the re-opening of currently closed roads. See our comments cited and quoted above, in other sections of this objection.

*Drop the re-opening of closed roads that were closed for ecological protection reasons, such as hydrological connections, soil erosion, and wildlife disturbance, as well as closed roads that are not maintained, have already grown over, or would require reconstruction.
*Drop re-opening of closed roads in RHCAs.
*If feasible with this project, decommission fully all roads within RHCAs except for major roads not causing ecological damage.
*Maintain overall road density to less than Forest Plan standards, based on best available science.

Potential Violation of Soil Protection Standards

We are reiterating all our comments regarding detrimental soil impacts, since the Final EA appears to have the exact same wording and text as the Preliminary EA. We do appreciate that "Any sites where prior DSC + anticipated treatment approach or exceed the 20% DSC standard will not be selected for mechanical treatment." (Final EA p. 3-26) This statement also appeared in the Preliminary EA, but we are concerned that there is insufficient detailed analysis for potential detrimental soil impacts on a site-specific basis in the EA. Our comments below explain our objection:

Soils:

The analysis for effects to soils claims that: "Nearly all the potential implementation tools included for aspen treatments have very little direct soil disturbance associated with them." (PEA p. 3-20, 1st par.) This is not the case with commercial logging to remove all or most conifers in aspen stands if there are a lot of mature conifers—especially since aspen stands likely have high water tables.

There is no detailed description of the extent and intensity of effects from "mechanical ripping along the contour of low angle slopes" and from "topsoil ripping in selected sites for aspen enhancement." There is no explanation as to why topsoil ripping "will create disturbance that is so short-lived that it will not meet the criteria of 'persistent' soil disturbance to be truly considered DSC." (Detrimental Soil Conditions) (PEA p. 3-20, 1st full par.) Then the analysis jumps to the conclusion that: "Thus, all proposed action[s] fit into the category of actions 'with effects appearing to be much lower [than] the 20% DSC [limit]." (PEA p. 3-20, 1st par.) There is

no detailed or quantitative analysis supporting this assumption, and that would disclose the intensity, extent, and duration of the aspen project's detrimental soil impact effects.

We appreciate that: "The soil scientist for the Emigrant Creek Ranger District will conduct a field investigation to assess prior DSC in the area of any proposed aspen treatment site. Any sites where prior DSC + anticipated treatment DSC approach or exceed the 20% DSC standard will not be selected for mechanical treatment." (PEA, p. 3-20, 2nd full par.) However this whole project seems rushed toward implementation with no specific information regarding existing conditions from field surveying and no quantification of potential effects. Why didn't the soil scientist conduct a field investigation to assess prior detrimental soil impacts in the area of any proposed aspen management site prior to preparation of the PEA? There should be a comment period for the next iteration of the EA since so much critical information (analysis) is missing in the Preliminary Environmental Assessment.

Why would a single soil pit for each stand be considered sufficient to determine detrimental soil impacts? Some aspen stands are much bigger than others. Multiple soil sampling sites should be used to determine the footprint of the historic aspen stand to guide the extent and configuration of restoration.

The following conclusions are not supported due to lack of disclosure of existing soil conditions in the aspen stands and the lack of detailed analysis to determine the intensity and extent of planned management that would cause significant detrimental soil disturbance, such as commercial logging removal of many mature and large conifers and topsoil ripping: "Overall, the direct and indirect effects of the proposed aspen treatments on soils, including potential soil mitigations, will be of limited extent with low to moderate levels of soil disturbance created. Those disturbances for the most part will be short-lived. As such, they will not present any significant soil impacts relative to the effects of past, present, and reasonably foreseeable future actions. The potential cumulative effects associated with this decision for soil resources are insignificant." (PEA p. 3-20, last par. re: soils, underlining emphasis ours)

How can no significant cumulative detrimental soil impacts be determined with no information as to levels of existing detrimental soil conditions within the aspen stands? This determination is also not justifiable because there is no quantification of potential detrimental soil impacts from proposed management actions. Standard practice by the Forest Service is to disclose existing levels of detrimental soil conditions (DSC), then add expected percentages of additional detrimental soil impacts that would be caused by proposed management—on a site-specific level, by sale unit or aspen stand. Then these combined percentages of detrimental soil conditions are compared with the 20% of the area limit for detrimental soil impacts under the Forest Plan. None of this analysis was done for the PEA or it was not disclosed or summarized in the PEA.

The Forest Service has also adopted reliance on soil impact mitigation practices to meet the Forest Plan 20% limit for detrimental soil conditions—see the underlining we added to show this in the quotation of DSC conclusions above. Yet mitigation tends to be limited to sub-soiling, which only assists in mitigating soil compaction, and is not 100% effective. Planned soil impact mitigation may also not be implemented due to lack of funding. Yet these factors are not considered.

No mechanical management (use of heavy equipment, commercial logging) should be used within RHCA INFISH buffers—for wet meadows, springs, streams, or seeps. We want full

adherence to INFISH "no logging" buffers and the requirement for management to move toward achieving Riparian Management Objectives. (EA comments, p. 22-23)

Resolution

BMBP has commented on our objection that the Project as proposed could violate Forest Plan soil protection standards. See our comments quoted and cited above.

To resolve this objection, the Forest Service needs to do the following:

*Drop sale units which are acknowledged to have already high degrees of detrimental soil impacts or sensitive soils likely to lead to violation of Forest Plan standards for soil protection with proposed management, such as through use of heavy equipment in moist RHCAs. This seems to be the proposed plan, but we want to make sure that this is the outcome, since there is no site-specific detail regarding specific aspen stand soil conditions in either the Preliminary EA or the Final EA.

*No mechanical management (use of heavy equipment, commercial logging) should be used within RHCA INFISH buffers—for wet meadows, springs, streams, or seeps. We want full adherence to INFISH "no logging" buffers and the requirement for management to move toward achieving Riparian Management Objectives. (one of our EA comments)

*Drop logging of any slopes greater than 35% to reduce potential erosion, loss of soil integrity, and potential sedimentation of creeks, if adjacent.

*Drop any sale units or parts of sale units unlikely to meet Forest Plan standards for detrimental soil standards without further mitigation, as mitigation is unlikely to be 100% effective.

Endangered Species Act Objections and National Forest Management Act Management Indicator Species Objection for Redband Trout

Comments re: Sensitive-listed plant species: Since there was no response to our comments and no apparent change to the Sensitive plant effects section from the Preliminary EA to the Final EA, we are reiterating our EA comments for this issue to explain our objection:

Effects to Sensitive Plants:

We appreciate and support the project design criteria to protect Sensitive plants. Clearcutting or virtual clearcutting of conifers could crush, shred, uproot, and otherwise destroy Sensitive plants within the aspen stands. All known Sensitive plants must be flagged, buffered, and avoided with logging machinery and tree felling. The moonwort and moss species are very rare and hard to detect. In addition, there should be RHCA "no logging" buffers and other prohibitions against machinery use in areas with high water tables and in or adjacent to moist meadows, seeps, springs, and streams. Some of these mitigations may already be incorporated in Project Design Criteria.

There's a litany of past and current projects—especially timber sales and livestock over-grazing—that threaten the viability of the Sensitive plants listed in Table 4 for the aspen stands. Reducing shade within a wet aspen stand is not necessarily a positive effect, since this could dry out the soils, especially with commercial logging of all or most conifers.

The lack of more detailed analysis for effects to Sensitive and notable plants is conspicuous in the PEA, as the PEA promises that: "The documented populations of Sensitive species in the

project area will be discussed individually." (p. 3-14) Then the PEA analysis does not discuss the documented populations of Sensitive species individually, or even the Sensitive species, individually. The failure to discuss the habitat needs of the Sensitive plant species found in the aspen stands, their rarity, their population status, and what planned actions would negatively affect them, limits public understanding of the threats posed to these species by planned management actions. Lack of detailed analysis and informed public response can cause agency disregard for mitigation measures or identification of what types of management should be prohibited for better protection of particular species of Sensitive and notable plants.

Not using commercial logging with heavy equipment use and tree removal would better protect soils, Sensitive plants, and wildlife habitat, as well as water quality and water retention. We support full protection of Sensitive plant populations from all ground disturbing activities, as planned re: p. 3-15 under "Aspen Regeneration Protection Treatments", but avoiding commercial logging and conifer removal in the aspen stands would better protect undetected Sensitive plants and plant biodiversity.

The PEA claims that cumulative effects are not quantifiable: "These historical effects are not quantifiable." (PEA p. 3-15, last par.) Actually, past timber sales, grazing allotments, and road construction are quantifiable in acreage, intensity of logging methods, allotment conditions, and mileage of open roads. It's absurd to claim that cumulative historical effects are not quantifiable, as there is documentation of these effects going back to various times decades ago. Further, Forest Service staff in the region have often used quantified cumulative effects analysis of past management impacts. These past management effects could be compared to natural habitat conditions for Sensitive plants, even if pre-European colonization conditions and population status of Sensitive plant species are not documented. The analysis could also identify threats to individual Sensitive and notable plant species from past, current, and planned management actions. Information for the current population status and population trends of Sensitive-listed plant species is available, yet even this information is not included in the inadequate analysis of effects to Sensitive plant species. This is all usually standard procedure for the Forest Service NEPA document effects analysis.

The Forest Service staff writing this PEA stubbornly refused to engage in cumulative effects analysis, which leads to absurd, unsubstantiated disclaimers instead, such as: "The effects of grazing combined with the effects of the proposed action would not work together to create any cumulative effects, either negative or beneficial." (PEA p. 3-16, 1st par.) Other Forest Service staff for various NEPA project analysis writing have figured out how effects of proposed management actions would "work together" cumulatively with the effects of ongoing management effects, including livestock grazing. Cumulative effects analysis is standard and required, not impossible to achieve. Negative or beneficial effects and their interactions could be discussed. For example, livestock grazing can simplify plant communities, eliminating plant biodiversity, and when combined with clearcutting or virtual clearcutting ground disturbance where there are many conifers in the aspen stand, could further reduce the viability of any Sensitive plants in the stand. Likewise, livestock over-grazing can result in barren areas that encourage the introduction and dispersal of invasive exotic plants, and intensive logging of effects of over-grazing and increasing the introduction and spread of invasive plants. If I can come up with examples of cumulative effects of the proposed action with livestock grazing so quickly (over only a minute or two), the Forest Service should be able to do the same.

There is no detailed analysis in the PEA justifying the conclusion that: "Therefore, this project, foreseeable projects, and those that have occurred in the recent past are not likely to contribute any cumulative detrimental impacts to sensitive plant species." (PEA p. 3-16)

There is no quantification of effects in the PEA, such as how much Sensitive plant species are still declining or recovering; how many Sensitive plant populations with how many individual Sensitive plants still persist in the project area, across the District and on the Forests for each species; and population trends since 1990. What happened to the Malheur botanists and their documentation of Sensitive plant populations, including Sensitive plant survey results? Usually Malheur Sensitive plant effects analysis has been much better informed—up until now.
(EA comments pp. 18-20)

Resolution:

Since there was no detailed plant species specific or site-specific detailed analysis regarding effects to Sensitive plants, and this was not corrected in the Final EA, we can only fear the worst outcomes. While this is part of our inadequate environmental analysis NEPA objection, this situation points to the reasons why detailed, (site-specific and species specific) analysis is required to avoid loss of plant or wildlife species, prevent contributing to a trend toward uplisting under the Endangered Species Act, or otherwise prevent long-term loss of biodiversity.

*We request specific information as to the Sensitive plant species that are known to be in the aspen stands or have suitable habitat in the aspen areas proposed for management, including mapped identification of those aspen stands that are thought to be suitable or occupied habitat for Sensitive plant species.

*The Emigrant Creek District staff needs to prepare another EA or an EIS with detailed, site-specific, and site-specific, environmental effects analysis for Sensitive plants.

*The Malheur botany staff need to survey the proposed aspen stands for restoration for Sensitive plants and buffer any Sensitive plant species that could be negatively affected— by dropping the aspen area from heavy equipment use, dropping the aspen stand altogether (as would likely be needed for the Moonwort (Botrychium) species, or flag off suitable and/or occupied habitat for the Sensitive plant populations with an adequate buffer, or exclude those areas from the aspen stand management.

Aquatic species:

We are concerned by potential negative effects to the Sensitive aquatic wildlife species known to inhabit the project area: Redband trout, Western ridged mussel, and Columbia Spotted frog. We appreciate the additional, more detailed analysis regarding direct, indirect, and cumulative effects to aquatic species in the final EA on pages 3-20 to 3-24. This additional information addresses a lot of our concerns regarding the lack of detailed, site-specific analysis for effects to aquatic species, but may not completely resolve our concerns, given that these three aquatic species are in decline and threatened by a multitude of management impacts already, including the effects of over-grazing by livestock, loss of water retention in streams and other riparian areas due to livestock pond diversions, loss of forest cover shading or down wood-associated moisture retention, and climate change-increased ambient temperatures and droughts, with low humiditiy.

Our EA comments for this issue are under the heading "Direct, Indirect, and Cumulative Effects to Aquatic Species" on page 21. We specifically referenced Sensitive Redband trout and

Columbia Spotted frog. However, as Western ridged mussel was not listed or discussed as a Sensitive aquatic species that inhabited the aspen stands of the project area in the Preliminary EA, we were not aware that the Western ridged mussel inhabited the project area, so we were not able to address our concerns regarding potential effects to the mussel species in our comments.

Resolution:

Blue Mountains Biodiversity Project has commented on our objections regarding potential violations of the Endangered Species Act. See our comment quotations and citations above. Some of the species addressed in this objection have remedies cited under NFMA—MIS and other species viability above, that are also applicable to the ESA violations.
Additional partial resolutions are by species below:

Re: Sensitive Redband trout, Columbia Spotted frog, Western ridged mussel, and Sensitive riparian plant species:
*Drop all heavy equipment use and all commercial-size logging and removal in potential Columbia Spotted frog habitat, Redband trout habitat stream reaches and downstream reaches, and Western ridged mussel habitat within RHCAs.
*Buffer and protect any Sensitive plants found in current or pre-implementation surveys.
*Drop suitable habitat for Sensitive plant species from commercial logging and heavy equipment use.

IV. The Emigrant Creek Aspen Project Would Potentially Violate the Clean Water Act

We appreciate the additional analysis for effects to aquatic species and water quality. We remain concerned with regard to commercial logging impacts within RHCA buffers to water quality, fish habitat, amphibians, riparian processes and functions, and attainment of INFISH/PACFISH Riparian Management Objectives.

Examples of our comments regarding water quality and potential violations of the Clean Water Act raising our concerns prior to the additional Final EA analysis can be found on pages 20 under "Aquatic and Water Quality" through the first two paragraphs of p. 21.

Resolution

*Drop planned commercial logging and heavy equipment use in the RHCAs.
*All conifers contributing to stream bank stability or primary and secondary shading of a stream must be retained as live trees or existing snags (not girdled live trees).
*Drop all re-opening of closed roads within, or adjacent to, RHCAs.
*Drop any planned logging equipment stream crossings and prohibit heavy equipment use near or in RHCAs by working from adjacent roads or landings and by only girdling or hand-felling conifers up to 21" dbh and leaving the snags and/or logs in place in the RHCAs.
*Removal of felled trees must be prohibited within RHCAs.

Region 6 Invasive Plant Management Plan potential violations

As there was no change to the text regarding Invasive Plant effects from the Preliminary EA to the Final EA, our original comments are incorporated in full below to explain our objection:

Invasive Plants:

While we appreciate and support the Malheur National Forest Invasive Plant Management Plan mitigations to avoid introduction and dispersal of invasive exotic plants, it can't be assumed there would be no increased introduction or dispersal of invasive plants in aspen stands across the entire District. Mitigation measures are not 100% effective. Both commercial logging and prescribed burning can introduce and spread invasive plants. Many of these sites may already have exotic invasive plant populations due to livestock grazing and past logging. Any existing invasive plant populations in the aspen stands need to be buffered from ground disturbance—especially from logging-- and prescribed burning, which can create areas of disturbed and barren ground that forms a seedbed for invasive plant seeding and establishment. This issue should have had detailed, site-specific analysis.

There should have been analysis regarding effects to and from invasive plant populations. The analysis should have disclosed the species of invasive plants in the aspen stands, their population size and extent, their means of dispersal, and how proposed management could affect invasive plant introduction and dispersal. Such analysis should be used to increase effectiveness of invasive plant prevention and reduction. For instance, species-specific and site-specific information would make it clear that all invasive plant populations should be buffered from ground disturbance, including from logging and burning. More specific analysis would also be more transparent as to the effects of invasive plants and what management actions would potentially introduce and disperse invasive plant species. (EA comments, p. 23)

Resolution:

*The lack of sufficient detailed environmental effects analysis regarding invasive plants requires a new EA or EIS with detailed site specific analysis as to direct, indirect, and cumulative effects addressing invasive plants and providing a new public comment period.

*Invasive plant prevention and mitigation would be more successful if heavy equipment use was prohibited and all conifer felling was by hand and left in place. Heavy equipment use is a key root cause of much of the invasive plant introduction and dispersal on National Forest lands in the Blue Mountains, based on our pre-logging surveys and our post-logging observations of increased invasive plant populations in the same areas we field surveyed before logging. Drop commercial logging with heavy equipment in the aspen groves and the RHCAs.

* Don't remove any felled trees from RHCAs.

*Fence off all aspen groves to cattle, as cattle introduce and disperse invasive plants, as another major source of invasive plant populations.

Inadequate Analysis and Mitigation Regarding Effects to Climate Change

The Forest Service fails to accept responsibility repeatedly for their cumulative contributions to climate change through the increasing scale and pace of incremental deforestation and carbon

storage reduction through repeated timber sales at an accelerated pace and scale. In this case, the Emigrant Creek Aspen Project is part of the current trend to return to large (and inevitably old growth) conifer logging, based on the Region 6 amendment to the Eastside Screens. Logging large trees represents removal of the trees sequestering and storing the most carbon—with the greatest capability to reduce catastrophic climate change effects. Extreme climate change effects include unusually intense fires, record-breaking temperatures, more severe storms, and prolonged droughts, all of which threaten the mass extinction of wildlife species, break down of ecological processes and ecosystems, and the continued viability of organized human civilization as we know it.

A renowned climate scientist, James Hansen, has warned that even if we manage to eliminate all fossil fuel use by using renewable energy, the Earth as we know it will be doomed to catastrophic outcomes from global warming if we don't fully protect natural carbon sinks—including the oceans and forest carbon sequestration and storage, including mature and large trees and forest cover. The Forest Service analysis of climate change is incredibly biased—as if a timber industry lobbyist wrote it. The climate change analysis fails to disclose significant scientific controversy and fails to disclose the full range of the best available science.

See our related comments below:

There is a competing critical need to retain and protect all mature and large tree cover for carbon sequestration and storage to reduce the catastrophic long-term effects of extreme climate change and for wildlife habitat in the midst of the Sixth Mass Extinction. (EA comments, p. 7, 2nd to last par.)

Apparently there is no size limit on conifer removal in violation of the Eastside Screens and even in violation of the Region 6 2021 amendment violating the 21" dbh limit for logging by not specifying protection of trees >/=21" dbh with old growth characteristics. As we expected, the Forest Service is now starting to allow a barrage of unmitigated logging of large trees regardless of size and old growth characteristics—at least on the Malheur National Forest. There is nothing reassuring about the 2021 amendment being only a voluntary guideline and requiring review of the consequences—no doubt after years of unrestricted logging of large and old trees. We all know how devastating the consequences will be from past unrestricted logging of large and old trees. Yet now with far fewer large and old trees left, plus climate change-driven wild fires, droughts, and heat waves, the consequences will be even more dire. Yet the lack of limitations on logging large trees in this aspen project indicates that the Forest Service really doesn't care about the mass extinctions of wildlife species and unraveling of forest ecological processes that would ensue—not what I would have expected from the Emigrant Creek Ranger District staff. One seemingly benign project allowing unrestricted logging of large trees will lead to other, larger timber sales sacrificing large and old trees. (EA comments, p. 8, par. 1)

Resolution

BMBP has often commented regarding Forest Service failure to acknowledge and mitigate their contributions to catastrophic climate change through their increased intensity and scale of commercial logging to unsustainable levels in multiple large timber sales, and in this case, contributing to a disastrous return to logging large and old growth trees, despite the great deficit in large tree structure compared to historical conditions from over-logging large trees across the Blue Mountains Forests.

To resolve this problem, the Forest Service needs to make the following modifications to the Emigrant Creek Aspen project, as suggested in other proposed resolution remedies above:
*Decrease the intensity of planned commercial logging by leaving higher minimum and average basal area per acre based on full retention of large live trees and large snags, with any logging in aspen stands not exceeding the historical foot print of the aspen stands, based on soil sampling and historical photos of the aspen stands.
*Any commercial logging should be focused on over-planted or wild fire suppressed young, even-age plantations.
* Retain all large tree structure, including snags, down wood, and large live conifer trees in all aspen stands (equal to or greater than 21" dbh) to retain the most significant existing carbon storage and increase the biodiversity of the aspen stands.
* Retain large trees to sequester carbon by dropping the best wildlife habitat, such as elk calving and deer fawning habitat and dropping riparian areas from commercial logging and heavy equipment use.
*Retain more soil sequestration of carbon by dropping commercial logging and heavy equipment use in sensitive soil areas and in sale units that would exceed Forest Plan detrimental soil impact standards.

Thank you for your consideration of these objections. We look forward to meeting with you to work on a resolution to our concerns. We support aspen restoration, but not large tree logging, logging of old growth trees, and logging of large trees and heavy equipment use in Riparian Habitat Conservation Areas. Multiple forest values need to be considered and protected.
Sincerely,