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Submitted via webportal: <https://cara.fs2c.usda.gov/Public//CommentInput?Project=66482>

RE: Comments on Spirit Lake Outflow Safety Improvement Project DEIS #66482

Dear Ms. Jolley:

Thank you for the opportunity to provide input on the Spirit Lake Outflow Safety Improvement Project. Cascade Forest Conservancy's (CFC) mission is to protect and sustain the forests, streams, wildlife, and communities in the southern Washington Cascades through conservation, education, and advocacy. We represent over 12,000 members and supporters who share our vision for a forest where wild places exist and wildlife thrives. CFC recognizes the Spirit Lake and Toutle River system is complex, dynamic, and geologically young, which presents unique challenges. This project also sits within the unique and special landscape of the Mount Saint Helens National Volcanic Monument, a designation which requires the Agency to “manage the Monument to protect the geologic, ecologic, and cultural resources . . . allowing geologic forces and ecological succession to continue substantially unimpeded.”¹ The Act also requires the Agency to allow “full use of the Monument for scientific study and research.”² With the purposes of the Monument and these challenges in mind, we have the following comments on the Draft Environmental Impact Statement (DEIS). We will address where the DEIS is insufficient in Section I, our conditional support for Preferred Alternative 7 in Section II, and concerns with the proposed Forest Plan amendments in Section III.

¹ Mount St. Helens National Volcanic Monument, Wash. Designation 16 U.S.C. § 431, 96 Stat. 301 (1982)

² *Id.* at § 4(c) (“The Secretary shall permit the full use of the Monument for scientific study and research, except that the Secretary may impose such restrictions as may be necessary to protect public health and safety and to prevent undue modification of the natural conditions of the Monument.”)

I. Compliance with NEPA

The National Environmental Policy Act (NEPA) exists to “protect the environment by requiring that federal agencies carefully weigh environmental considerations and consider potential alternatives to the proposed action before the government launches any major federal action.”³ The agency must analyze the “reasonably foreseeable environmental effects of the proposed agency action.”⁴ When analyzing impacts on the environment, the agency must examine both direct, indirect, and cumulative effects.⁵ The agency must also analyze “any reasonably foreseeable adverse effects which cannot be avoided . . .”⁶ and “a reasonable range of alternatives to the proposed action.”⁷ Agencies must take a “hard look” at potential environmental consequences.⁸ “General statements about ‘possible effects’ and ‘some risk’ do not constitute a ‘hard look.’”⁹

As currently written, the DEIS does not comply with NEPA for the following reasons: 1) it does not analyze all reasonable alternatives, 2) it does not take a “hard look” at the impacts to all important resources, and 3) the cumulative impacts analysis is not sufficient. This section will cover each area of insufficiency.

A. *Permanent Access Road*

CFC has questions and concerns about the proposed access road for each alternative. First, the DEIS is inconsistent in determining which alternatives require a permanent access road. In a few places, it appears that Alternative 5 will not need a permanent access road¹⁰, but then in other portions of the DEIS, the document talks about how each alternative would need a permanent access road. When discussing the Forest Plan amendments required for Alternative 5, the DEIS states:

An amendment to Forest-wide, Recreation Opportunity Spectrum, Primitive, Access standard 1 would only be needed if the Johnson Ridge Access Road is selected in this alternative. For other amendments, the final forest plan amendment language would

³ *Barnes v. U.S. Dep’t. of Transp.*, 655 F.3d 1124, 1131 (9th Cir. 2011)

⁴ 42 U.S.C. § 4332 (c)(i) (2024)

⁵ 36 C.F.R. § 220.4 (2024)

⁶ 42 U.S.C. § 4332 (c)(ii) (2024)

⁷ *Id.* at § 4332 (c)(iii)

⁸ *High Sierra Hikers Ass’n v. Blackwell*, 390 F.3d 630, 639–40 (9th Cir. 2004)

⁹ *Neighbors of Cuddy Mountain vs United States Forest Service*, 137 F.3d 1372 at 1380 (9th Cir. 1998)

¹⁰ USDA, U.S. FOREST SERVICE, SPIRIT LAKE OUTFLOW SAFETY IMPROVEMENT PROJECT, DRAFT ENVIRONMENTAL IMPACT STATEMENT, 34 (2025) (“Maintenance and inspection at the intake could also be accessed using the existing gravity tunnel. As such, a permanent access road across the Pumice Plain would not be required.”)

include only the access road that is selected as part of the alternative.¹¹

This language suggests that a permanent access road is planned for Alternative 5. Additionally, when discussing Alternative 5's impacts on fish and wildlife, the DEIS contradicts itself by stating the following:

Alternative 5 does not require a permanent access road; therefore, no permanent impacts would occur from habitat fragmentation. With implementation of appropriate minimization measures, **construction and operation of Alternative 5 and the associated permanent access road** may impact individuals or habitat but would not likely result in population-level effects to general fish or wildlife species or contribute to a trend towards federal listing of loss of population viability for special status species.¹²

This language throughout the DEIS implies that a road option will be selected, making the option of using the existing tunnel as the permanent access option look like an alternative that was an afterthought that wasn't well studied or seriously considered. It is not clear from the DEIS how this alternative would work while also providing redundancy as a "backup" outflow. The lack of a detailed explanation of this alternative reinforces the impression that using the old tunnel as an access road for the new tunnel was neither meaningfully analyzed nor seriously considered.

It is not clear to CFC why all, or most, of the alternatives need a permanent access road. It does not appear that the DEIS analyzed whether permanent access roads were actually needed, but instead assumed they would be needed for all of the alternatives. For example, as mentioned previously, the possibility of using the old tunnel instead for access almost seemed an afterthought. Additionally, several alternatives, including Alternative 2, mention that it will have the same operation and maintenance requirements as the current tunnel¹³ – which did not need a permanent access road. The DEIS also mentions that the fully repaired tunnel will need less frequent repairs¹⁴, which also contradicts the "need" for a permanent access road. Therefore, the agency has not done enough to justify the need for permanent access roads for the alternatives, especially given the uniqueness of the pumice plain and the important research the area supports. Without meaningfully analyzing alternatives other than roads, the analysis cannot prove that impacts to the pumice plain have been mitigated to the full extent possible.

¹¹ *Id.* at 35 (emphasis added).

¹² *Id.* at 169 (emphasis added).

¹³ *Id.* at 25.

¹⁴ *Id.*

Currently, the DEIS only meaningfully analyzes access roads as alternatives, instead of analyzing all of the reasonable alternatives as required by NEPA. The DEIS should be updated to look at more alternatives that do not require permanent access roads and more fully analyze and explain exactly how the old tunnel could be used as the permanent access for a new pressure tunnel.

B. Impacts to Water Quality & Fish and Wildlife

The DEIS does not take a “hard look” at the impacts to water quality for each of the alternatives. The draft briefly mentions water quality in a few places with respect to a few of the alternatives, but the level of analysis and detail is not enough to constitute a “hard look” as required by NEPA. Most of the water quality related analysis is focused on sediment and only mentions temperature and other parameters in passing. Water quality, more generally, is not a key issue section in the DEIS, and the discussion that does exist focuses on sediment and wetlands. Although this does cover some of the water quality related issues, it is not sufficient to meet the requirements of NEPA.

Relatedly, the DEIS does not take a “hard look” at impacts to fish and wildlife, specifically with respect to water quality. The discussion of water quality impacts to fish or wildlife is fairly cursory in nature. When discussing water quality and impacts to fish, the DEIS states “fish would be temporarily exposed to marginally higher temperatures in these localized stream stretches, which could cause individuals to avoid an area or inhibit upstream or downstream passage.”¹⁵ This statement is really the discussion of the impacts on fish, and it does not constitute a “hard look.” There are several relevant issues when examining water quality and fish and wildlife impacts that appear to have been overlooked in the DEIS. Questions that should have been addressed include, but are not limited to, what is the temperature of the water released from the outflow from each alternative, and what would be the implications for fish species from these differences? Are there differences in temperature or other water quality parameters for downstream waters from each alternative beyond sediment and temperature? Does the intake structure on the different tunnel options have the ability to manipulate where in the water column the water is from, influencing the temperature released downstream? If these types of issues were considered by the agency, it is not clear from the DEIS.

C. Impacts from Increasing Lake Storage

The DEIS does not take a “hard look” at the impacts from lowering the lake as required by NEPA. In most sections, the DEIS mentions that since there will not be construction needed for Alternative 9, there aren’t really impacts, or they are minor without much explanation. This may be true for some issues, but it is certainly not true for all. More analysis is needed on the impacts

¹⁵ *Id.* at 151.

from lowering the lake on important resources, including water quality, wetlands, aquatic species residing in the lake, etc. For example, the DEIS does not address how the proposed lowering of the lake will impact water quality, fish, and other aquatic species in the lake. We should expect to see some temperature changes from lowering the lake, but by how much, and will that impact the survivability of fish and other aquatic species currently residing in the lake? These types of concerns are not addressed in the DEIS.

Additionally, the analysis that exists seems contradictory. For example, in Table 2.4-1. Comparison of alternatives, the DEIS claims that Alternative 9 does not “meet the intent of the [Aquatic Conservation Strategy] for multiple objectives”¹⁶ but in the Wetlands and Riparian Areas section, the DEIS states “[t]his would be a permanent, minor impact that could also be beneficial to wetlands and riparian areas.”¹⁷ Also, in the analysis on impacts to the research section, the DEIS only states “a lower lake level could have minor impacts on existing research in Spirit Lake”¹⁸ without any explanation on why that conclusion was reached. More analysis is needed to better understand the impacts of lowering the lake for the DEIS to comply with NEPA.

Additionally, the agency did not examine all of the alternatives by failing to consider a temporary lowering of the lake level for construction purposes. It appears that in all alternatives that include lowering the lake, including Alternative 7, the lake will mostly be maintained at the new level, 40 feet lower. If this is not the case, then the DEIS should be updated to better explain alternatives that would temporarily lower the lake for construction purposes only. If this is not the case, then the DEIS failed to consider all reasonable alternatives and is not compliant with NEPA.

D. Impacts to Recreation

The scope and scale of impacts to recreation are not clear in the DEIS, particularly regarding the duration of closures for particular trails. For example, in Table 3.8-1. Trails, trail classifications, and project impact¹⁹ a six month closure is expected for Alternatives 2-5, but construction is expected for a much longer time period.²⁰ For how long during the construction period will trails be impacted? Is the length of the closures listed in Table 3.8-1 how long any particular closure

¹⁶ *Id.* at 96.

¹⁷ *Id.* at 306.

¹⁸ *Id.* at 245.

¹⁹ *Id.* at 226.

²⁰ “Construction of Alternative 2 is anticipated to take approximately 30 months . . .” *Id.* at 23; “Construction to convert the existing tunnel to a pressure tunnel would take approximately 44 months . . .” *Id.* at 31; “The overall construction duration for a new pressure tunnel would be approximately 37 months . . .” *Id.* at 34; “Overall construction of Alternative 6 would take approximately 10 years . . .” *Id.* at 40; “Construction duration of the pressure tunnel would be as described above for Alternative 5 (37 months). Development of the natural habitat channel, via incremental construction and natural processes, is currently unknown but would likely take 10-20 years.” *Id.* at 47.

would be, or is it the total time period the trail would be closed over the whole construction period? The DEIS should be clearer about when, during the construction period, recreation will be impacted and how long each alternative will require closures. In other words, the DEIS does not adequately articulate the impacts to recreation from each alternative.

E. Comparison of Impacts to the Monument's Purposes

The Agency is required to “manage the Monument to protect the geologic, ecologic, and cultural resources . . . allowing geologic forces and ecological succession to continue substantially unimpeded.”²¹ The Act also requires the Agency to allow “full use of the Monument for scientific study and research.”²² The DEIS does not adequately address how well the alternatives will or will not meet these statutorily required purposes. The only real mention seems to be in the multi-criteria decision making charts, but there is no real discussion comparing the alternatives on these points. The DEIS should be updated to include a more robust discussion about how each alternative will or will not meet the monument’s required purposes.

F. Comparative Operation and Maintenance Costs for the Alternatives

The DEIS does not compare expected operation and maintenance costs and needs of the alternatives. This is important information that should have been included in the operation discussion for each alternative. Given the Forest Service’s budget constraints that are expected for the next several years, costs and operation and maintenance burden are important information that should be included in the DEIS, especially since one of the purposes of the project is to “reduce long-term outflow and operation and maintenance burden.”²³

G. Cumulative Impacts

The DEIS does not adequately examine the cumulative impacts of each alternative as required to comply with NEPA. In particular, the cumulative impacts analysis should have included impacts to water quality and how the current impacts from the intake gate replacement will influence issues like research plots. For example, when discussing impacts to research plots on the pumice plain, the DEIS does not discuss the impacts from the temporary road for the intake gate replacement project and whether the permanent access road alternatives impact research plots that were also impacted by the temporary road, or are they plots that have yet to be impacted by construction? The DEIS just states how many research plots will be impacted by the Truman

²¹ Mount St. Helens National Volcanic Monument, Wash. Designation 16 U.S.C. § 431, 96 Stat. 301 (1982)

²² *Id.* at § 4(c) (“The Secretary shall permit the full use of the Monument for scientific study and research, except that the Secretary may impose such restrictions as may be necessary to protect public health and safety and to prevent undue modification of the natural conditions of the Monument.”)

²³ USDA, U.S. FOREST SERVICE, SPIRIT LAKE OUTFLOW SAFETY IMPROVEMENT PROJECT, DRAFT ENVIRONMENTAL IMPACT STATEMENT, 7 (2025)

Trail Road and what types of research are done at those sites.²⁴ The cumulative impacts analysis should include current work that is happening in the project area, like the intake gate replacement project. Without including work like the intake gate, the DEIS is not compliant with NEPA.

II. Preferred Alternative 7

Using the multi-criteria decision making tool, CFC has determined that the best alternative is Alternative 7, assuming some of our assumptions are correct. Behind public safety, we heavily weighted moving the system towards a more natural system and restoring fish passage. Although research is also important to our organization, we felt moving the system towards a more natural system and restoring fish passage were of higher importance, assuming the habitat channel is actually managed for fish and other aquatic species.

It is not clear from the DEIS how the habitat channel will be managed. The DEIS mentions that the lake can be managed primarily through the pressure tunnel and that the habitat channel will not be used for flood control:

For instance, during flood events, the majority of lake outflows would be routed through the pressure tunnel, while only the flows necessary to support habitat, fish passage, and the long-term functionality of the channel would be released through the surface outlet.²⁵

In Chapter 3 the DEIS also states:

For the long-term operation, the lake level could fluctuate more than it does currently, by allowing lake level to rise above 3,440 feet to have flow in the channel and drawing down the lake to below 3,440 feet to provide more flood storage space.²⁶

Chapter 3 also mentions:

[T]he habitat channel is not required to pass relatively high flood flows; the use of the pressure tunnel allows flow peaks to be reduced by passing them through the tunnel while allowing only those flows

²⁴ *Id.* at 242-243.

²⁵ *Id.* at 43.

²⁶ *Id.* at 123.

required for channel formation to be passed through the habitat channel of Alternative 7.²⁷

These types of statements raise questions about how engineered the habitat channel will be and how often flows will pass through it once constructed. If the habitat channel is frequently cut off or dewatered after construction, then fish kills or other negative impacts to aquatic ecosystems could occur. It's also unclear from the DEIS at what elevation the habitat channel will be created and maintained. Will the channel only be used when the lake is at a higher level? Or will flows be somewhat constant after creation? CFC only supports this alternative if it creates a more natural connection between Spirit Lake and the North Fork Toutle, and if the channel and lake level are managed for the benefit of aquatic ecosystems, particularly fish.

CFC also has questions about the access road needs for the habitat channel creation. We do agree that the DEIS should have analyzed the access road as permanent, given the plans to have the road for an untold number of years for adaptive management purposes.²⁸ However, the DEIS should still include that to meet the purposes of the monument act, the road should be removed again as soon as possible. Additionally, as mentioned in Section I. A. above, the DEIS has not made a clear case why this alternative needs an access road long term. What sort of equipment, if any, would be needed that needs a road to get to the habitat channel versus other access alternatives? If the agency needs only to view the channel to then determine whether the lake level should be lowered, then a trail should be sufficient to allow access and oversight of the channel while minimizing impacts to the pumice plain.

III. Forest Plan Amendments

The proposed Forest Plan amendments are not compliant with the 2012 Planning Rule. We feel it is important to raise this issue to ensure any amendment to the Gifford Pinchot Land and Resource Management Plan is done in compliance with the National Forest Management Act (NFMA). The current Planning Rule requires the following process for every plan amendment: 1) determine the need for a forest plan amendment, 2) identify which of the substantive requirements in 36 C.F.R. §§ 219.8 through 219.11 are “directly related” to the needed amendment, 3) apply those to the amendment, and 4) create new Forest Plan requirements that address the same protection needs.²⁹

It does not appear that the agency is truly “updating” standards, but rather exempting this project and/or plan area, either temporarily or permanently, from any standards in the Forest Plan. The 2012 rule, and the 2016 amendments to that rule, make clear that a project-specific amendment

²⁷ *Id.* at 213.

²⁸ *Id.* at 47.

²⁹ 36 C.F.R. § 219.13 (b) (2025).

cannot exempt a project from complying with the Forest Plan. Therefore, any Forest Plan standards considered for updating should be replaced with new standards using the “directly related” substantive requirements of 36 C.F.R. §§ 219.8 through 219.11.³⁰ Eliminating standards for a section of forest, or for the project area, would be a violation of the 2012 Planning Rule and the NFMA. The Forest Service, in rulemaking documents for the 2016 amendments, specifically addressed a possible interpretation of the rule that would allow for exemptions of Forest Plan standards on a project-specific basis, and outright rejected that interpretation:

Other members of the public suggested an opposite view: That the 2012 rule gives the responsible official discretion to selectively pick and choose which, if any, provisions of the rule to apply, thereby allowing the responsible official to avoid the 2012 rule requirements or even propose amendments that would contradict the 2012 rule. Under this second interpretation, some members of the public hypothesized that a responsible official could amend a 1982 rule plan to remove plan direction that was required by the 1982 rule without applying relevant requirements in the 2012 rule.

This final rule clarifies that neither of these interpretations is correct.³¹

Forest Plan amendments under the 2012 Planning Rule have been challenged in Court and have been most extensively reviewed by the 4th Circuit.³² The 4th Circuit Court found that in cases where the Forest Service failed to apply the substantive requirements of the 2012 rule, the NFMA was violated. For example, in *Wild Virginia v. U.S. Forest Service*, the Forest Service reasoned that although a pipeline could not meet the Forest Plan requirements in the proposed right of way, it only impacted a very small fraction of the Forest, and therefore, the requirements of the Forest Plan were met. The Court rejected this reasoning, stating:

[T]he Forest Service cannot rely on the notion that because the Pipeline will affect only a minimal fraction of the entire Jefferson National Forest, application of the existing forest plan (i.e. without

³⁰ “For every plan amendment, the responsible official shall: . . . Determine which specific requirement(s) within §§ 219.8 through 219.11 are directly related to the plan direction being added, modified, or removed by the amendment and apply such requirement(s) within the scope and scale of the amendment.” 36 C.F.R. § 219.13(b)(5)(2025).

³¹ National Forest System Land Management Planning, 81 Fed. Reg. 90,723, 90,725 (Dec. 15, 2016)

³² The Ninth Circuit has not considered this issue in a published opinion, meaning the 4th Circuit cases are still the best guidance on how this rule will be interpreted by the Courts.

Pipeline-related amendments) outside the area will continue to provide adequate protections.³³

The Court went on to note that if this type of reasoning were found to be in compliance with the NFMA, then the 2012 Planning Rule’s substantive requirements would essentially be meaningless.³⁴ Here, the agency proposes something similar by claiming that Project Design Criteria will mitigate some of the visual impacts of the permanent access road and that people will have the opportunity to have primitive experiences elsewhere on the Monument.³⁵ This does not meet the requirement to create new plan components to address the same protection needs.

Additionally, although the DEIS and appendices call the proposed amendments “programmatic,” they are more accurately considered to be project specific, given their scope and purpose.³⁶ Project specific amendments are to be temporary in nature, not permanent. Here, the agency proposes to add permanent fixtures to the landscape, making it impossible for the project to ever comply with the Forest Plan and Comprehensive Management Plan. This would violate the 2012 planning rule and the NFMA. If the agency cannot meet the Forest Plan requirements with the project, then they cannot do the project as presented. In other words, if scenery and wetland impacts cannot be fully mitigated for the permanent access road, then the permanent access road cannot be built in that location.

In sum, the agency is not currently following the requirements of the 2012 Planning Rule. If amendments are determined to be needed, CFC would like to ensure that the agency does a compliant amendment under the 2012 rule, which would include applying the relevant standards and creating new plan components to replace those that are in need of amendment. In other words, new protections should replace any standards that are deemed in need of updating by this process instead of exempting portions of the Monument from relevant forest plans.

IV. Conclusion

We appreciate the opportunity to provide comments on the DEIS Spirit Lake Outflow Safety Improvement Project. In summary, CFC supports the concept of Alternative 7 if our questions and concerns about long-term management of the system are addressed adequately – i.e. does the habitat channel and lake management actually move the system towards a more natural system,

³³ *Wild Virginia v. U.S. Forest Serv.*, 24 F.4th 915 (4th Cir. 2022)

³⁴ *Wild Virginia v. U.S. Forest Serv.*, 24 F.4th 915 (4th Cir. 2022) quoting *Cowpasture River Pres. Ass’n v. U.S. Forest Serv.*, 911 F.3d 150, *rev’d and remanded on other grounds*, 140 S. Ct. 1837 (2020)

³⁵ USDA, U.S. FOREST SERVICE, APPENDIX B: FOREST PLAN AMENDMENT ANALYSIS, SPIRIT LAKE OUTFLOW SAFETY IMPROVEMENT PROJECT (August 2025)

³⁶ The changes proposed here are specific to implementing this project. The Preamble to the 2012 planning rule explains the intent of project specific amendments: “Project specific amendments are short-lived with the project, and localized to the project area.” National Forest System Land Management Planning, 77 Fed. Reg. 21,162, 21,239 (April 9, 2012).

and are fish and other aquatic species uplifted by the new connection? If the answer to either of these overarching questions is no, then CFC would not support Alternative 7.

Before selecting an alternative and signing a decision, the DEIS and analyses should be updated to clearly answer these more overarching questions about Alternative 7, updated to address the multiple NEPA deficiencies identified in Section I of this letter and updated to address 2012 Planning Rule compliance issues identified in Section III.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'AS', with a stylized, elongated horizontal stroke extending from the 'S'.

Ashley Short
Policy Manager
Cascade Forest Conservancy
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