Sent via online comment system at
https://cara.fs2c.usda.gov/Public/CommentInput?Project=68842

October 31, 2025

Greg Wanner, District Ranger
Zigzag Ranger District
Mt. Hood National Forest
70220 E Highway 26
Zigzag, OR 97049

Re: Basin Thinning Project

Dear District Ranger Wanner:

WildEarth Guardians ("Guardians") submits these comments regarding the U.S. Forest Service's proposed Basin Thinning Project ("Project") located on the Zigzag Ranger District of Mt. Hood National Forest. Guardians is a nonprofit conservation organization with offices in Washington, Oregon, and five other states. Guardians has nearly 200,000 members and supporters across the United States and works to protect and restore wildlife, wild places, wild rivers, and the health of the American West. Guardians and its members have specific interests in the health and resilience of public lands and waterways, including the Mt. Hood National Forest.

The Forest Service is proposing variable density thinning with skips and gaps on approximately 110 acres in the B2 Scenic Viewshed land allocation. Knowing it does not have a categorical exclusion ("CE") for a project of this nature, and rather than prepare an environmental assessment ("EA") to determine whether there are any significant environmental effects, the Forest Service has decided to look across the country for another agency's CE, here the Tennessee Valley Authority ("TVA"). Guardians opposes this misapplication of "CE 31," which was unlawfully adopted by the Forest Service and, in any case, does not properly apply to the proposed activities. We therefore urge the Forest Service to prepare an EA as required for the Project.

COMMENTS

I. Legal Background

A. The National Environmental Policy Act (NEPA)

NEPA is "our basic national charter for protection of the environment." *Center for Biological Diversity v. United States Forest Serv.*, 349 F.3d 1157, 1166 (9th Cir. 2003) (quoting 40 C.F.R. § 1500.1 (2019)). In enacting NEPA, Congress recognized the "profound impact" of human activities, including "resource exploitation," on the environment and declared a national policy "to create and maintain conditions under which man and nature can exist in productive harmony." 42 U.S.C. § 4331(a). NEPA has two fundamental goals: "First, it places upon [a federal] agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process." *Alliance for the Wild Rockies v. U.S. Forest Serv.*, 2025 WL 2655984, *1 (E.D. Wash., Sept. 16, 2025) (quoting *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1066 (9th Cir. 2002)).

"NEPA promotes its sweeping commitment to 'prevent or eliminate damage to the environment and biosphere' by focusing Government and public attention on the environmental effects of proposed agency action." *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989) (quoting 42 U.S.C. § 4321). Stated more directly, NEPA's "'action-forcing' procedures . . . require the [Forest Service] to take a 'hard look' at environmental consequences" before the agency approves an action. *Metcalf v. Daley*, 214 F.3d 1135, 1141 (9th Cir. 2000) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989)). "By so focusing agency attention, NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct." *Marsh*, 490 U.S. at 371 (citation omitted). To ensure that the agency has taken the required "hard look," courts hold that the agency must utilize "public comment and the best available scientific information." *Biodiversity Cons. Alliance v. Jiron*, 762 F.3d at 1086 (internal citation omitted).

NEPA's review obligations are more stringent and detailed at the project level, or "implementation stage," given the nature of "individual site specific projects." *Ecology Ctr., Inc. v. United States Forest Serv.*, 192 F.3d 922, 923 n.2 (9th Cir. 1999); *see also Friends of Yosemite Valley v. Norton*, 348 F.3d 789, 800–01 (9th Cir. 2003); *New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 718–19 (10th Cir. 2009) (requiring site-specific NEPA analysis when no future NEPA process would occur); *Colo. Envtl. Coal. v. Ofc. of Legacy Mgmt.*, 819 F. Supp. 2d 1193, 1209–10 (D. Colo. 2011) (requiring site-specific NEPA analysis even when future NEPA would occur because "environmental impacts were reasonably foreseeable"). "[G]eneral statements about possible effects and some risk do not constitute a hard look, absent a justification regarding why more definitive information could not be provided." *Or. Natural Res. Council Fund v. Brong*, 492 F.3d 1120, 1134 (9th Cir. 2007) (citation omitted); *see also Or. Natural Res. Council Fund v. Goodman*, 505 F.3d 884, 892 (9th Cir. 2007) (holding the Forest Service's failure to discuss the importance of maintaining a biological corridor violated NEPA, explaining that "[m]erely disclosing the existence of a biological corridor is inadequate" and that the agency must "meaningfully substantiate [its] finding").

NEPA requires site-specificity to fulfill NEPA's twin aims of informed decisionmaking and meaningful public participation. *Stein v. Barton*, 740 F. Supp. 743, 749 (D. Alaska 1990). Federal courts apply these touchstone criteria when evaluating whether a NEPA document is adequately site-specific. *See WildEarth Guardians*, 790 F.3d at 921–25 (holding EIS inadequate for failure to disclose the location of moose range); *Or. Nat. Desert Ass'n v. Rose*, 2019 WL 1855419 (9th Cir. 2019) (holding environmental analysis violated NEPA by failing to establish "the physical condition of [roads and trails] and authorizing activity without assessing the actual baseline conditions").

Analyzing and disclosing site-specific impacts is critical because where (and when and how) activities occur on a landscape strongly determines the nature of the impact. As the Tenth Circuit has explained, the actual "location of development greatly influences the likelihood and extent of habitat preservation. Disturbances on the same total surface area may produce wildly different impacts on plants and wildlife depending on the amount of contiguous habitat between them." *New Mexico ex rel. Richardson*, 565 F.3d at 706. The court used the example of "building a dirt road along the edge of an ecosystem" and "building a four-lane highway straight down the middle" to explain how activities with similar *types* of impacts may create impacts—particularly habitat disturbance—of very different *scale* and *intensity* depending on the activity's scope and context. *Id.* at 707. Indeed, a project's "location, not merely total surface disturbance, affects habitat fragmentation," and therefore location data is critical to the site-specific analysis NEPA requires. *Id.* Merely disclosing the existence of particular geographic or biological features is inadequate—agencies must discuss their importance and substantiate their findings as to the impacts. *Or. Natural Res. Council Fund v. Goodman*, 505 F.3d 884, 892 (9th Cir. 2007).

B. The National Forest Management Act

Under the National Forest Managemetn Act ("NFMA"), the Forest Service is charged with "the management of national forest land, including for the protection and use of the land and its natural resources." *All. For the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 1109 (9th Cir. 2018). Accordingly, the Forest Service is required to "develop, maintain, and, as appropriate, revise land and resource management plans," also known as "forest plans," for each national forest. 16 U.S.C. § 1604(a). Implementation of site-specific projects "shall be consistent with the land management plans." 16 U.S.C. § 1604(i).

In developing and implementing forest plans, the Forest Service is required to "mak[e] the most judicious use of the land." 16 U.S.C. § 531(a). Such use must be done "without impairment of the productivity of the land." *Id.* The Forest Service is prohibited from adopting management practices solely because they "will give the greatest dollar return or the greatest unit output." *Id. See also Mountain States Legal Foundation v. Glickman*, 92 F.3d 1228, 1238 (D.C. Cir. 1996) (stating that objectives for logging in forest management statutes "does not mean that logging must be maximized at the expense of all other values").

When Congress enacted the NFMA, it recognized that because "the majority of the Nation's forests and rangeland is under private, State, and local governmental management," it is those "nonfederally managed renewable resources" that provide the basis for "the Nation's major

capacity to produce goods and services." 16 U.S.C. § 1600(5). *See also* Butler and Sass, *Wood Supply from Family Forests of the United States: Biophysical, Social, and Economic Factors*, Forest Science (2023), https://www.fs.usda.gov/nrs/pubs/jrnl/2023/nrs_2023_butler_001.pdf (**Ex. 1**) (as of 2018, 88% of annual timber production in the U.S. is sourced from private forestlands). Understanding this, and recognizing the importance of federally owned forests for non-timber purposes, Congress required the Forest Service to "reduce pressures for timber production from Federal lands." 16 U.S.C. § 1600(7). This must inform how the Forest Service views its public trust obligations in managing our national forests.

C. The Endangered Species Act

The Endangered Species Act ("ESA") commands all federal agencies to "seek to conserve endangered species and threatened species and . . . utilize their authorities in furtherance of the purposes of" the Act. 16 U.S.C. § 1531(c)(1). Its purpose is to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered and threatened species[.]" *Id.* § 1531(b). The ESA is intended not just to forestall extinction, but to allow species to recover to the point where they may be delisted. Federal agencies are thus mandated to work towards recovery of protected species. *Id.* §§ 1532(3) (defining "conservation" to mean both survival and recovery of species), 1536(a)(1) (requiring agencies to work towards species' recovery). To implement these sweeping policy goals, the ESA imposes a series of interrelated substantive and procedural obligations on all federal agencies.

1. Substantive Section 7 Obligations

Section 7(a)(2) of the ESA imposes a substantive duty upon each federal agency to ensure that any action authorized, funded, or carried out by such agency is not likely to (1) jeopardize the continued existence of any threatened or endangered species, or (2) result in the destruction or adverse modification of the critical habitat of such species. *Id.* § 1536(a)(2). To "jeopardize the continued existence of" a species means to "engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." 50 C.F.R. § 402.02. "Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species." *Id*.

Section 7(a)(1) creates a further, related duty, requiring each agency to implement programs for the conservation of threatened and endangered species. 16 U.S.C. § 1536(a)(1). Agencies are specifically commanded to use "all methods and procedures which are necessary to bring any endangered species … to the point at which the measures provided pursuant to [the ESA] are no longer necessary." *Id*. § 1532(3). In other words, every agency must affirmatively work towards both the survival *and the recovery* of protected species. This substantive duty applies at all times, regardless of whether the ESA's other provisions have been triggered.

2. Section 9 Take Prohibition

Section 9 of the ESA prohibits any entity, including federal agencies, from "taking" members of a listed species, broadly defined as "harass, harm, wound, kill, trap, capture, or collect any members of the species, or to attempt to engage in any such conduct." *Id*. §§ 1538(a)(1), 1532(19). "Harm," in turn, encompasses "significant habitat modification or degradation." 50 C.F.R. § 17.3. This prohibition extends to incidental takings, which "result from, but are not the purpose of, carrying out an otherwise lawful activity." *Id.* § 402.02. A reasonable certainty that unlawful take is imminent warrants preemptive injunctive relief—the ESA does not require citizens or courts to wait until the damage has been done until they act.

3. Section 7 Consultation

To implement these substantive provisions, ESA Section 7 imposes a procedural requirement obligating any federal agency proposing an action (the "action agency") to consult with—as relevant here—the U.S. Fish and Wildlife Service ("USFWS") to evaluate the proposed action's effects on every listed species present in the project area. 16 U.S.C. § 1536(a)(2). Agency actions requiring consultation are construed broadly and encompass "all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies," including "actions directly or indirectly causing modifications to the land, water, or air." 50 C.F.R. §§ 402.02, 402.3. Consultation is required both for individual projects and for the promulgation of broader management plans.

The USFWS is not permitted to base its compliance with the ESA on speculation or surmise. Instead, it must "use the best scientific and commercial data available" in assessing impacts to protected species during the consultation process. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(d).

If ESA-listed species may be present in the area of proposed agency action, the action agency first must prepare a biological assessment ("BA") to determine whether such species may be affected. *See* 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12. If the agency determines that its action "may affect" any listed species, it must formally consult with the USFWS. *Id.* § 402.12. The threshold for a "may affect" determination is very low: Consultation must occur if "a proposed action may pose *any* effects on listed species or designated critical habitat." U.S. Fish and Wildlife Serv. & Nat'l Marine Fisheries Serv., *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act* at xvi (1998) (emphasis in original). Both direct and indirect effects are relevant to this determination. 50 C.F.R. § 402.02.

If the action agency concludes that the activity may affect, but is not likely to adversely affect, the listed species or adversely modify its critical habitat, and the USFWS concurs with that determination, the consultation is complete. 50 C.F.R. §§ 402.12, 402.14(b). If, however, the action agency concludes that the activity is likely to adversely affect the listed species, the USFWS must prepare a biological opinion ("BiOp") to determine whether the activity will jeopardize that species' continued existence. *Id.* § 402.14. The BiOp must include a summary of the information on which it is based, a detailed discussion of the effects of the action on listed

species or critical habitat, and the USFWS's opinion on whether the action is likely to jeopardize the species or result in destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h).

If the USFWS concludes that the proposed action will not result in jeopardy but may incidentally take members of a protected species, it will provide the action agency with an incidental take statement ("ITS"). The ITS shields the action agency from liability under Section 9 for any incidental take resulting from the proposed action—as long as the agency complies with its terms. 50 C.F.R. §§ 402.02; 4102.14(i). An ITS must articulate: (1) the amount of incidental take authorized and its impact on the species; (2) "reasonable and prudent measures" to minimize such impacts; and (3) mandatory terms and conditions to implement the reasonable and prudent measures. 16 U.S.C. §§ 1536(b)(4)(i)–(iv). If the action agency fails to implement the terms and conditions, or exceeds the level of take identified in the ITS, it becomes liable under Section 9 for any subsequent take resulting from its actions and must reinitiate consultation with the USFWS. 16 § 1536(2)(B)(3), (4); 50 C.F.R. § 402.14(g)(7).

The ITS should, whenever practical, express take as a specific cap on the number of individual members of a species taken. The USFWS may instead employ a take surrogate—a way of defining take by the amount of adversely affected habitat rather than by the number of individuals harassed or killed—in certain defined circumstances. *See* 50 C.F.R. § 402.14(i)(1)(i). First, it must describe "the causal link between the surrogate and take of the listed species." *Id.* A "causal link" is an articulated, rational connection between the activity and the taking of species. The USFWS must also explain why it is not practical to express the amount or extent of anticipated take or to monitor take-related impacts in terms of individuals of the listed species. *Id.* The agency typically relies on surrogates when the incidental take is "difficult to detect," which occurs "when the species is wide-ranging; has small body size; finding a dead or impaired specimen is unlikely; losses may be masked by seasonal fluctuations in numbers or other causes (e.g., oxygen depletions for aquatic species); or the species occurs in habitat (e.g., caves) that makes detection difficult." USFWS, *Procedures for Conducting Consultation and Conference Activities under § 7 of ESA* 4-52 (Mar. 1998). Finally, the take surrogate must set "a clear standard for determining when the level of anticipated take has been exceeded." 50 C.F.R. § 402.14(i)(1)(i). This last requirement is necessary to determine whether the agencies must reinitiate consultation on the action.

4. Duty to Reinitiate Consultation

The agencies' Section 7 duties do not end with the issuance of a BiOp. The USFWS and action agency must consult on the impact of an action before it occurs and—just as importantly—reconsult on the activity and respond appropriately when new information emerges. If it fails to comply with this duty, an action agency may unwittingly cause, and be held liable for, jeopardy to a protected species, adverse modification of its critical habitat, and/or unlawful take of the species' individual members. To this end, agencies must reinitiate consultation on an ongoing project if certain "triggers" occur. *See id.* § 402.16. This obligation falls on both the action agency and the consulting agency.

Reconsultation is mandatory where discretionary federal involvement or control over the relevant action has been retained or is authorized by law and, as relevant here, "a new species is listed or critical habitat designated that may be affected by the identified action." *Id.* § 402.16.

After consultation is initiated or reinitiated, ESA Section 7(d) prohibits the action agency from "mak[ing] any irreversible or irretrievable commitment of resources" toward a project that would "foreclos[e] the formulation or implementation of any reasonable and prudent alternative measures[.]" 16 U.S.C. § 1536(d). The ESA § 7(d) prohibition "is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied." 50 C.F.R. § 402.09.

Strict compliance with these procedural duties is necessary for an agency to fulfill its substantive duties, and for the ESA to fulfill its fundamental purposes. Without accurate, detailed, and current consultation on its actions, an agency may unwittingly push vulnerable species past the point of recovery.

II. The Basin Thinning Project

A. The Forest Service did not properly adopt the Tennessee Valley Authority's CE and that CE is not applicable to the Basin Thinning Project as proposed.

To approve the Basin Thinning Project's proposed 110 acres of commercial logging, the Forest Service says that it plans to use TVA CE 31, which applies to:

> Actions to manipulate species composition and age class, including, but not limited to, harvesting or thinning of live trees and other timber stand improvement actions (e.g., prescribed burns, non-commercial removal, chemical control), generally covering up to 125 acres and requiring no more than 1 mile of temporary or seasonal permanent road construction.

Scoping Notice 2 (citing 18 C.F.R. Subpart C, App. A). As explained below, the Forest Service's purported adoption of this CE failed to comply with notice and comment requirements, and it therefore cannot authorize *any* activities under this unlawfully borrowed authority. Moreover, even if TVA CE 31 was properly adopted, it is not applicable to the Basin Thinning Project as it is currently proposed.

1. The Forest Service failed to comply with notice and comment requirements before adopting the TVA CE.

On May 12, 2025, the Forest Service issued a document purporting to be a "notice of adoption of multiple categorical exclusions," including the one at issue here, another TVA CE, and a National Park Service CE.[1] While this document appears to be an unofficial version of a notice

[1] *See* USDA-FS, *Adoption of Categorical Exclusions Under Section 109 of the National Environmental Policy Act, 42 U.S.C. 4336c* (May 12, 2025), *available at* www.fs.usda.gov/sites/default/files/05122025-Notice-to-adopt-timber-EO-CEs.pdf.

that would later be published in the Federal Register, there is no evidence that it was ever officially published there.[2] Instead, it appears the Forest Service simply posted this notice on its website without any prior notice and comment opportunities.[3]

The Forest Service erred in adopting the TVA CE without notice and comment because the purported adoption constitutes a "new position inconsistent with existing regulations, or otherwise effects a substantive change in existing law or policy."[4] The application of the TVA CE to the Basin Thinning Project underscores this.

An existing Forest Service CE, d47, is potentially applicable to this project.[5] That CE applies to activities, including "vegetation thinning" and "timber harvesting," that have a "primary purpose of meeting restoration objectives or increasing resilience."[6] This is precisely how the Forest Service characterizes the Basin Thinning Project.[7] However, Forest Service CE d47 includes a requirement that projects "shall be developed or refined through a collaborative process that includes multiple interested persons representing diverse interests."[8] There is no such requirement in TVA CE 31.

TVA CE 31 was therefore inconsistent with the Forest Service's existing regulations because it purports to allow the Forest Service to proceed with the same actions contemplated under CE d47 without the "collaborative process" that it requires. Adopting TVA CE 31 therefore constituted a substantive change in existing law or policy, since it had the same effect as revising CE d47. The Forest Service should have conducted notice and comment rulemaking prior to adopting TVA CE 31 and the failure to do so makes that adoption invalid.

2. There is no evidence that the Forest Service consulted with TVA to determine the appropriateness of adopting TVA CE 31.

In addition to needing to conduct notice and comment procedures, the Forest Service was also required to consult with TVA "to ensure that the proposed adoption of the [CE] to a category of actions is appropriate."[9] While the Forest Service claims that consultation occurred, it provided no details about the alleged consultation other than saying "[t]he Forest Service explained that the agency intends to rely on the CEs to assist with expeditious and efficient natural resource management activities and to amend plans where applicable."[10] That does not amount to

---

[2] This is in contrast with similar adoptions by the Interior Department, which did appear in the Federal Register on September 2, 2025. *See* Interior Department, *Notice of Adoption of Categorical Exclusions Under Section 109 of the National Environmental Policy Act*, 90 Fed.Reg. 42432 (Sept. 2, 2025).
[3] *See* USDA-FS, *Ecosystem Management Coordination-Environmental Planning and Compliance*, https://www.fs.usda.gov/about-agency/regulations-policies/nepa.
[4] *Mendoza v. Perez*, 754 F.3d 1002, 1021 (9th Cir. 2014).
[5] *See* 7 C.F.R. § 1b.4(d)(47).
[6] *Id*.
[7] *See* Scoping Notice at 1 ("the purpose of the proposed project is to *restore* selected plantation" to "increase structural diversity and reduce stand density, which will *increase forest health and resiliency*") (emphasis added).
[8] 7 C.F.R. § 1b.4(d)(47)(ii)(A).
[9] 42 U.S.C. § 4336c(2).
[10] USDA-FS, *Adoption of Categorical Exclusions Under Section 109 of the National Environmental Policy Act, 42 U.S.C. 4336c*, at 3.

"consultation," nor is there any record of TVA's response to this "explanation." And there is no evidence of how the agencies determined the adoption was "appropriate."

It is not enough that the Forest Service claimed that it consulted with TVA regarding whether adoption of TVA CE 31 was appropriate. Bald assertions without documentation are insufficient, particularly with an administration that has record of routinely making false statements.[11] In addition, this administration has defied dozens of court orders,[12] ordered the U.S. Attorney General to prosecute specific individuals,[13] and fired agency heads for reporting statistical data.[14]

Given this record of defying judicial orders, inappropriate pressure and interference in department and agency procedures, and making false statements (including misleading the country on whether one of its cities is in a state of war), the Forest Service needs to do more than simply claim it consulted with TVA. The Forest Service should have disclosed the contents of that consultation to the public as part of its required public disclosure.[15] Because the Forest Service failed to do that, its purported adoption of the TVA CE is not valid.

3. The TVA CE is not applicable to the Basin Thinning Project.

Even if the Forest Service had followed proper notice and comment procedures and validly adopted the TVA CE, that CE is not applicable to the Basin Thinning Project. The examples provided by TVA at CE 31 demonstrate that it does not apply to commercial logging. According to the scoping notice, however, the Forest Service proposes both non-commercial and commercial logging. The inclusion of commercial logging activities places this project outside of the purview of this CE.

---

[11] *See e.g.*, *State of Oregon v. Donald Trump*, Case No. 3:25-cv-1756-IM (D. Or., Oct. 4, 2025) (explaining that President Trump's characterizations of Portland, OR as "War ravaged" and "under siege from attack by Antifa, and other domestic terrorists" were "not 'conceived in good faith'" and "simply untethered to the facts."); David Smith, *'We're watching mass delusion happen': Trump's return to White House brings cascade of lies*, The Guardian (Jan. 26, 2025), https://www.theguardian.com/us-news/2025/jan/26/trump-white-house-lies-immigration-economy; Steven Lee Myers and Stuart A. Thompson, *In His Second Term, Trump Fuels a 'Machinery' of Misinformation*, The New York Times (Mar. 24, 2025), https://www.nytimes.com/2025/03/24/business/trump-misinformation-false-claims.html; Allison Quinn, *The White House Lied About Destroying the White House*, New York Magazine (Oct. 23, 2025), https://nymag.com/intelligencer/article/the-white-house-lied-about-destroying-the-east-wing.html.

[12] *See* Justin Jouvenal, *Trump officials accused of defying 1 in 3 judges who ruled against him*, The Washington Post (July 21, 2025), https://www.washingtonpost.com/politics/2025/07/21/trump-court-orders-defy-noncompliance-marshals-judges/ (analysis of 165 court orders filed against the Trump administration. The analysis found that the administration was accused of resisting court orders in at least 57 of the cases (34 percent)).

[13] *See* Jeremy Roebuck, Perry Stein, and Salvador Rizzo, *Trump demands Bondi prosecute political foes in Truth Social posts*, The Washington Post (Sept. 20, 2025) (emphasis in original), https://www.washingtonpost.com/national-security/2025/09/20/replacement-named-va-prosecutor-ousted-over-probes-trump-foes/ (after the U.S. Attorney for the Eastern District of Virginia, Erik Siebert, decided "not to seek indictments" against former FBI Director James Comey and New York Attorney General Letitia James," President Trump "called for the ouster" of Mr. Siebert, who then resigned. Following Mr. Siebert's resignation, President Trump posted a message on social media addressed to U.S. Attorney General Pam Bondi declaring that Mr. Comey, Ms. James, and a U.S. Senator are "guilty as hell" and that "JUSTICE MUST BE SERVED, NOW!!!") (emphasis in original).

[14] Lauren Aratani, *Labor statistics chief fired by Trump sounds alarm over White House's 'dangerous' interference*, The Guardian (Sept. 17, 2025), https://www.theguardian.com/business/2025/sep/17/labor-statistics-chief-trump-erika-mcentarfer.

[15] *See* 42 U.S.C. § 4336c(3).

Importantly, while the Forest Service claims it intends to rely on the TVA CE "to assist with expeditious and efficient natural resource management" (which encompasses a range of non-commercial activities), the title of the document is called "Notice to adopt *timber EO* CEs."[16] The "timber EO" refers to the "Immediate Expansion of American Timber Production" executive order (EO 14225) issued by President Trump in March 2025.[17] EO 14225 directed the Forest Service to "facilitate increased timber production" and "reduce time to deliver timber" from National Forest lands.[18] In calling it a "Notice to adopt *timber EO* CEs," the Forest Service admits that the purported adoption is solely about responding to EO 14225's directive to "facilitate increased timber production" and "reduce time to deliver timber" from National Forest lands. Again, had the Forest Service disclosed the contents of its alleged consultation with TVA, the public would have an understanding whether TVA thought adoption of its CE for this purpose was "appropriate."

The use of TVA CE 31a to increase timber production and reduce time to deliver timber from National Forest lands is not appropriate and the Forest Service should instead prepare an EA or an EIS.

B. Lack of information

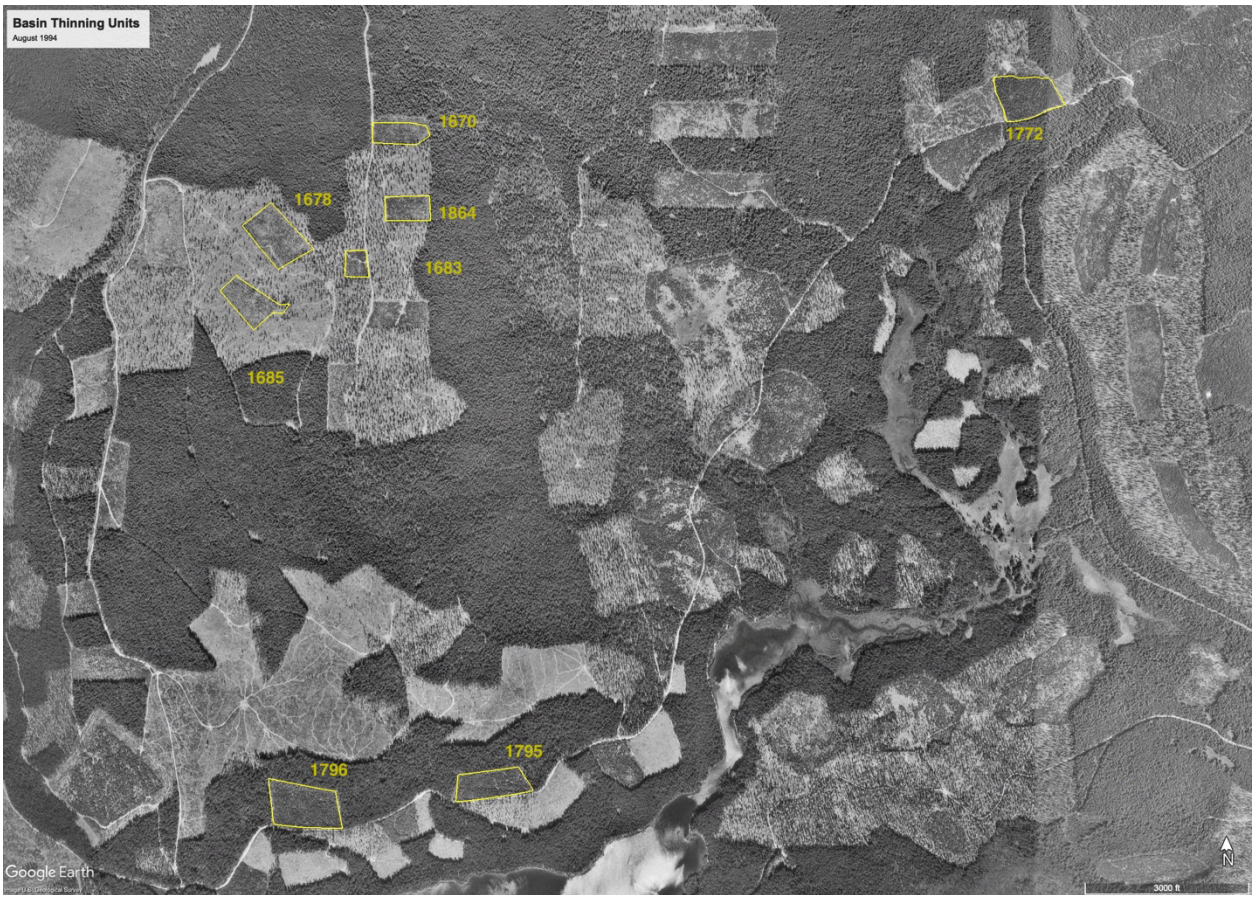
If the Forest Service intends to "reduce time to deliver timber" from National Forest lands through the use of CEs like the one at issue here, then it must disclose as much information as possible in the scoping notice since that will be the only opportunity for the public to provide feedback before the agency makes a final decision. The Forest Service's scoping notice for the Basin Thinning Project failed to provide sufficient information to allow the public to meaningfully participate.

For example, the Forest Service claims the "purpose of the proposed project is to restore selected plantations." Scoping Notice 1. Even though there are just eight stands in the project area, the Forest Service provides no information about these stands. The public does not know how old the stands area, the species composition of the stands, or whether the stands contain or are adjacent to mature or old-growth stands. This information is important because at least three of the stands (1772, 1795, and 1796) could be decades older than the surrounding forest, increasing their importance as species habitat. Balancing these older stands' value in their undisturbed state versus the purported benefits of the proposed logging is precisely the sort of decision NEPA is intended to inform; the decisionmaking process should include more comprehensive site-specific data and opportunity for *informed* public input.

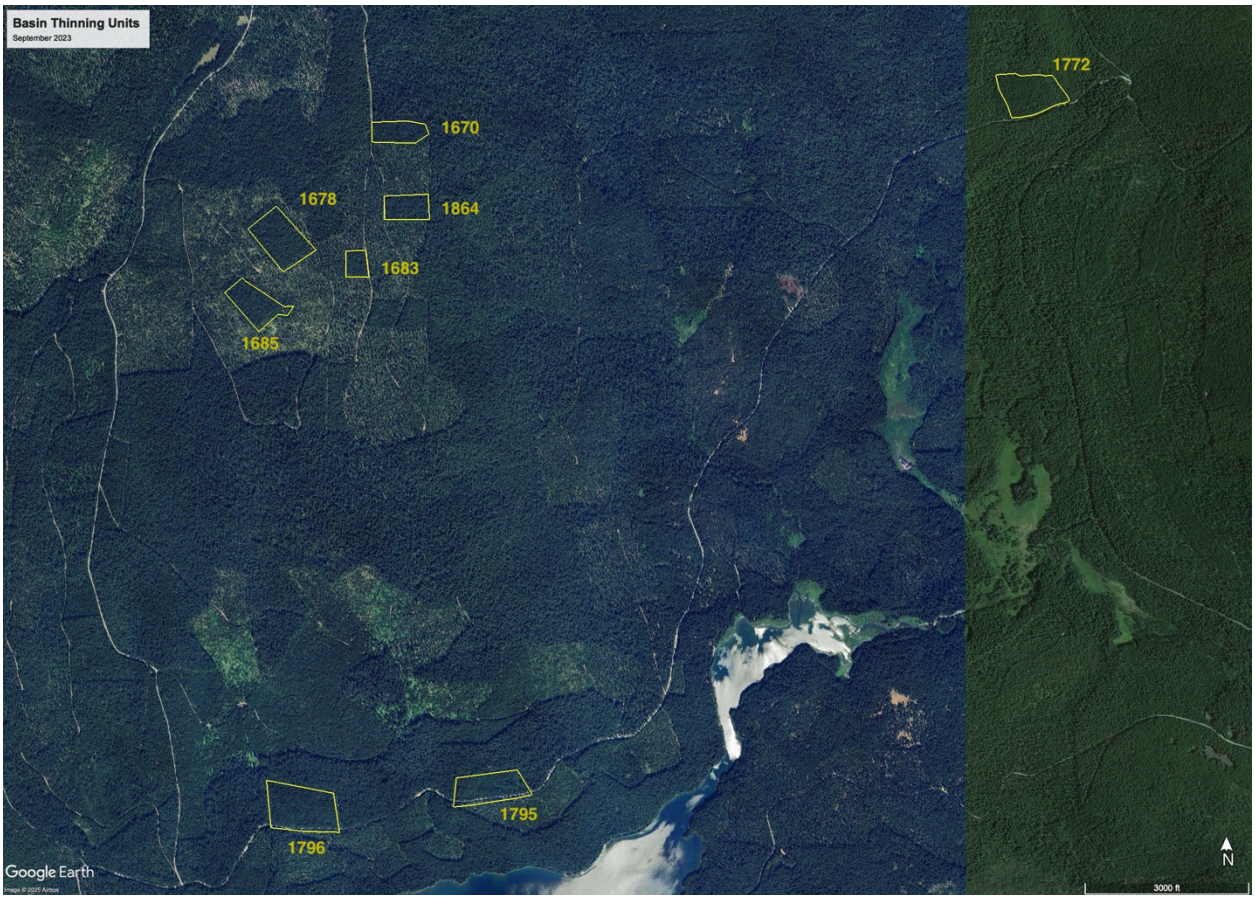
Satellite imagery from December 1985 shows these three stands having much more tree cover than the other stands, which all had been recently clearcut at that time:

[16] *See* www.fs.usda.gov/sites/default/files/05122025-Notice-to-adopt-timber-EO-CEs.pdf (emphasis added).
[17] Exec. Order No. 14225, 90 Fed. Reg. 11365 (Mar. 6, 2025).
[18] *Id.* § 2(a).

By August 1994, much of the area encompassing stands 1670, 1678, 1683, 1685, and 1864 was clearcut but no further logging occurred around stands 1772, 1795, and 1796:



As of September 2023 (the last date available), the undisturbed areas that existed adjacent to stands 1772, 1795, and 1796 were still intact:



The Forest Service needs to disclose how old stands 1772, 1795, and 1796 are and whether they were ever clearcut. These stands likely have more mature trees than the other stands and may even have old-growth trees if they were not previously clearcut.

The Forest Service's scoping notice is deficient in other ways too. For example:

- The Forest Service failed to disclose to the public that at least part of stand 1795 is in critical habitat for northern spotted owl.
- The Forest Service failed to identify whether the stands contain suitable habitat for northern spotted owl.
- The Forest Service failed to identify what the remaining canopy cover would be for the stands after logging.
- The Forest Service failed to identify any project design features to protect wildlife and watersheds.

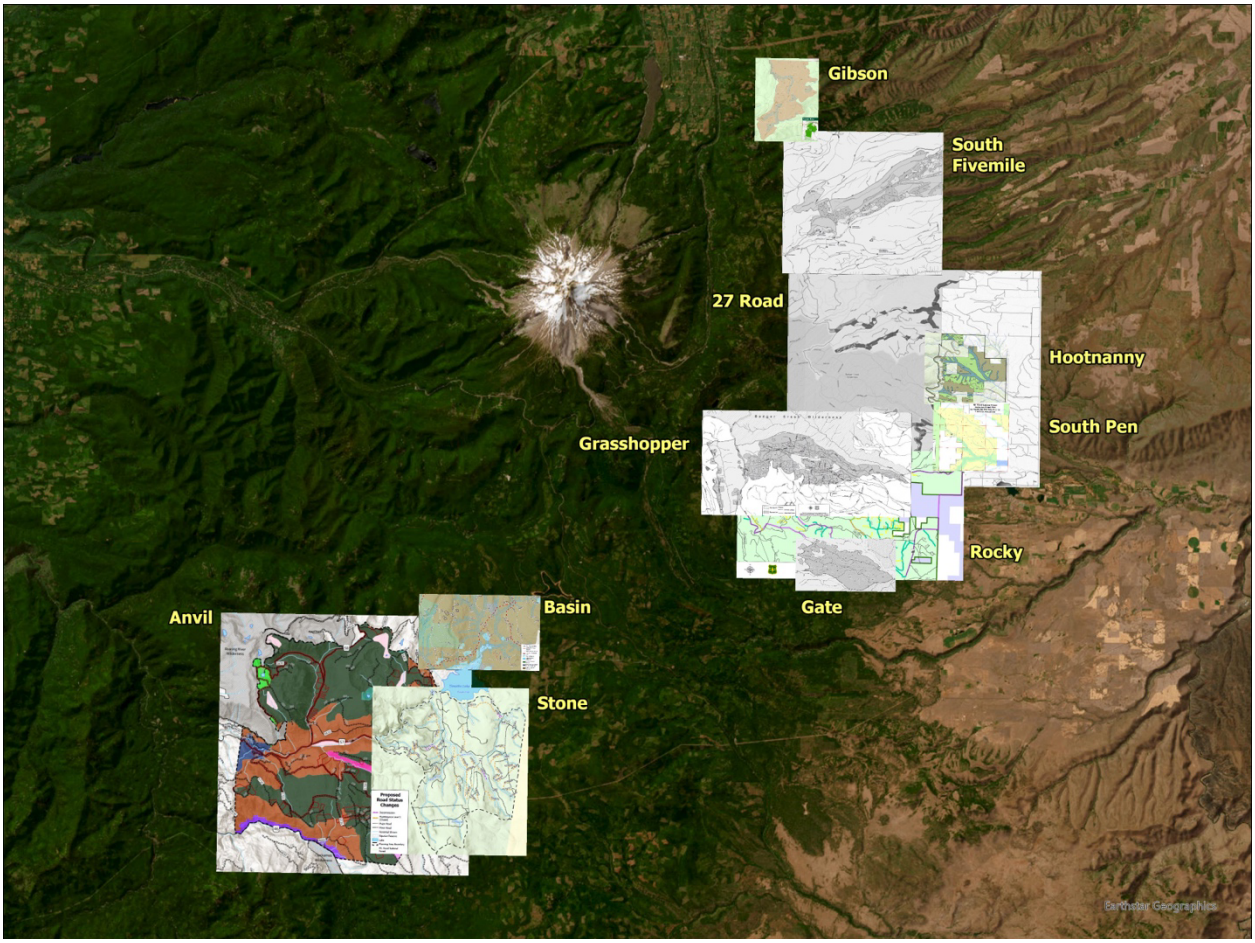
The total lack of information about the project area renders the scoping notice deficient. At a minimum, the Forest Service needs to reissue the scoping notice to include the above-referenced information so the public can ascertain whether there are extraordinary circumstances—including impacts to ESA-protected species such as the spotted owl—that warrant preparation of an EA or EIS. But the lack of information in the scoping notice precludes the public's ability to

even determine the age of some of the stands or the potential effects to suitable habitat for northern spotted owl.

C. Extraordinary Circumstances

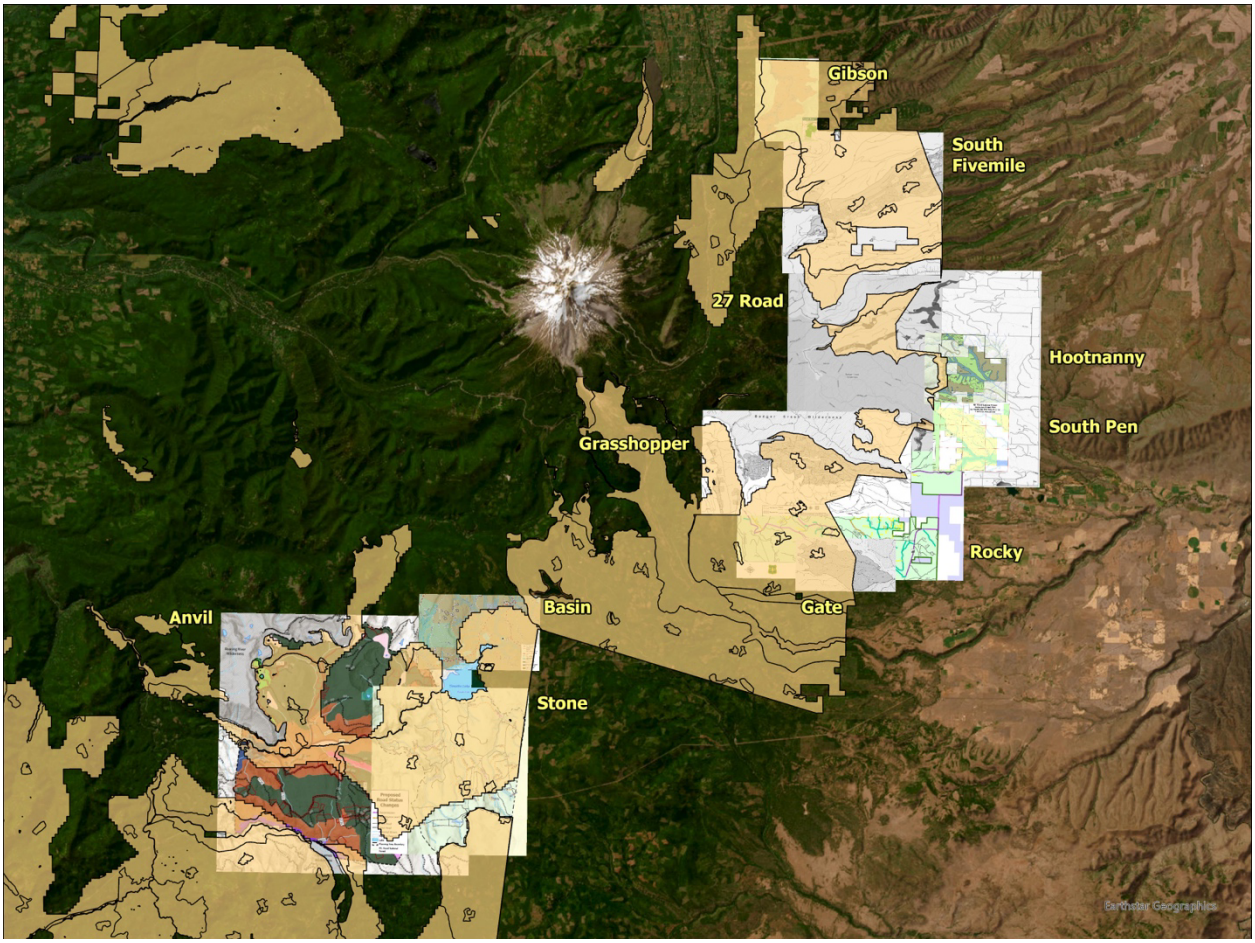
The presence of extraordinary circumstances also precludes reliance on a CE.[19] To determine whether extraordinary circumstances exist, the Forest Service must consider, *inter alia*, whether the project will impact ESA-listed species, designated critical habitat or "important" forest lands.[20] The Project area contains spotted owl habitat. Thus, in addition to the potential direct and indirect effects to northern spotted owl, the Forest Service must consider the cumulative effects to this species. But there is no evidence that the Forest Service has done so, or even has the necessary information to do so.

As the image below reveals, since 2019, the Forest Service has approved or is currently analyzing at least 11 logging projects, 8 on the east side of Mt. Hood, and 3 on the south side.



[19] *See* 7 C.F.R. § 1b.3(e).
[20] *Id.* § 1b.3(f).

Even if each of these projects may not individually have a significant effect on northern spotted owl, taken together their cumulative effects could be significant. In the image below, for example, you can see how much northern spotted owl critical habitat overlaps these projects. The Forest Service cannot ignore the cumulative effects of all of these logging projects impacting this critical habitat in the course of just a few years.



How is the Forest Service determining cumulative effects for northern spotted owl? What buffer is it using for the Basin Thinning Project? Is the Forest Service using the same 1.2-mile radius buffer for analyzing cumulative effects that it did for analyzing direct and indirect effects (as was done in the adjacent Stone Creek Project)?[21] If so, that is improper and inconsistent with other recent projects. For example, in the Grasshopper Project, the Forest Service's cumulative effects analysis area for northern spotted owl "was completed within the White River Watershed."[22] The Forest Service explained that cumulative effects analysis "at the watershed scale allows for a biologically meaningful analysis and supports management of migratory or dispersal corridors for northern spotted owls."[23] Is the Forest Service isolating the cumulative effects analysis for northern spotted owl to the direct/indirect effects analysis area or is it looking at a broader scale?

[21] *See* Stone Creek EA, Wildlife Biological Evaluation and Resource Report, 24 (Apr. 18, 2025) (**Ex. 2**).
[22] Grasshopper EA, Wildlife Report at 12 (**Ex. 3**).
[23] *Id*. at 12–13.

If the former, what is the agency's justification for this change? It is impossible to tell from the information provided in the scoping notice.

The Forest Service also must consider the extent to which staff cuts will hinder the agency's ability to protect wildlife habitat and watersheds during and after project implementation. "[M]ass firings, hiring freezes and pressure to retire early [has] already reduced the [Forest Service's] workforce by about 30% since President Donald Trump took office in January."[24] And that was *before* the current shutdown of the federal government that, according to a USDA contingency plan, has likely led to an additional 12,744 workers (about 40% of the remaining staff nationwide) being furloughed.[25] The Forest Service must disclose how much staff Mt. Hood National Forest has lost this year and how that impacts the agency's ability to meets its statutory obligations. This must be done in the context of an EA or EIS.

D. EO 14225 violates the National Forest Management Act

More broadly, to the extent that the Project implements or relies on EO 14225 it is unlawful, because the EO itself violates NFMA. The Forest Service is legally required to "mak[e] the most judicious use of the land."[26] Such use must be done "without impairment of the productivity of the land."[27] The Forest Service is prohibited from adopting management practices solely because they "will give the greatest dollar return or the greatest unit output."[28]

When Congress enacted the National Forest Management Act (NFMA), it recognized that because "the majority of the Nation's forests and rangeland is under private, State, and local governmental management," it is those "nonfederally managed renewable resources" that provide the basis for "the Nation's major capacity to produce goods and services"—not publicly owned and federally managed lands.[29] Congress therefore required the Forest Service to "reduce pressures for timber production from Federal lands."[30] This must inform how the Forest Service views its public trust obligations in managing our national forests.

Instead of seeking ways to "reduce pressures for timber production from Federal lands," EO 14225 does the exact opposite by mandating the Forest Service "fully exploit[s] our domestic timber supply" and "facilitate[s] increased timber production" from National Forest lands in a manner that "reduce[s] time to deliver timber" to market.[31] This incessant push for the

---

[24] *See* Sam Wilson and Brett French, *Forest Service furloughs recreation, trails staff as shutdown continues*, Bozeman Daily Chronicle (Oct. 2, 2025), https://www.bozemandailychronicle.com/news/forest-service-furloughs-recreation-trails-staff-as-shutdown-continues/article_d7fe2cd8-5ada-5578-be07-8e6c176ba6bb.html.
[25] *Id*.
[26] 16 U.S.C. § 531(a).
[27] *Id*.
[28] *Id*. *See Mountain States Legal Foundation v. Glickman*, 92 F.3d 1228, 1238 (D.C. Cir. 1996) (stating that objectives for logging in forest management statutes "does not mean that logging must be maximized at the expense of all other values").
[29] 16 U.S.C. § 1600(5). *See also* Butler and Sass, Wood Supply from Family Forests of the United States: Biophysical, Social, and Economic Factors, Forest Science (2023) (**Ex. 1**) (as of 2018, 88% of annual timber production in the U.S. is sourced from private forestlands), https://www.fs.usda.gov/nrs/pubs/jrnl/2023/nrs_2023_butler_001.pdf.
[30] 16 U.S.C. § 1600(7).
[31] EO 14225.

"immediate expansion" of timber production from National Forests is impermissibly based on what "will give the greatest dollar return or the greatest unit output" of timber in violation of NFMA. And with so much of the Forest Service staff cut this year, the agency cannot ensure that this "immediate expansion" of logging is being done "without impairment to the productivity of the land." Consequently, actions taken to implement EO 14225 may themselves be in unlawful conflict with NFMA.

E. Forest Service failed to identify whether visual quality objectives will be retained.

The scoping notice indicates that the Project area is in the B2 Scenic Viewshed land allocation under the Mt. Hood Forest Plan. The following forest-wide standards and guidelines apply to visual quality objectives (VQOs) in the context of logging:

- FW-560 indicates that logging units "should not dominate over nature landscape character (i.e., form, line, color and texture) in areas where VQOs of Retention and Partial Retention are prescribed."[32]
- FW-562: "As a measure to achieve VQOs, only a portion of the 'seen area' within viewsheds should be in a visually disturbed condition at any given time."[33]
- FW-564: "Within landscapes where Retention VQOs are prescribed, the maximum percent of the seen area visually disturbed should not exceed 8 percent at any one time or 4 percent per decade."[34]
- FW-565: "Within landscapes where Partial Retention VQOs are prescribed, the maximum percent of the seen area visually disturbed should not exceed 16 percent at any one time or 8 percent per decade."[35]
- FW-567: "Natural diversity of plant species (and/or age classes) should be maintained or increased in landscapes where Retention (foreground and middleground) and Partial Retention (foreground) VQOs are prescribed."[36]
- Landings shall be hidden from viewer positions in landscapes where Retention VQOs are prescribed. Landings should not dominate over natural landscape character where Partial Retention VQOs are prescribed. Mitigation measures may be necessary within the first year following an activity to achieve these Standards and Guidelines[.]"[37]
- "Tree stumps shall be cut so as to not dominate over natural form, line, color, and texture in foreground zones of landscapes where Retention and Partial Retention VQOs are prescribed."[38]

While the Forest Service's scoping notice explains that "[v]ariable density thinning with skips and gaps would occur on approximately 110 acres," at no point does it state whether VQOs will be retained during and following project implementation. For example, will the variable density

[32] Mt. Hood Forest Plan, Four-113.
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] *Id*. at Four-114.
[37] *Id*.
[38] *Id*.

thinning "dominate over natural landscape character"? How much of the "seen area" will be visually disturbed? Will landings be "hidden from viewer positions" and tree stumps cut "so as to not dominate over natural form, line, color, and texture in foreground zones"? The scoping notice failed to provide any of this information, again precluding meaningful public participation.

In addition to these forest-wide VQO standards and guidelines, the following applies to B2 Scenic Viewsheds:

- Desired Future Condition
    - Foreground Retention (Four-219-220)
        - Numerous large-diameter, old trees are a major component of the stands.
        - Target tree diameters for mature trees with following vegetation types are:
            - Grand fir (ponderosa pine), 24" DBH
            - Pacific silver fir, 26" DBH
            - Western hemlock, 32" DBH
            - Mountain hemlock, 24" DBH
    - Middleground and Background Partial Retention (Four-220)
- Visual Resource Management
    - Management activities shall achieve prescribed VQOs from the identified positions as displayed in Table Four-23 Designated Viewsheds.
    - Timothy Lake Designated Viewshed (Four-222)
        - Road 57, Lake, PCNST
            - Foreground (up to 0.5 mile) (R)
            - Middleground (0.5 to 5 miles) (PR)
            - Background (beyond 5 miles) (PR)
- Timber Management (Four-226)
    - All logging shall be directed toward creating or maintaining the desired landscape character through time and space. (See FW Timber S&Gs)
    - When even-aged logging is used, the average rotation age (i.e., stand age at clearcut) on the average growing site should be at least:
        - 250 years in foreground and middleground Retention
        - 200 years in foreground Partial Retention
        - 125 years in middleground Partial Retention

Will "numerous large diameter, old trees" be a "major component" of the stands? Will the variable density thinning create or maintain the desired landscape character? Again, the Forest Service provided no details about retention of VQOs in the scoping notice, precluding meaningful participation.

The Forest Service must ensure that it complies with applicable standards and guidelines under NFMA; if it does not precisely adhere to the guidelines, it must at least explain how its chosen action will achieve their purpose at least as well as the guideline would. The dearth of specific information in the scoping notice prevents the public from gauging whether the Project will meet this benchmark.

Conclusion

The Forest Service's proposal to implement the Basin Thinning Project under TVA CE 31 violates NEPA. adoption of TVA CE 31 is invalid because the agency failed to follow notice and comment requirements or conduct the legally mandated consultation with TVA to determine the appropriateness of the adoption. Because none of the Forest Service's own, properly adopted CEs apply here, it must prepare an EA or EIS.

There are also extraordinary circumstances that preclude the use of any CE for this project. The Forest Service failed to identify the potential for impacts to northern spotted owl. Numerous nearby logging projects have occurred in northern spotted owl critical habitat over the past few years, but there is no analysis of their cumulative impacts. There is also a stunning lack of information about the project, precluding meaningful, informed public participation. As proposed, the Project therefore threatens to violate both NEPA and the ESA.

Because the scoping notice fails to explain how, or even whether, it will conform with the applicable forest plan's standards and guidelines, the Project also threatens to violate NFMA and NEPA. The Forest Service does not identify any of the applicable VQO standards and guidelines or whether those VQOs will be retained. And with uncertain funding and so much of its staff either fired, pushed out of the agency, or on indefinite furlough, the Forest Service cannot ensure that the logging would be done "without impairment to the productivity of the land."

Finally, the Project implements EO 14225 and is thus unlawful. That EO violates NFMA because instead of "reduc[ing] pressures for timber production from Federal lands," it requires the "immediate expansion" of timber production from Federal lands, primarily National Forest lands.

Thank you for the opportunity to comment.

Sincerely,

Ryan Talbott
Pacific Northwest Conservation Advocate
WildEarth Guardians
213 SW Ash Street, Suite 202
Portland, OR 97204
503-329-9162
rtalbott@wildearthguardians.org