

Battle Bruin Proposed Action comments from Blue Mountains Biodiversity Project

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The Emergency Situation Determination for the Battle Bruin Vegetation Management Project is illegitimate:

BMBP submits these comments in part to urge against the use of the Secretary's Memorandum 1078-006 ("Secretary's Memo" or the "Memo") emergency situation determination ("EAD") under section 40807 of the Infrastructure Investment and Jobs Act ("IIJA"). As discussed below, the use of the EAD is inappropriate for the Battle Bruin project. And even if it were, then the associated stifling of public engagement and limited alternatives analysis under the EAD may, in fact, prohibit the Forest Service from determining the actual best management solution for the Battle Bruin project area.

BMBP requests that the Forest Service fully analyze the environmental effects of the Battle Bruin project under normal NEPA procedures with a full opportunity for robust public participation and engage in the pre-decisional objection process under 36 C.F.R. part 218 consistent with past practices.

The authorized emergency actions are unlikely to achieve the desired conditions for the Battle Bruin project area:

The Secretary's Memo declares that our "National Forests are in crisis due to uncharacteristically severe wildfires, insect and disease outbreaks, invasive species, and other stressors whose impacts have been compounded by too little active management," and thus requires the Secretary to declare an emergency under section 40807 of the IIJA. Memo at 2. "These threats," the Memo continues, "combined with overgrown forests, a growing number of homes in the wildland-urban interface, and more than a century of rigorous fire suppression" led to 112,646,000 acres (59% of all National Forest System lands) falling under this EAD. *Id.*

The Battle Bruin project's scoping materials identify a purpose and need to, *inter alia*, "thin overcrowded forests to ... create a mix of tree size and age classes to build forest resiliency," "manage fuel levels to reduce flammable material buildup on the forest floor by utilizing prescribed fire and other fuels reduction methods on the landscape," and "reduce hazardous fuels to help increase the effectiveness of wildfire response." Battle Bruin Proposed Action at 2. To satisfy this purpose and need, the Forest Service is proposing treatments across 36,405 acres including commercial and non-commercial thinning, including the potential felling of trees greater than 20" DBH; the creation of fuel breaks; regeneration harvests (clearcutting); and an

expansion of the Umatilla National Forest’s already bloated road network. *Id.* at 3–9. However, the EAD only authorizes select enumerated emergency actions designed to address specific emergency situations. As such, to the extent the Battle Bruin project includes actions not listed in the authorized emergency actions, reliance on the EAD is inappropriate and illegal.

Moreover the authorized emergency actions under the EAD are unlikely to address these threats nor provide relief. In many cases, the authorized emergency actions may actually worsen these conditions. Under section 40807 of the IIA, an emergency situation exists only where “immediate implementation” of authorized emergency actions are necessary to provide “[r]elief from hazards threatening human health and safety” or mitigate “threats to natural resources on National Forest System land or adjacent land.” 16 U.S.C. § 6592c(a)(2)(A) & (B). “Authorized emergency actions” include the following:

- (A) the salvage of dead or dying trees;
- (B) the harvest of trees damaged by wind or ice;
- (C) the commercial and noncommercial sanitation harvest of trees to control insects or disease, including trees already infested with insects or disease;
- (D) the reforestation or replanting of fire-impacted areas through planting, control of competing vegetation, or other activities that enhance natural regeneration and restore forest species;
- (E) the removal of hazardous trees in close proximity to roads and trails;
- (F) the removal of hazardous fuels;
- (G) the restoration of water sources or infrastructure;
- (H) the reconstruction of existing utility lines; and
- (I) the replacement of underground cables.

16 U.S.C. § 6592c(b)(2). A majority of these authorized actions intended to address the threat of severe wildfire and insect and disease outbreaks boil down to one action: increased logging.

BMBP agrees that the ecological health of our National Forests has degraded and must be addressed. However, this degradation was borne of the Forest Service’s fire suppression and logging practices over the last century. Further contributing to the declining health of our forests is climate change, the increasingly seen and felt effects of which are only being expedited by logging on National Forest System lands.

It is well-established that the main driver of severe wildfires is not increased fuel loading, but rather climate change and weather events.¹ In Oregon, the timber industry is the top source of greenhouse gas emissions, representing a major contributor to the worsening climate crisis.² Logging not only decreases the current carbon stores of these forests—releasing stored carbon dioxide back into the atmosphere at faster pace than the natural carbon cycle of living forests—but also inhibits the potential future sequestration and storage of carbon dioxide from the

¹ Keyser, A, A Westerling. 2017. Climate drives inter-annual variability in probability of high severity fire occurrence in the western United States. *Environ. Res. Lett.* 12 065003.

² Law, B.E., Hudiberg, T.W., Berner, L.T., Kent, J.J., Buotte, P.C., Harmon, M.E., 2018. Land use strategies to mitigate climate change in carbon dense temperate forests. *Proc. Natl. Acad. Sci. U.S.A.* 115 (14) 3663-3668, <https://doi.org/10.1073/pnas.1720064115> (2018).

atmosphere.³ Moreover, by logging trees before they grow into what is generally considered a “large” tree with thick bark, the Forest Service is perpetually stunting the development of the most fire resilient trees on the landscape.⁴ The proposed large-scale logging in the Battle Bruin project will open up the canopy and reduce the basal area of targeted stands, thus allowing more solar radiation to dry out the forest floor and allowing wind-driven wildfires to increase in severity and speed.⁵ The proposed logging will only worsen the primary drivers of severe wildfire, thereby bringing about the very emergency the EAD is purportedly trying to address.

If the Battle Bruin project area is in a state of emergency, it is not an emergency that the Forest Service can log its way out of. Therefore, the use of the EAD for the Battle Bruin project is inappropriate and unwarranted.

The use of the Secretary’s EAD authority is inconsistent with the democratic principles the management of public lands are supposed to be based on:

Alternatives analysis:

The use of the EAD frustrates the statutory goals of the NEPA and the purpose of the Forest Service’s pre-decisional administrative review (“objections”) process, which will then unnecessarily limit the Forest Service from determining the best way to address the on-the-ground conditions of the Battle Bruin project area.

NEPA was enacted in order to “promote efforts which will prevent or eliminate damage to the environment.” 42 U.S.C. § 4321. In pursuit of this purpose, NEPA requires that federal agencies take a “hard look” at the environmental consequences of their actions and foster meaningful public engagement in the decisionmaking process. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349–50 (1989). NEPA does not require certain outcomes, but does “prescribe the necessary process.” At the heart of the NEPA process is the development and analysis of “a reasonable range of alternatives to the proposed agency action.” 42 U.S.C. § 4332(C)(iii). However, section 40803 of the IIA allows the Forest Service to develop and analyze only a single action alternative and the baseline no-action alternative under an EAD. 16 U.S.C. § 6592c(c)(1). That said, there is nothing in the IIA that expressly limits the range of alternatives analyzed to just the one proposed action and the no-action alternative. Even under the EAD, the Forest Service may—and should—analyze a full suite of reasonable alternatives to the proposed action.

Allowing the Forest Service to consider only a single proposed action alternative dramatically limits the consideration of management activities that may differ from the Forest Service’s preferred action, yet still meet the purpose and need of the Battle Bruin project. From the

³ Mildrexler, D.J., Berner, L.T., Law, B.E., Birdsey, R.A. and Moomaw, W.R., 2020. Large trees dominate carbon storage in forests east of the cascade crest in the United States Pacific Northwest. *Frontiers in Forests and Global Change*, 3, p.594274.

⁴ Moris, J.V., Reilly, M.J., Yang, Z., Cohen, W.B., Motta, R. and Ascoli, D., 2022. Using a trait-based approach to assess fire resistance in forest landscapes of the Inland Northwest, USA. *Landscape Ecology*, 37(8), pp.2149-2164

⁵ Fitzgerald, S., Bennet, M. 2013. A Land Manager’s Guide for Creating Fire-Resistant Forests. Oregon State University, Northwest Fire Science Consortium, available at <http://www.nwfirescience.org/sites/default/files/publications/A%20Land%20Managers%20Guide%20for%20Creating%20Fire-resistant%20Forests%20.pdf>

incredibly limited information in the project's scoping materials, it is unclear whether immediate or expedited action is necessary in the Battle Bruin project to begin with. Under these circumstances then, the use of the EAD for the Battle Bruin project simply doesn't make sense. There is no reason to preemptively restrict the range of potential solutions to such a complex problem. Rather, the Forest Service should forgo the use of the EAD for the Battle Bruin project and instead engage with interested and knowledgeable stakeholders and analyze a full range of alternatives under NEPA before making a final decision.

Objection process:

The Forest Service's objection process is designed to allow a final opportunity for interested individuals or entities to seek a final independent Forest Service review, negotiate, and resolve disputes about a proposed project before a final decision is made. 36 C.F.R. part 218. The overall purpose of the pre-decisional objection process is to facilitate the Forest Service's "collaborative approach to forest management ... resulting in better, more informed decisions." 78 Fed. Reg. 18,483 (March 27, 2013). The objection process is not likely to significantly delay any implementation, as the public is required to abide by strict and relatively short objection submission deadline requirements. 36 C.F.R. part 218. The Forest Service's objection negotiation and resolution process, where discussion with interested stakeholders may produce more nuanced and appropriate management decisions—and potentially less litigation—is therefore the most appropriate path forward for the Battle Bruin project.

Without the objection process—especially in conjunction with the limited alternatives analysis—the Forest Service is left trying to solve a problem with one arm tied behind its back. The Forest Service has a valuable problem-solving resource in the individuals and organizations that live, recreate, and work in and around the Umatilla National Forest, and BMBP implores it to take advantage of that resource. The Forest Service should forgo the use of the EAD for the Battle Bruin project and instead continue its well-established and successful collaborative approach to forest management with the objection process.

There is no "emergency," as the term is normally used, that would justify the use of the EAD for the Battle Bruin project:

What emergency in the Battle Bruin project area is there to legitimize an emergency intervention? There is no ongoing emergency. The Blue Mountains forests evolved with wildfire, including high severity fire, defoliating insect outbreaks, and tree diseases, as natural disturbances. Global warming is the most critical threat to the viability of the Earth and the forests other than timber sales. Global warming has been well known since about 1990, with the science on climate change since much earlier with the Greenhouse Effect. Global warming probably started since the time of the Industrial Revolution. Climate change effects have been well documented by a huge consensus of international scientists since the 2000's.

The Secretary's Memo declares that 112,646,000 acres (59%) of National Forest System lands are in a state of emergency, leading to the current EAD under section 40807 of the IIA. However, the standalone term "emergency" is defined nowhere in the IIA nor the Secretary's Memo, meaning there is no special meaning intended for the term beyond its common usage. An "emergency," as the term is usually used, is defined as "an unforeseen combination of

circumstances or the resulting state that calls for immediate action;”⁶ “a state of things unexpectedly arising, and urgently demanding immediate action;”⁷ “[a] situation that demands unusual or immediate action and that may allow people to circumvent usual procedures....”⁸ The conditions in the Battle Bruin project do not align with any of the ordinary usages of “emergency,” or “a situation or occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action.” (The American Heritage Dictionary of the English Language, p. 427) None of these elements of an emergency apply to the Battle Bruin Project timber sale.

The Secretary’s Memo highlights that 66,940,000 acres of National Forest System lands are “under a very high or high fire risk,” while “roughly 78,800,000 acres ... are at risk of experiencing[] insect and disease infestations.” Secretary’s Memo at 2. “These threats,” the Secretary continues “combined with overgrown forests, a growing number of homes in the wildland-urban interface, and more than a century of rigorous fire suppression” contributed to the present declaration of an emergency. *Id.* None of these conditions are “unforeseen,” unexpected,” or demand “unusual” action. In fact, as the Secretary’s Memo makes clear, these conditions are more than a century in the making under the supervision of the Forest Service.

The mere threat of a wildfire does not amount to an emergency that would allow the Forest Service to circumvent the otherwise mandatory full alternatives analysis under NEPA and objection process under the forest Service’s planning regulations. In *FSEEE v. U.S. Forest Service*, 2017 WL 2962771, at *5 (E.D. Wash. July 11, 2017), the district court addressed a challenge to a Service emergency declaration under the Forest Service’s NEPA regulations at 36 C.F.R § 220.4(b) to address a wildfire that was at that moment burning toward a town. The court upheld the emergency declaration, distinguishing between a specific wildfire, which is usually not foreseeable and can create an emergency, and wildfires generally, which are “common and their general existence is foreseeable.” *Id.* at *6. The Ninth Circuit affirmed, noting that individual fires and their course, intensity and duration are unforeseeable and present emergency situations “when viewed at the time the fire is raging.” *FSEEE v. U.S. Forest Service*, 726 Fed. Appx. 605, 606 (9th Cir. 2018). The mere increased threat of wildfire and insect and disease outbreak from over a century of Forest Service management is not an unforeseeable emergency, but rather a foreseeable and very serious concern that requires a full analysis of reasonable alternatives in an EIS and robust public engagement, including a 45-day comment period on the EIS and a pre-decisional objection process. This is a problem that requires the best available decisionmaking processes we have in place, not simply increased logging. Because there is no unforeseeable “emergency” present in the Battle Bruin project area, the proposed use of the EAD is inappropriate and unnecessary.

The “desired” conditions are only determined by the Forest Service, which has incentive to prepare timber sales to fund agency staff. Now there may be fewer Forest Service wildlife biologists, soil scientists, and any other staff, such as for recreational infrastructure, due to de-

⁶ Webster’s Third New International Dictionary of the English Language 1961 and Merriam-Webster’s Collegiate Dictionary (11th ed. 2004)

⁷ The Oxford English Dictionary (2d ed. 1991)

⁸ Black’s Law Dictionary 260, 562 (8th ed. 2004).

funding of federal agencies. This is in the context of environmental protection acts and regulations being dismantled. So the Forest Service is taking advantage of executive directives, such as the “Emergency Action Determination” which represents an overreach of executive power by the President. This also includes the mass firings, resignations, and lay-offs of federal agency staff with no legal process.

The Forest Service goal under the current administration appears to be maximum escalation of resource extraction—leading to total commodification of the National Forests. This changed policy jettisons all other forest values enshrined in the Forest Plans, although these Forest Plans have not been revised since 1990 or 1980 in the Blue Mountains region. Forest values now being degraded to an extreme extent include: soil fertility, integrity, and productivity; wildlife and plant biodiversity; retaining fish runs and high water quality and abundance; and cultural uses and recreational values.

*Drop the use of an Emergency Situation Determination for the Battle Bruin Project. Instead, allow the public to engage in a full democratic process, including an objection period and an opportunity to negotiate with the Forest Service, including well established and fair 45 days for submitting an objection, and fair and adequate notice for negotiations with the Forest Service to try to resolve objections.

Purpose and Need:

The Purpose and Need states that: “The purpose of the Battle Bruin Integrated Vegetation Management Project is to restore a healthy, diverse, and resilient forest ecosystem that can accommodate human and natural disturbance”, yet clearcutting, as planned, regardless of which type of clearcutting, does not “restore a healthy, diverse, and resilient forest ecosystem.” High intensity logging creates unnatural widespread ground disturbance, usually introducing and dispersing exotic invasive plants from the heavy machinery, and removes natural amounts of down wood and future down wood for water retention, soil fertility, and soil carbon storage. Clearcutting and other high intensity logging eliminates suitable wildlife habitat for species that require higher canopy closure, such as Management Indicator species (MIS) Pileated woodpecker, Pacific marten, and American goshawk; denser forest for MIS Rocky Mountain elk and MIS American goshawk, Mule deer for hiding and thermal cover, and other wildlife species such as Northern Pygmy owls, Cooper’s hawks, and Sharp-shinned hawks. Many wildlife species rely on forest structural complexity and large tree structure, which clearcutting and other high intensity logging removes from the existing condition and into the future for decades, since most or all of the mature trees are logged and can no longer grow into large trees and old growth structure.

Clearcutting also does not “restore or improve understory shrub, grass, and forb diversity and abundance” (Battle Bruin Project Information and Proposed Action, p. 2, first par.) Understory shrubs, grasses, and forb diversity would likely be reduced for the long-term, as there would be much less moisture retention for moisture-adapted plants, less organic material in soils for

vigorous plant growth, and loss of carbon storage in soils and from wood removed. Down wood is also important habitat for small rodents, many bird species, diverse insect species, amphibians, and reptiles. Many primary cavity excavator woodpeckers forage on large down wood and many PCEs also depend on abundant or large snags, which would be removed from clearcutting.

Thus clearcutting and other high intensity logging would greatly contradict the stated “desired future condition for the Project Area” for the Purpose and Need by not resulting in “an ecologically and structurally diverse landscape which is resistant and resilient to disturbance from wildfire, insects, and disease pathogens.” (Proposed Action, p. 2, 2nd par.) “Restoring or improving understory shrub, grass, and forb diversity” is code for heavy logging, as the outcome would be less understory plant diversity after essentially plowing the ground and planting tree seedlings, not leaving micro-climate habitat niche diversity for plants that may require more shade, more cooling, and more moisture.

Mountain pine bark beetle outbreaks are part of the natural life cycle of Lodgepole pines, resulting in a mosaic of snag and log habitat for wildlife (such as for Pacific marten) and by self-thinning the dense stands for rejuvenation of the stand. Wild fires stimulate Lodgepole pine regeneration. Grand fir are also naturally thinned from periodic outbreaks of Spruce budworm and fir engraver beetle, again, opening up stands and creating diverse habitat niches in a variable density mosaic. Notably, Spruce budworm primarily thins out young, small Grand firs, while leaving mature and large Grand fir so as to have less competition for water and nutrients. Forest ecosystems do not need logging to thin the stands. For instance: “Elevated populations of the western pine beetle have resulted in increased mortality in large, old Ponderosa pine, and the fir engraver beetle has killed considerable numbers of Grand fir, most notably on moisture limited sites in high density stands of late seral species.”

“The need for treatment [i.e. logging and biomass reduction] was determined from the current landscape condition and the goals, objectives, and desired conditions” in the Forest Plan (p. 2), yet the existing condition is probably the result from past clearcutting and other heavy logging and roading impacts, which is then used to justify the next timber sale—e.g. the Battle Buin sale. Thus the existing conditions are based on the degraded conditions that would be caused or increased by the next similar timber sale. Yet the Forest Service ignores the option of choosing adaptive management to avoid repeating past management that results in unnatural devastation of the forest ecosystem.

The stated Purpose and Need further states that “There is a need to thin overcrowded forests to give trees more room to grow strong and healthy” such as to increase individual tree vigor, as in a tree farm, without considering the need for snags and logs for wildlife, as well as for natural disturbances to thin the forest and create unique habitats for a great variety of wildlife and plant species. Clearcutting and planting to convert the forest into homogenous plantations results in tremendous loss of biodiversity of plants and wild animals. Plantations and clearcuts are virtually biologically sterile compared to never logged forest with natural ecological disturbances

as part of functioning forest ecosystems. Then the next description of the purpose and need for this timber sale includes “to encourage growth of desirable, native tree species best suited to the area; and to create a mix of tree size and age classes to build forest resiliency.” Yet all the clearcutting and other heavy logging would not result in “native tree species best suited to the area” as the Forest Service’s “desirable” tree species is usually a monoculture crop of timber industry preferred tree species: i.e. Ponderosa pine and Western larch. Clearcutting sets the stage for converting complex and diverse forest by planting single or double tree species as even-aged tree plantations, as in tree farms. Also, clearcutting and similar heavy logging does not result in stronger, healthy trees. I have seen many young, even-aged plantations in the Umatilla National Forest and also in the Malheur National Forest that are all planted Ponderosa pines in the midst of moist mixed conifer forest, with sickly planted Ponderosa pines. Plantations are highly susceptible to insect outbreaks since most defoliating insects and tree diseases are usually associated with particular tree species, weakening the stand, fueling insect epidemics or the spread of tree diseases. Plantations are more likely to burn intensely, as the trees tend to be evenly spaced or dense, without the variable density and large trees that are more fire resistant. Wind speed increases through the plantations, intensifying wild fires, also because the trees are usually young and more flammable.

Logging and biomass reduction leaves far less forest structure for wildlife and forest carbon storage. Clearcutting actually increases fire intensity and would greatly reduce mature Ponderosa pines and other tree species, preventing most of the mature trees from becoming large and old trees, which are the most fire-resistant. We agree that there is a need to restore mature and “overmature” large, old trees—of all tree species, not just Ponderosa pine. Clearcutting and other intensive logging to low basal area retention do not meet the need to restore mature and large trees—and more forest cover to retain and increase the forest carbon sink to offset catastrophic climate change effects.

Climate change is human-caused, with logging being the biggest source of CO₂ emissions in Oregon, increasing climate change-associated increased fire intensity, prolonged droughts, unprecedented ambient temperatures, and extended heat waves—all of which threatens the survival of forest cover. Ponderosa pine and Sitka spruce are already diminishing on from extreme heat waves. Grand fir and Douglas fir are also more susceptible to insect outbreaks and loss of moisture retention on marginal sites, as I’ve seen on the Emigrant Creek Ranger District of the Malheur National Forest. We need to protect live forest cover as much as possible by not logging mature trees.

Non-commercial small tree thinning up to 9” dbh and using prescribed burning in dry forest types is the most effective method of fire risk reduction, based on the science, not commercial logging, which increases fire intensity. We advocate avoiding prescribed fire in high elevation moist mixed conifer and subalpine forest as these forest types retain more moisture from more precipitation and longer lasting snow packs and are adapted to infrequent, high severity wildfires, with which wildlife and plant species have evolved. Prescribed fire, by contrast,

mimics frequent, low intensity fire, which is more appropriate for lower elevation dry forests, generally dominated by Ponderosa pine or co-dominant Ponderosa pine and Douglas fir.

We support retaining all trees equal to or over 21” dbh, with the 21” dbh limit still in effect.

* We advocate for no management in Riparian Habitat Conservation Areas (RHCAs) unless there are limited cases of dense young conifers competing with riparian hardwoods, which could then be non-commercially thinned only up to 9” dbh and not all the way to the water’s edge if thinning would reduce shading of the streams or if small conifers are giving the streambanks stability. We support there being no commercial logging within RHCAs but we are wary of excessive management from biomass reduction and removal of down wood or felled small trees. Most RHCAs are moist or wet, limiting the effects of fire. There should be no ignitions for prescribed burning in RHCAs. Drop prescribed burning for RHCAs in moist mixed conifer RHCAs or in subalpine, cold high elevation forest types. Using prescribed burning in RHCAs in low elevation dry forest with dominant Ponderosa pine or dry co-dominant with Douglas fir could be acceptable—however, prescribed burning can introduce significant excessive sediment into streams, as recently occurred in the Tiger Mill timber sale area on the Walla Walla District of the Umatilla National Forest, when the prescribed burn got out of control and extended further than planned.

Endangered Species Act potential violations:

However, the entire sale area is within the Special Fish Management Area, so there should be no increased sedimentation in streams, no removal of shade to streams, no increase of water temperature, and no destabilization of stream banks and no use of heavy equipment or roads within any RHCAs.

This is a major, critical issue for the Battle Bruin timber sale and associated other management, since the fish species in this project area likely include Threatened-listed fish species in decline, such as Bull trout and Middle Columbia Steelhead trout. This is an Endangered Species Act issue, as designated Critical Habitat under the ESA must be protected to prevent the extirpation of Threatened and Sensitive fish species populations that could cumulatively lead to extinction of these TESC (Threatened, Endangered, Sensitive, and Candidate) fish species. There is also recent best available science that shows that logging outside of RHCAs can also cause excess stream sedimentation and increased water temperature, both of which could cause extirpation of a TESC fish species.

The Need to Retain Public Participation under the National Environmental Policy Act statute:

With such a critical environmental protection concern, the public needs to be able to comment on detailed, in-depth analysis of the potential effects to the resident or migratory TESC fish species in the Environmental Assessment. Public participation in decision making is a democratic process that needs to be protected. Consideration of environmental effects analysis is intended under NEPA to lead to better protection of environmental values and to prevent the

cumulative extirpation of declining TESC wildlife and plant species. We request that the Battle Bruin Environmental Assessment (or EIS) include a public comment period and an objection period for better environmental protection and to retain our U.S. democracy on the federal level.

Proposed remedies for our concerns, based on Table 3, p. 3:

- * We support excluding any logging or biomass reduction in the following Management Areas, where they are designated: within RHCAs, Wildlife Connectivity corridors, Dedicated Old Growth, Late and Old Structure stands (LOS), “Managed” C2 Old Growth areas, Research Natural Areas, any developed camp grounds or along established hiking or biking trails, and within scenic views. We are also opposed to any logging, roading, or biomass reduction in Inventoried Roadless Areas.

- *We also oppose any commercial logging and biomass reduction in suitable source (reproductive) habitat for Management Indicator species, including: Pileated woodpecker, Primary Cavity excavators, American goshawk (formerly Northern goshawk), Pacific marten (formerly Pine or American marten), and within suitable MIS Rocky Mountain elk security habitat blocks.

- * There should be no need for “reforestation”. Drop all types of clearcutting and logging to low basal area retention of only 20-70 square feet of basal area retention or less.

- *There should be no heavy equipment used in RHCAs and no biomass reduction, as well as no commercial logging. Streams in canyons with topographic shading should not be thinned in RHCAs where riparian hardwoods would not thrive.

- * Reduce the 8,557 acreage of commercial logging substantially by dropping all clearcutting and intensive logging to very low basal area retention. Instead, only use true selective commercial thinning of the understory and limited midstory, with no overstory logging. Any commercial thinning should be limited to only up to 15” dbh, so as to allow the next size class of trees (15-21” dbh) that would otherwise grow into large and old trees, which are at a severe deficit compared to historic conditions before colonization and to existing never logged forest. In most cases, any excessive tree density is only small trees up to 9” dbh, pole size, so much of the planned commercial logging could be dropped by using noncommercial thinning up to 9” dbh instead.

- *Drop commercial logging in suitable source habitat for MIS Pileated woodpecker, Pacific marten, Primary Cavity Excavators, Rocky Mountain elk security habitat, and source habitat for any TESC wildlife and within TESC plant populations. There should be no ground disturbance within TESC plant populations, which should be buffered and flagged.

- *Prioritize thinning of noncommercial size trees up to pole size (up to 9” dbh) only where tree density is excessive.

*Drop the commercial “fuel” breaks over 4,693 acres. Instead, use noncommercial thinning and prescribed burning in dry forest types (defined above), and pruning lower limbs immediately adjacent to major access roads, as well as only hand-felling “ladder fuel trees” near major access roads and only under the single drip line of old growth Ponderosa pines and Western larch. However, many old growth tree species generate their own seedlings within their dripline to replace the old growth tree in the future. See Suzanne Simard’s book with her research findings with study citations in the book, Finding the Mother Tree, Discovering the Wisdom of the Forest.

*Fire risk reduction should be limited to the Wildland Urban Interface and developed recreational infrastructure. There is a major scientific consensus that advocated for fire risk reduction only within the WUI defined as residential communities, not in the back country or in higher elevation moist mixed conifer forest. This consensus was expressed by scientists in a Forest Service public meeting in Baker City years ago. There are multiple science studies and articles confirming this consensus. Wildfires in the back country should be allowed to burn as much as possible, including allowing wildfires to burn but managing the fire, while avoiding fire risk to nearby communities. This is also strongly advocated by best available science.

*We oppose planting and seeding trees on up to 35,978 acres! This indicates extensive past and planned clearcutting for establishing yet more homogenous plantations that are virtually sterile for wildlife and plant diversity. We are also strongly opposed to tree species conversion on a landscape scale, moving the forest composition away from the original native tree species composition. This seems like a campaign to eradicate historic moist mixed conifer. Historically, the Forest Service was more honest about it by admitting they wanted to completely eradicate Grand fir, since it is not a timber industry preferred species. Native plants should be allowed to thrive, not be artificially planted and tree seedlings from plantations to “re-stock” clearcuts are usually not adapted to the planting sites’ micro-climate conditions.

*Drop all 27 miles of “temporary” roads, which are seldom fully decommissioned, so they become de facto open road density increases, often higher than Forest Plan Management Area open road mileage density standards. Increased open road density and the use of unauthorized routes from “temporary” roads, re-opened closed roads, and skid trails are to the detriment of elk, deer, and wolves from poaching and road kill; and elk, songbirds, and owls from road disturbance. “Temporary” roads and re-opening of closed roads increase illegal firewood cutting, reducing snag and log habitat; increase invasive exotic invasive plant introduction and dispersal; increased fur trapping access; increased ATV use of unauthorized routes; and poaching from roads—especially of deer, elk, and wolves.

*Avoid pile burning as much as possible, including no grapple piling, which tend to sterilize the soil under the big burn piles. Instead mostly lop and scatter felled small trees or masticate them, but don’t mow and masticate shrubs, which are winter forage plants for Mule deer and habitat for small rodents, insects, amphibians, and reptiles.

Re: Commercial logging:

We are strongly opposed to any form of clearcutting, including “regeneration harvests”, “sanitation cuts” and “shelterwood treatments”, all of which are euphemisms for devastating the forest. Clearcutting and other intensive logging down to very low basal area retention is not consistent with the stated purpose and need for this timber sale. It is very unnatural to remove all or most of the trees, leaving soil deprived of organic material and depletion of carbon storage, which is needed for reducing climate change effects. Further, clearcutting reduces soil and tree productivity—with less productivity with each repeated timber sale.

The Deschutes National Forest soil scientist found that the records of detrimental soil impacts were cumulatively increased with each implemented timber sale, indicating long-term detrimental soil impacts. Detrimental soil impacts from logging have been found to last up to 70 years or longer.

The results of clearcutting do not bolster forest resilience to natural disturbances. Logging, and especially clearcutting, fragment mycorrhizal fungal communities that support tree health by transferring nutrients and carbon to other trees—even to other tree species. Clearcutting also eliminates wildlife and plant habitat for most species in decline, and cultural and recreational values.

Any “commercial thinning” should not be perpetuating “even-aged management.” Large logging caused “gaps” do not allow for the canopy to grow into future large trees. Logging mature trees reduces the numbers of trees that could otherwise grown if not removed. The current timber sales are on short timber sale rotations of only about 30 years, each time removing more mature trees that could otherwise grow large and old. We oppose large gaps from logging. How large would these proposed gaps be in the canopy? There’s no specific acreage of proposed gaps.

If the forest in sale units is moist mixed conifer with large and old Grand firs, Douglas firs, White firs, and/or Englemann spruce, then don’t remove those tree species.

Old Forest Single Stratum (OFSS) was not the most dominant successional state in historic moist mixed conifer. This is confirmed by both never logged moist mixed conifer and historic accounts of having to cut down many trees to move the covered wagons, such as in the explorer Fremont’s diary.

Clearcutting perpetuates homogenous even-aged trees, with loss of most biodiversity.

* Drop all “sanitation cuts”, “shelterwood” clearcutting, “regeneration harvest” and any other version of clearcutting or logging down to very low basal area retention, such as logging to the low retention management zone.

* Stop tree species conversion and stop grapple piling. Greatly reduce the planned extensive acreage of ground disturbance.

Small diameter thinning:

* Usually most tree density is only small young trees up to 9" dbh, which would cause the most competition for water or sunlight. Change management from clearcutting to non-commercial thinning instead and use prescribed burning in dry forest types at lower elevations.

Managed area C2 Old Growth:

We are opposed to logging mature trees in C2 Old Growth, as removal of the mature size class of 15-21" dbh is the next size and age class would otherwise become large and old. Large and old trees are at a tremendous deficit compared to historical conditions before European colonization. David Mildrexler's recent study determined that large and old trees now only represent about 3 % of the Blue Mountains National Forests due to about a century of logging large and old trees. Noncommercial thinning up to 9" dbh in C2 "Managed" Old Growth could be acceptable where there is high density of small, young trees that may be due to wildfire suppression or to past logging creating openings for more seedlings. Where C2 Old Growth areas do not have old growth and are within dry forest types with dominant Ponderosa pine or co-dominant Ponderosa pine/Douglas fir, typically at lower elevations, low intensity prescribed burning could be used to thin the small young trees without killing many mature trees.

"Managed" old growth is intended to become old growth structure into the future. Commercial logging of mature trees would be contrary to the Forest Plan intent for increasing the development of old growth structure and more large trees. Usually most tree density is only small young trees up to 9" dbh or less. Thus thinning seedlings and saplings usually cause the most competition for water or sunlight for the mature and large trees.

Based on our field checking of the existing conditions after mature tree logging, up to 30 years or more since the previous timber sale, there has been chronic lack of developing more large and old trees, even though increase of large trees is often promised by the Forest Service. The lack of large and old trees is conspicuous where an area has been commercially logged, compared to never logged forest. Large trees are often felled and removed as hazard trees or to allow for cable yarding lines. There has also been the use of Forest Plan amendments to allow for logging large trees since 1995, when the 21" dbh limit for logging or killing large trees was established under the Eastside Screens. Even when no large trees have been removed from logging, more mature trees are removed with every timber sale, leaving fewer mature trees being allowed to become large ($\geq$ 21" dbh) and old. Short timber sale rotations of only about 30 years before the next timber sale effectively keep mature trees from becoming 21" dbh. Sometimes that has seemed intentional, when there is marking to cut most or all trees to up to 21" dbh, such as in the W2 sale on the Malheur National Forest.

The Forest Service has consistently failed to disclose the scientific controversy over the agency's use of Historic Range of Variability, which is based on outdated science. HRV is used by the Forest Service to justify logging, which was not the intent of the Eastside Screens.

Re: Historic Range of Variability:

The Forest Service has used HRV (Historical Range of Variability) to justify intensive logging to very little basal area retention, even though there is high variability of tree species composition and high variation of tree density historically, based on elevation, levels of precipitation, snow pack persistence, soil types, and soil moisture retention. Never logged forest at high elevations in the Blue Mountains have higher tree density due to more precipitation and moisture retention, including tree species such as Englemann spruce, Grand fir, Douglas fir, Western larch, potential White pine, some White fir, and Lodgepole pines and Subalpine fir in high elevation mixed conifer forests in the Blue Mountains. Ash soil is typical in moist mixed conifer, and with loamy soil, which retain more moisture than clay soil. At lower elevation, there is less moisture retention with less precipitation and more clay soils, with higher ambient temperatures, so lower density of trees, including Ponderosa pine, Western juniper, and some Douglas fir. The mid-elevation mixed conifer forest is varied depending on topography, slope aspect, soil types, and proximity to riparian areas, characterized with mixed severity fire. However there has historically been currently, large, stand replacement wildfires, not just frequent low intensity fires.

Moist or cold mixed conifer is naturally more productive, with denser forest. “Overstocked” is an excuse to maximize logging; it is pitched to silviculturists as a paradigm that outlines HRV rationales to justify heavy logging, which has been debunked by more recent best available science.

The density of trees is not unnatural for competition stress to affect “early seral” tree species, such as by Western larch naturally being shaded out by firs in natural succession. However, Western larch regenerate quickly after high severity fire conditions, with the highest growing larch remaining to become old growth with high live crowns above the mixed conifer canopy. When the next wildfire occurs, there will be more Western larch from the seed bed. This is a natural process. Western larch are also very fire resistant as they age and grow large, with thick, fire-resistant bark and high live crowns.

Further, the Forest Service has used photo propaganda using historic photos that were obviously taken after European colonization to claim that most of the western forests were historically wide open Ponderosa pines. One of these widely used photographs taken in Montana, which if inspected closely, shows a carriage driving through the open old growth Ponderosa pine stand with European colonists and stumps evident that show the stand had already been logged. Malheur Forest Service staff showed a slideshow to a collaborative group in Harney County, with photographs used to show historic open forest in the foreground, but the staff members zoomed in to show high density forest in the background. I was there.

*Stop using HRV to justify logging. Instead focus on increasing resiliency to climate change effects without converting tree species dominance and without high intensity logging and without logging on a landscape scale.

Mountain pine bark beetle outbreaks are part of the life cycle of Lodgepole pine. Logging, especially clearcutting, increases regeneration of dense Lodgepole pine seedlings and saplings,

which are highly flammable. If lodgepole pines are within mixed conifer, eventually the Lodgepole pines will be shaded out by Grand firs and potential other tree species, such as Englemann spruce. This would cause a decrease in Lodgepole pine until the next high severity fire. Allowing other conifers to shade out Lodgepole pines creates good Pacific marten habitat, with abundant down and elevated logs, as well as large snags from other conifers for denning in Pileated nest holes.

The Forest Service should not be engaging in tree species conversion to mostly Ponderosa pine and Western larch plantations, which often don't do well in the wrong forest types. I've witnessed sickly young Ponderosa pine plantations in the middle of moist mixed conifer forest. I've seen this both in the Umatilla National Forest and in the Malheur National Forest. I have been field surveying proposed timber sales for 34 years every summer in the Blue Mountains National Forests.

“Desired” tree species are the tree species favored by the timber industry: Ponderosa pine, Western larch, and sometimes Douglas fir. The National Forests should not be clearcut to create or perpetuate homogenous plantations that burn in fires at higher intensity and that have more widespread defoliating insect epidemics, since most defoliating insects are associated with particular tree species, and thus spread due to little or no other conifer species in the plantation stands.

The combination of clearcutting and other high intensity logging, with mastication, burning, and planting is like a war on the forest, resulting in scorched earth with widespread ground disturbance. There is little organic material left to nourish soil fertility from this excessive biomass removal compared to never logged forest after a fire, with plenty of snags and down wood, as well as areas of live trees. That combination of excessive management is devastating to soil carbon storage, forest carbon storage, suitable habitat for most wildlife, and to loss of sense of place, and loss of the wildness and biodiversity needed for cultural and recreational uses.

See our science study articles regarding the misuse of HRV, intensive logging (such as clearcutting) actually increasing fire intensity, and the need to protect as much forest cover as possible to retain and increase the forest carbon sink to offset catastrophic climate change effects in combination with phasing out all fossil fuel uses.

Actually, the Eastside Screens prohibit the felling or girdling of live trees ≥ 21 ” dbh. The planned felling and girdling of live Grand firs 21” dbh to 30” dbh violates the Eastside Screens 21” dbh limit for killing large trees. Grand firs are very valuable to wildlife, by being able to grow back all their dead needles after a spruce budworm epidemic or after a prolonged drought, which is very useful in the context of climate change. Grand firs also develop cavities within their trunks that are used for wildlife denning or nesting, such as by Pacific fisher, who need very large denning cavities. Grand fir also develop cavities at the base of the trunk, where there is an opening at ground level, providing water to drink for birds, amphibians, reptiles, and small rodents during droughts. Further, the Deschutes Bend-Fort Rock District staff cored a good sampling of Grand firs in the Ursus sale to determine at what dbh size they would be old growth—at least 150 years old. The result was that statistically most Grand firs are at least 150

years old at 22" dbh. This is only one inch difference from the 21" dbh limit that was based on Ponderosa pine statistically being 150 years old at 21" dbh.

*Drop the felling and girdling of Grand firs between 21" dbh and 30" dbh. This age range would involve killing large and old Grand firs in violation of the Eastside Screens.

Further, the most large Grand firs left from past logging are in the range from 21" dbh to 30" dbh. The Forest Plan has a goal of increasing the abundance of large and old trees. This was not a species specific goal. All large trees of different species are needed for wildlife species depending on large tree structure, including most of the Management Indicator species, including Pileated woodpecker, Primary Cavity Excavators, American goshawk, and Pacific marten. Management Indicator species' habitat protection extends to many other wildlife species that have similar habitat requirements to that of Management Indicator species. The National Forest Management Act requires that all Management Indicator species must be protected from loss of population viability.

Large trees are also the most fire resistance across most tree species, including Grand fir and Douglas fir. Large and old trees are at an enormous deficit due to past logging for decades, compared to historic pre-European colonization conditions. Large tree structure is also vital for riparian areas for fish and other aquatic life, including large wood for slowing down water flows to filter sediment and create pool refugia for fish in hot ambient temperatures, who depend on cool water temperatures.

*Drop all the clearcutting, heavy removal of down wood, replanting unnatural tree species' composition, and felling or girdling large Grand firs from 21" dbh to 30" dbh.

75 miles of "shaded fuel breaks" are excessive and are being used as a timber grab, likely violating Forest Plan standards, such as visual quality requirements and scenic views. We've seen how ugly and completely changed to devastated forest conditions from clearcuts and biomass "fuel" reduction. The Umatilla National Forest along major access roads used to look like natural forest. We have photographed these starkly barren outcomes from "fuel breaks" on other Umatilla timber sales that have been implemented.

300 to 500 feet along both sides of roads is extremely excessive and unnecessary, and would destroy many Forest values. A recent study found that there is an extremely low probability that any given "fuel break" is effective when a fire occurs in the same place. This is due to a very limited window of possible (but not definite) effectiveness of only about 5 to 15 years. Climate change-driven wildfires have ignited wildfires up to 6 miles ahead of the fire front through airborne embers. So making the fuel or fire breaks excessively large scale will not necessarily stop a fire. In fact, "fuel breaks" were often clearcut, leaving highly flammable slash on the Umatilla National Forest. Further, it is highly unlikely that the Forest Service will have the funding to maintain these "fuel" breaks every 5 to 20 years, and even maintained, that often will not guarantee that the "fuel" breaks would stop or even slow a wildfire.

I observed the outcome of the Mac Cache Fire on the Sisters District of the Deschutes National Forest, with clearcuts and young Ponderosa pine plantations with widely spaced trees burned at

high severity, whereas there was only spot fires creating small openings in the moist mixed conifer forest, which was, and still is, dense.

*Instead, just make egress safer on main access roads safer by just noncommercially thinning the most flammable small trees up to 9" dbh, pruning lower branches of mature trees immediately adjacent to the roads, and using prescribed fire for thinning small trees—up to 25-50 feet on each side of the roads or up to the tallest tree height that could fall well into the roads, which is usually more like 50-80 feet at most in height. With a feathered, shaded fire break, there would still be a more natural forest appearance and cooling shade to maintain moisture retention.

*Drop all commercial logging and biomass reduction (e.g. “fuel breaks”) in all wildlife corridors to maintain sufficient forest cover for security habitat for migration and genetic dispersal.

Far ranging wildlife species include migratory Mule deer, MIS Rocky Mountain elk, MIS Pacific marten, Threatened Canada lynx, Threatened wolverine, Sensitive Pacific fisher, and other wildlife species that require higher canopy closure and denser forest, including MIS American goshawk, Cooper’s hawk, Northern Pygmy owl, MIS Rocky Mountain elk, and MIS Pileated woodpecker. For wildlife migration and dispersal for genetic diversity, wildlife connectivity corridors need to have intact forest cover for hiding cover, thermal cover, and higher canopy closure for Pileated woodpecker, American goshawk, and Pacific marten, as well as the other species with similar habitat needs that they represent.

“Wildlife patches” of only one to two acres per 30 acres of contiguous logging is not enough, sacrificing source reproductive habitat for MIS Primary Cavity excavators, Pileated woodpecker, Pacific marten, and American goshawk, and threatening their population viability. Such high intensity logging and clearcutting as planned causes cumulative loss of source habitat leading to eventual extirpation of populations, and causing declining trends toward extinction of the species.

*Drop all logging that leaves only one to two acres of “wildlife patches” per 30 acres of contiguous logging.

*Drop all RHCA tree pruning all the way to stream edges. Only use non-commercial thinning up to 9" dbh by hand felling and leaving the trees only where small conifers are competing with riparian hardwoods. Don’t ignite prescribed fire within RHCAs. Don’t use prescribed fire in moist mixed conifer or subalpine cold forest RHCAs. We strongly oppose any commercial logging, roading, or heavy equipment use within RHCAs except for ecologically sound aquatic restoration separate from timber sales—for instance, to tip some mature trees into stream channels to create pools or for replacing or removing culverts.

This whole timber sale area is within a Special Fish Management Area. This implies that there are probably Threatened listed fish species, such as Bull trout and Middle Columbia Steelhead trout. The public should be able to comment on the Environmental Assessment, as there is no environmental analysis in this “Information and Proposed Action” document. We need to know from fish biologists and hydrologists about how these declining fish species could be affected from reduced water quality or abundance, including increased water temperature, sedimentation

of streams, loss of aquatic invertebrate fish prey, and any toxicity introduced into the streams. Without thorough detailed, in-depth analysis as to the effects to resident and migratory fish species, there is no guarantee that the fish runs will be protected. This could constitute violations of the Clean Water Act and the Endangered Species Act.

Likewise, the public has the right to know and respond to the potential negative environmental effects that could be caused from this timber sale, including for effects to: soil fertility, integrity, and productivity; forest and carbon storage; TESC wildlife and plant species known or suspected to be in the Battle Bruin project area; the viability of Management Indicator species populations; riparian areas, fish species, amphibians, aquatic macro-invertebrates, and other aquatic organisms; forest moisture retention; down wood habitat; snag habitat; and indigenous people's treaty rights and cultural uses of the area and recreational values.

Based on the National Environmental Policy Act statute, the core purpose is to fully inform the public, allow the public to comment on Environmental Assessments, and allow for the public to have an objection period and negotiations with the Forest Service after the EA or EIS comment period. The Executive Orders to scrap components of NEPA, NFMA, the Clean Water Act, and the Endangered Species Act are under the purview of Congress, not the presidential executive authority. The executive branch of the U.S. government is over-reaching its authority. These "Emergency Situation Determinations" are likely to be contested in court and blocked and canceled.

Thank you for consideration of our comments. We request a public comment period for the Environmental Assessment and an objection period for the Battle Bruin project, including the opportunity to negotiate with the Forest Service for a better outcome to protect forest ecosystems and wildlife.

Please keep us fully informed of all developments with the Battle Bruin project. The best way to send me information is by voicemail (541) 385-9167 or by mail at 27803 Williams Lane, Fossil, OR 97830. In the winter I have more access to email. There is no internet access near where I live in eastern Oregon for the rest of the year, from April through October.

For the Wild,



Karen L. Coulter