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August 21, 2026

Jacqueline Buchanan
Regional Forester
Objection Reviewing Officer
Attn: 1570 Objections
1220 SW 3rd Ave.
Portland, OR 97204

Submitted via webportal: <https://cara.fs2c.usda.gov/Public/CommentInput?Project=305289>

RE: Spirit Lake Outflow Safety Improvement Forest Plan Amendment Objection

Dear Ms. Buchanan:

The Cascade Forest Conservancy (CFC) submits the following objection to the U.S. Forest Service's Final Environmental Impact Statement and Draft Record of Decision for the Gifford Pinchot's Spirit Lake Outflow Safety Improvement Project. This project affects the Forest Service lands within the Gifford Pinchot National Forest. The Responsible Official for this project is Forest Supervisor Johanna Kovarik.

As required by 36 C.F.R. § 218.8(d), the following is the lead objector's name, address, and telephone number:

Ashley Short
Cascade Forest Conservancy
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(503)222-0055
ashley@cascadeforest.org

I. Interest and participation of objecting parties.

CFC is an independent nonprofit conservation organization with offices in Washington. CFC's mission is to protect and sustain the forests, streams, wildlife, and communities in the heart of the Cascades through conservation, education, and advocacy. We represent over 12,000 members and supporters who share our vision for a forest where wild places exist and wildlife thrives. We have an organizational interest in the proper and lawful management of the Gifford Pinchot National Forest.

We submitted timely comments on the Forest Service's Invitation to Comment and Draft Environmental Impact Statement. Our comment letter dated October 30, 2025 addressed the issue of forest plan amendments that would allow for a permanent access road in Section III. The public notice for the Draft Decision was published on July 7, 2026, in *The Longview Daily News* and *The Columbian*. This objection is submitted electronically within 45 days of the publication date and is, therefore, timely under 36 C.F.R. § 218.5(a) and 36 C.F.R. § 219.56(c).

II. Issues and parts of the decision to which the objection applies.

As presented in Section III, CFC believes the Forest Service's decision, including the Draft ROD and FEIS violates law, regulation, or policy in the following ways:

- a. The proposed forest plan amendments to allow a permanent access road are unlawful and violate the National Forest Management Act (NFMA).**
- b. The intake gate replacement project and the Spirit Lake Outflow process together violated NEPA.**

III. CFC identified the following parts of the decision for objection.

- a. The proposed forest plan amendments to allow a permanent access road are unlawful and violate NFMA.**

The proposed Forest Plan amendments are not compliant with the 2012 Planning Rule. Any amendment to the Gifford Pinchot Land and Resource Management Plan and the Northwest Forest Plan must comply with the National Forest Management Act (NFMA). The current Planning Rule requires the following process for every plan amendment: 1) determine the need for a forest plan amendment, 2) identify which of the substantive requirements in 36 C.F.R. §§ 219.8 through 219.11 are "directly related" to the needed amendment, 3) apply those to the amendment, and 4) create new Forest Plan requirements that address the same resource protection needs.¹

¹ 36 C.F.R. § 219.13 (b) (2025).

It does not appear that the agency is truly “updating” standards, but rather exempting this project and/or plan area, either temporarily or permanently, from applicable requirements in the Forest Plan. The 2012 rule, and the 2016 amendments to that rule, make clear that a project-specific amendment cannot exempt a project from complying with the Forest Plan. Therefore, any Forest Plan standards considered for “updating” (a term that is not found in the Planning Rule) should be replaced with new plan components pursuant to the “directly related” substantive requirements of 36 C.F.R. §§ 219.8 through 219.11.² Eliminating standards for a section of forest or the project area violates the 2012 Planning Rule and the NFMA.

Appendix B argues that the agency is not exempting the area from any Forest Plan requirements, stating:

Although these amendments functionally allow the Truman Trail Access Road and temporary haul road in locations where existing standards would otherwise prohibit roads, they are not “exemptions” from plan direction. Under NFMA and the 2012 Planning Rule, there is no mechanism for exempting a project or activity from a Forest Plan standard. Instead, any departure from existing plan components must be made through a plan amendment that modifies how or where the standard applies.³

Arbitrarily stating that these changes are not “exemptions” does not make it so: that is exactly what they are. Furthermore, the information in the EIS is contradictory. In the table that displays the language for each amendment, several of the amendments include the language “except for the [Johnston Ridge Access Road, Shoreline Access Road, or Truman Trail Access Road].”⁴ It certainly appears that the agency knows it cannot exempt projects from the Forest Plan and is trying to do so anyway by claiming that the “except for” language in each proposed amendment are not “exemptions.” Regardless of what the agency chooses to call the amendments, they are in practice exemptions because they exempt the Pumice Plain from several protective measures found in the forest plans. These types of amendments were rejected by the Forest Service when adopting the planning rule and have been rejected by Circuit Courts.⁵

² “For every plan amendment, the responsible official shall: . . . Determine which specific requirement(s) within §§ 219.8 through 219.11 are directly related to the plan direction being added, modified, or removed by the amendment and apply such requirement(s) within the scope and scale of the amendment.” 36 C.F.R. § 219.13(b)(5)(2025).

³ USDA, U.S. FOREST SERVICE, APPENDIX B: FOREST PLAN AMENDMENT ANALYSIS, SPIRIT LAKE OUTFLOW SAFETY IMPROVEMENT PROJECT, 10 (July 2026) (internal citations omitted).

⁴ *Id.* at 7.

⁵ *Cowpasture River Pres. Ass’n v. U.S. Forest Serv.*, 911 F.3d 150, *rev’d and remanded on other grounds*, 140 S. Ct. 1837 (2020); *Wild Virginia v. U.S. Forest Serv.*, 24 F.4th 915 (4th Cir. 2022).

The Forest Service, in rulemaking supporting the 2016 amendment to the 2012 Rule, specifically addressed a possible interpretation of the rule that would allow for exemptions of Forest Plan standards on a project-specific basis, and outright rejected that interpretation:

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

This final rule clarifies that neither of these interpretations is correct.⁶

Forest Plan amendments under the 2012 Planning Rule have been challenged in Court and have been most extensively reviewed by the 4th Circuit.⁷ The 4th Circuit Court found that failure to apply the substantive requirements of the 2012 rule violated NFMA. For example, in *Wild Virginia*, the Forest Service reasoned that although a pipeline could not meet the Forest Plan requirements in the proposed right of way, it only impacted a very small fraction of the Forest, and therefore, the requirements of the Forest Plan were met. The Court rejected this reasoning, stating:

[T]he Forest Service cannot rely on the notion that because the Pipeline will affect only a minimal fraction of the entire Jefferson National Forest, application of the existing forest plan (i.e. without Pipeline-related amendments) outside the area will continue to provide adequate protections.⁸

The Court went on to note that if this type of reasoning were found to be in compliance with the NFMA, then the 2012 Planning Rule's substantive requirements would essentially be meaningless.⁹

⁶ National Forest System Land Management Planning, 81 Fed. Reg. 90,725 (Dec. 15, 2016).

⁷ The Ninth Circuit has not considered this issue in a published opinion, meaning the 4th Circuit cases are still the best guidance on how this rule will be interpreted by the Courts.

⁸ *Wild Virginia v. U.S. Forest Serv.*, 24 F.4th 915, 931-932 (4th Cir. 2022).

⁹ *Wild Virginia v. U.S. Forest Serv.*, 24 F.4th 915, 932 (4th Cir. 2022) quoting *Cowpasture River Pres. Ass'n v. U.S. Forest Serv.*, 911 F.3d 150, *rev'd and remanded on other grounds*, 140 S. Ct. 1837 (2020).

Additionally, in *Cowpasture* the Court concluded that when the purpose of the amendment is to lessen environmental requirements to allow a project to occur, the agency has violated the 2012 planning rule:

There would be no need to amend the Forest Plans to “ensure consistency” if the ACP project could meet the Forest Plan standards in the first place. In other words, the ROD makes clear that the purpose of the amendments was to lessen certain environmental requirements in the GWNF and MNF Plans because the ACP project could not meet those Plans’ existing requirements.

Accordingly, by failing to analyze whether the substantive requirements of the 2012 Planning Rule are directly related to the purpose of the amendments, the Forest Service [violated NFMA]. . . . This failure is significant, because it is clear that the amendments (intended to lessen protections for soils, riparian areas, and threatened and endangered species in the GWNF and MNF Plans) are directly related to the 2012 Planning Rule's substantive requirements for these same categories: "soil and soil productivity" (36 C.F.R. § 219.8(a)(2)(ii)); "water resources" (id. § 219.8(a)(2)(iv)); "ecological integrity of riparian areas" (id. § 219.8(a)(3)(i)); "ecological integrity of terrestrial ... ecosystems" (id. § 219.8(a)(1)); "appropriate placement and sustainable management of... utility corridors" (id. § 219.10(a)(3)); and "recovery of federally listed ... species" (id. § 219.9(b)).¹⁰

Here, the agency proposes something similar by claiming that Project Design Criteria will mitigate some of the visual impacts of the permanent access road and that people will have the opportunity to have primitive experiences elsewhere on the Monument.¹¹ This does not meet the requirement to create new plan components to address the same protection needs. Although the agency claims this is not an exemption, in practice it is, because no new substantive requirements provide the same level of protection for wetlands and visual resources. Like in *Cowpasture*, the amendments would not be needed at all if the project could show consistency with the Forest Plans.

¹⁰ *Cowpasture River Pres. Ass’n v. U.S. Forest Serv.*, 911 F.3d 150, *rev’d and remanded on other grounds*, 140 S. Ct. 1837 (2020).

¹¹ USDA, U.S. FOREST SERVICE, APPENDIX B: FOREST PLAN AMENDMENT ANALYSIS, SPIRIT LAKE OUTFLOW SAFETY IMPROVEMENT PROJECT (July 2026).

Additionally, although the FEIS and appendices call most of the proposed amendments “programmatic,” they are more accurately project specific amendments, given their scope and purpose.¹² Project specific amendments are intended to be temporary in nature, not permanent. Here, the agency proposes to add permanent fixtures to the landscape, making it impossible for the project to ever comply with the Forest Plan and Comprehensive Management Plan. This violates the 2012 planning rule and NFMA. If the agency cannot meet the Forest Plan requirements for the project, it cannot proceed with the project as presented. In other words, if scenery and wetland impacts cannot be fully mitigated for the permanent access road, then the permanent access road cannot be built in that location.

In sum, the agency is not following the requirements of the 2012 Planning Rule. If amendments to the Monument Plan are needed, the agency must undertake a compliant amendment under the 2012 Rule, which would include applying the relevant substantive provisions of the 2012 Rule and creating new plan components to replace those that are in need of amendment. In other words, new protections should replace any standards that are deemed in need of “updating” instead of exempting portions of the Monument from relevant forest plans. If the agency cannot create plan components that create the same level of visual and wetland protections as the existing plan, then the agency cannot build the permanent access road across the pumice plain.

b. The intake gate replacement project and the Spirit Lake Outflow process together violated NEPA.

The National Environmental Policy Act (NEPA) exists to “protect the environment by requiring that federal agencies carefully weigh environmental considerations and consider potential alternatives to the proposed action before the government launches any major federal action.”¹³

Simply by focusing the agency's attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.¹⁴

Over the course of planning the Intake Gate Replacement Project and the Outflow Safety Improvement Project, the Forest Service violated NEPA by failing to fully analyze all the reasonably foreseeable effects of the proposed actions and predetermining both the need for an

¹² The changes proposed here are specific to implementing this project. The Preamble to the 2012 planning rule explains the intent of project specific amendments: “Project specific amendments are short-lived with the project, and localized to the project area.” National Forest System Land Management Planning, 77 Fed. Reg. 21,162 (April 9, 2012)

¹³ *Barnes v. U.S. Dep’t. of Transp.*, 655 F.3d 1124, 1131 (9th Cir. 2011).

¹⁴ *Robertson v. Methow Valley Citizen Council*, 490 U.S. 332, 349 (1989).

access road and its alignment during the Intake Gate Replacement Project. In other words, due to the under analyzed process utilized in the Intake Gate Replacement Project, the agency “overlooked or underestimated [effects] only to be discovered after resources have already been committed or the die otherwise cast.”¹⁵

During the Intake Gate Replacement planning project, CFC and other commenters requested an Environmental Impact Statement due to the severity of harm a temporary road would cause to the Pumice Plain and research occurring there. CFC also raised the issue at the time that the long-term planning and the intake gate replacement were connected actions that should have been analyzed together.¹⁶ Since the replacement project has been implemented, at least the road construction piece, the agency has concluded that the road has impacted the Pumice Plain and research. At the time, the agency insisted that the road would be temporary in nature and that the road could be fully removed, making the impacts temporary. The agency now expects impacts to linger beyond road removal, according to the FEIS and Appendices for the Outflow Safety Improvement Project.

In other words, the agency underestimated the impacts of the temporary road (and misrepresented them to the public), and now the existence of the temporary road is influencing the placement and justification for a permanent road in the Outflow Safety Improvement Project. For example, the FEIS notes that “[t]he Truman Trail Access Road would be constructed on already disturbed land, largely devoid of vegetation.”¹⁷ The FEIS also notes that:

The Truman Trail Road would overlap with 18 research sites (small mammal ecology, avian ecology, stream macroinvertebrates, terrestrial arthropods, herbivory surveys, tephra sampling, stream periphyton, plant ecology, lupine ecology, lupine herbivory, mycorrhizae ecology, lichen ecology, lotic amphibian ecology, lentic amphibian ecology, and avian and bat bioacoustics). *The existing temporary access road built to support the ongoing Spirit Lake Tunnel Intake Gate Replacement Project also overlaps these 18 sites.* Construction and operation of the Truman Trail Road could

¹⁵ *Id.*

¹⁶ CFC Spirit Lake Objection May 2020 (“As presented in part 3, we believe the Forest Service’s decision, including Draft DN, FONSI, and EA, violates law, regulation, or policy in numerous ways, including: a. The Forest Service’s determination to issue a FONSI and failure to prepare an EIS in violation of NEPA, b. The Forest Service’s failure to consider and fully analyze all reasonable alternatives, . . . f. The Forest Service’s failure to analyze the long-term management of Spirit Lake outflow as a connected action, g. The Forest Service’s failure to consider direct, indirect, and cumulative effects.”)

¹⁷ USDA, U.S. FOREST SERVICE, SPIRIT LAKE OUTFLOW SAFETY IMPROVEMENT PROJECT FINAL ENVIRONMENTAL IMPACT STATEMENT, 48 (July 2026).

result in major and permanent impacts to these sites, and they would be destroyed or no longer accessible.¹⁸

Appendix G, the response to comments, directly notes that the previous disturbance from the Intake Gate Replacement means the permanent road will have less impacts on research and the environment than the other access road options. “The proposed Truman Trail Access Road is in an area of previous disturbance, thereby minimizing environmental and research impacts.”¹⁹

From a practical perspective, it’s also worth noting that the PDCs for the temporary road in the Intake Gate Replacement Project were substantially similar to the PDCs provided here, at least with regard to visual impacts and impacts to research.²⁰ Both the DEIS and FEIS admit that harm has been done to the Pumice Plain and the research occurring on the Pumice Plain when discussing alignment options for the permanent access road.²¹ This means that the permanent access road will still cause substantial damage to the Pumice Plain, research, and wetlands and will not, in practice, be substantially mitigated by the PDCs included in the project.

In conclusion, although the Forest Service finally conducted an EIS for Spirit Lake and Pumice Plain, it was too late in the process to meaningfully inform the agency about access needs and placement. The under-analyzed Intake Gate Replacement Project prejudiced this process’s access related determinations. NEPA is not supposed to function in this manner: as noted above, NEPA is supposed to help agencies make decisions *before* an irretrievable commitment of resources has been made. The Forest Service’s approach here therefore violates NEPA.²²

IV. Suggested Resolution

CFC acknowledges the complex unique nature of the Spirit Lake outflow and the serious downstream safety concerns. However, these concerns do not excuse the agency from making lawful forest plan amendments pursuant to the NFMA or from following proper NEPA processes. To correct these errors, the agency should remove the permanent access road from the selected alternative and commit to removing the road once the habitat channel is formed.

¹⁸ *Id.* at 109 (emphasis added).

¹⁹ USDA, U.S. FOREST SERVICE, APPENDIX G: RESPONSE TO COMMENTS, SPIRIT LAKE OUTFLOW SAFETY IMPROVEMENT PROJECT, 11 (July 2026).

²⁰ USDA, U.S. FOREST SERVICE, APPENDIX A: TECHNICAL RESOURCE DOCUMENT, SPIRIT LAKE OUTFLOW SAFETY IMPROVEMENT PROJECT, 20-28 (July 2026); USDA, U.S. FOREST SERVICE, SPIRIT LAKE TUNNEL INTAKE GATE REPLACEMENT AND GEOTECHNICAL DRILLING PROJECT DECISION NOTICE, 14-18 (March 2021).

²¹ “The proposed Truman Trail Access Road is in an area of previous disturbance, thereby minimizing environmental and research impacts.” USDA, U.S. FOREST SERVICE, APPENDIX G: RESPONSE TO COMMENTS, SPIRIT LAKE OUTFLOW SAFETY IMPROVEMENT PROJECT, 11 (July 2026).

²² While we recognize that the Council on Environmental Quality regulations have been repealed and replaced by Department of Agriculture NEPA implementing procedures, the fundamental intent of NEPA is to inform agency action before acting: the Forest Service’s approach here turns that on its head, running afoul of congressional intent and the law.

V. Conclusion

The Cascade Forest Conservancy appreciates your consideration of the information and concerns addressed in this objection. Pursuant to 36 C.F.R. § 218.11, we respectfully request to meet with the reviewing officer to discuss these concerns and suggested resolutions.

Sincerely,

A handwritten signature in black ink, appearing to read 'AS', with a stylized flourish extending to the right.

Ashley Short
Policy Manager
Cascade Forest Conservancy
Ashley@cascadeforest.org