Submitted via email to kelby.witherspoon@usda.gov

November 12, 2026

Whitman Ranger District
1550 Dewey Avenue, Suite A
Baker City, OR 97814

Re: Whitman Post-Fire Recovery Project

Dear Responsible Official,

WildEarth Guardians and Blue Mountains Biodiversity Project strongly urge against authorizing the Whitman Post-Fire Recovery Project ("WPFR Project" or "the Project") pursuant to the Secretary's Memorandum 1078-006 emergency situation determination ("ESD") under the Infrastructure Investment and Jobs Act, 16 U.S.C. § 6592c ("IIJA"). Use of the ESD is inappropriate here and would be to the needless detriment of both informed decisionmaking and public trust.

We further urge you to fully comply with the Endangered Species Act ("ESA"), the National Historic Preservation Act ("NHPA"), and the Clean Water Act ("CWA"). There is no valid reason to circumvent the protections mandated by these bedrock environmental laws.

I. The Secretary's Memo is invalid.

Under Section 40803 of the IIJA, 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). The Secretary's Memo on Increasing Timber Production and Designating an Emergency Situation on National Forest System Lands ("Secretary's Memo" or "Memo") neither establishes a valid emergency under Section 40803 nor meaningfully addresses the issues it identifies. It is therefore invalid and cannot be relied upon to circumvent proper decisionmaking processes.

Pursuant to the IIJA, an emergency situation determination "shall be based on an examination of the relevant information." 16 U.S.C. § 6592c(b)(1)(C). With the Secretary's Memo, however, the ESD was based not on information relevant to "hazards threatening human health and safety" or "threats to natural resources," but on a desire to increase domestic timber production.[1]

[1] This is further demonstrated by the Acting Associate Forest Service Chief's Letter of April 3, 2025, "Implementation of Secretarial Memo 1078-006." It instructs Regional Foresters to implement the Memo by immediately developing strategies "to increase their timber volume offered, leading to an agencywide increase of 25% over the next 4-5 years,"

As the Secretary's Memo makes clear, the ESD is intended to implement Executive Order 14225, "Immediate Expansion of American Timber Production." The Memo identifies its "Purpose" as responding to "heavy-handed federal policies [that] have prevented full utilization of [timber] resources and made us reliant on foreign producers." Memo at 1. It asserts a need to "reverse these policies and increase domestic timber production to protect our national and economic security." *Id.* This is a political statement about economic goals, not a description of threats to natural resources and human health—a disagreement about appropriate levels of domestic timber production does not constitute an "emergency" under the IIJA, nor are "reliance on foreign producers" or the "costs of construction and energy" relevant to determining the existence of "threats to natural resources." *Id.*

Even the Memo's discussion of natural resource conditions fails to establish that an "emergency" exists. The Secretary declared that an emergency situation existed on "112,646,000 acres … which is 59 percent of all [Forest System] lands" based on their rating as "very high or high wildfire risk," or designation under the Healthy Forest Restoration Act ("HFRA") as at risk from insect or disease. *Id.* at 2. But these are not new or emergency conditions. HFRA has applied this designation to large areas of National Forest lands since 2003 without declaring an emergency. Wildfire risk ratings reflect the relative potential for a wildfire that may be difficult to manage combined with proximity to human development. Neither designation is enough to independently demonstrate the existence of an imminent threat to public safety or natural resources.

The IIJA does not grant the Secretary boundless authority to rescind environmental laws on a political whim. Instead, she must properly establish the existence of an emergency situation threatening imminent harm to human health and safety or natural resources. The Memo does not do so, and the ESD is thus invalid.

The ESD does not demonstrate the existence of, or appropriately respond to, an emergency on 59 percent of National Forest System lands. It is, instead, merely a pro-logging manifesto. The Forest should decline to implement it here.

II. The Forest Service has not established that the emergency situation determination is applicable to the proposed WPFR Project activities.

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," requiring the Secretary to declare a System-wide emergency. Memo at 2. The Memo additionally sites "overgrown forests, a growing number of homes in the wildland-urban interface, and more than a century of rigorous fire suppression" as contributing to the "emergency." *Id.*

To address this purported emergency, the Secretary declared an ESD over vast areas "rated as very high or high wildfire risk" and/or "experiencing declining forest health; at risk of experiencing substantially increased tree mortality over the next 15 years … from insect and disease infestation; or containing hazard trees posing an imminent risk to public health, infrastructure, and safety[.]" *Id.* Although the Memo references a general desire to increase commercial logging, this is not and

more aggressively solicit timber sales, and sell timber at lower prices. In other words, implementing the ESD is simply about logging more and faster, not responding to ecological conditions.

cannot be the basis for the ESD. Rather, the "emergency" pertains only to "wildfire and insect and disease risk." *Id.*

All actions taken pursuant to the ESD must be both "authorized emergency actions" *and* specifically necessary to address the purported emergency. There is no information in the project record that shows that the proposed Project activities are necessary to address the purported emergency.

1. There is no evidence the proposed activities will relieve or mitigate the emergency.

Under the IIJA, 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). Authorized emergency actions must be undertaken "in order to achieve relief from hazards threatening human health and safety or mitigation of threats to natural resources[.]" *Id.* § 6592c(b)(2).

Thus, the determination that an emergency situation exists is not, in itself, enough to justify applying the ESD to all potentially covered activities. The proposed actions must be necessary for, and undertaken specifically for the purposes of, "achiev[ing] relief from hazards threatening human health and safety or [mitigating] threats to natural resources[.]" *Id.*

The lack of meaningful information in the current public project record means the Forest Service has not established that any proposed activities are necessary specifically to address high wildfire risk, mortality from insect and disease infestation, or hazard trees posing an imminent risk to public safety. The Project thus cannot be authorized pursuant to the ESD.

Per the Secretary's Memo, the "emergency" consists of the threat of severe wildfire, mortality from insect and disease outbreaks, and hazard trees posing an imminent threat to public safety, meaning that only the actions necessary to address these threats are permissible under the ESD. Here, the Forest Service has presented no evidence that these are significant threats post-fire in the Anthony, Olive Butte, and McCully burn areas. Because the wildfires have been extinguished, the Project area is not currently facing high wildfire risk. Although the 5-page Determination of Analysis Reliance ("DAR") asserts that "there is a high likelihood of a post fire insect outbreak that could spread into green, unburned stands and cause additional mortality," there is no site-specific analysis to support this claim. Though there is an imminent threat to public safety from a small subset of all hazard trees within the project area, any hazard trees that are more than 1.5-2 tree lengths from roads and trails do not pose an imminent risk to public safety and therefore do not contribute to an emergency condition.

Many of the "emergency" conditions at issue here were created by the Forest Service's past and current fire suppression and logging practices, as well as the worsening effects of the climate crisis. The WPFR Project may worsen these issues in both the short and long term.

2. Any proposed activities that will not be immediately implemented are not authorized under the ESD.

An emergency situation exists only where "immediate implementation" of authorized emergency actions are necessary. Here, the Forest Service has not provided any information about the timeline

for implementation of the WPFR Project, so the public cannot know whether any implementing activities will occur "immediately." Activities not immediately implemented are, by definition, not necessary to respond to the "emergency." Those activities are therefore ineligible for authorization under the ESD.

The use of the ESD for the Project is unwarranted in the absence of the Forest Service providing information about the project activities and how those activities will provide relief from emergency. If that information is lacking, the proposal to use the ESD must be dismissed. Instead, the Forest Service should move forward with a robust NEPA alternatives analysis in an EIS with a full 30-day comment period and an opportunity for objections before a final decision is made.

III. The Forest Service has not shown the Project is consistent with the Forest Plan; therefore, application of the emergency situation determination is inappropriate.

Reliance on the ESD would be inappropriate because the Forest Service has not made a showing that the Project is consistent with the Wallowa-Whitman National Forest's Land and Resource Management Plan ("Forest Plan"). The IIJA specifies that any emergency action carried out under an ESD "shall be conducted consistent with the applicable land and resource management plan." 16 U.S.C. § 6592c(b)(3); *see also* 16 U.S.C. §1604(i) (requiring all projects to comply with applicable forest plan).

Without an explanation of how the Project is consistent with the Forest Plan, it is ineligible for the ESD and unlawful under NFMA.

Further, the Project is inconsistent with a set of amendments to the Forest Plan known as the Eastside Screens. The site-specific modification to the Post-Fire Environmental Assessment ("PFEA") Project Design Criteria No. TES-14 states that trees and snags greater than 30" dbh will be retained. This would permit the removal of trees and snags sized between 20" dbh and 30" dbh, which would violate the Eastside Screens requirement that trees and snags greater than 20" be retained unless the agency has completed a snag analysis using the best available science on species ecological requirements. Nothing in the Project record indicates the Forest Service has completed a snag analysis.

IV. Use of the emergency situation determination would frustrate NEPA's goals.

Use of the ESD here frustrates the fundamental goals of NEPA and the Forest Service's own public engagement and administrative review processes.

NEPA was enacted "to ensure that agencies carefully consider information about significant environmental impacts [and] to guarantee relevant information is available to the public." *N. Plains Res. Council, Inc. v. Surface Transp. Bd*., 668 F.3d 1067, 1072 (9th Cir. 2011). It is not intended to be a meaningless exercise in paperwork; "[p]roperly applied, NEPA helps agencies to make better decisions[.]" *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, 605 U.S. 168, 177 (2025). Cutting out the agency's duty to consider reasonable alternatives to a proposal undermines informed decisionmaking.

To better achieve NEPA and NFMA's goals, the Forest Service has developed a system of public participation culminating in administrative review and collaborative objection resolution. *See* 36 C.F.R. § 218.26; 91 Fed. Reg. 647,6078 (October 13, 2026). This process ensures public

involvement and reduces the risk of ill-informed decisionmaking and litigation by frustrated stakeholders

Application of the ESD also threatens to erode public trust in the Forest Service's management of public lands. Relying on an overly broad, vaguely defined "emergency" declaration to cut short public involvement, alternatives analysis, and administrative review sends the message that the Forest Service is not interested in hearing from the public, reaching the best course of action, or maintaining accountability for its decisions.

1. **A limited alternatives analysis will prevent the Forest Service from identifying the best course of action for the Project.**

NEPA was enacted to "promote efforts which will prevent or eliminate damage to the environment." 42 U.S.C. § 4321. To this end, 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). 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, invoking the ESD allows the Forest Service to develop and analyze only its preferred alternative and the baseline no-action alternative. 16 U.S.C. § 6592c(c)(1). That said, nothing in the IIJA limits the range of alternatives the Forest Service *may* consider. Even if the Project does come under the ESD, the Forest Service may—and should—analyze a reasonable range of alternatives to the proposed action.

Considering only a single action alternative would essentially commit the Forest Service to a pre-determined course of action before it analyzes potential effects and whether they might be avoided. By foreclosing consideration of any other alternatives, the Forest Service may overlook options that would minimize environmental costs while still meeting the Project's purpose and need. This truncated and ill-informed decisionmaking is precisely what NEPA is intended to prevent. It does not ultimately serve the public, the Forest Service, or the Project's purposes to ignore better alternatives in an attempt to make a slightly quicker decision.

Moreover, as previously noted, the Forest Service has not shown why "emergency" actions are necessary here to begin with. There is no reason to preemptively restrict the range of potential approaches to the Project's purpose and need. The Forest Service should instead engage with interested and knowledgeable stakeholders to analyze a full range of viable alternatives before making a final decision.

2. **Sidestepping the objection process frustrates public engagement.**

The Forest Service's objection process is designed to allow a final opportunity for interested persons to seek a final independent Forest Service review, negotiate, and resolve disputes about a proposal before the 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. at 18,483. The objection process is not likely to significantly delay any implementation, as the public is required to submit any objections within 45 days after publication of the EA or EIS. 36 C.F.R. § 218.26(a). The Forest Service then begins a 45-day objection negotiation and resolution process, where discussion with interested stakeholders may produce more nuanced and appropriate management

decisions—and potentially fewer litigation-related delays and expenses—on the Project. *See id.* § 218.26(b).

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 Forest. The Forest Service should forgo the use of the ESD for the Project and instead continue its collaborative approach to forest management with the objection process.

V. The Forest Service Has Failed To Analyze Site-Specific Impacts of the Project

Again, NEPA requires federal agencies to take a "hard look" at the environmental consequences of their proposed actions. *350 Montana v. Haaland*, 50 F.4th 1254, 1265 (9th Cir. 2022) (citations omitted). A "hard look" is "a reasonably thorough discussion of the significant aspects of the probable environmental consequences." *Id.* An agency must "ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents." 42 U.S.C. § 4332(2)(D).

Here, the Forest Service fully relies on the nation-wide for its analysis of the environmental impacts of the Project, with no site-specific analysis included in the DAR or the November 5, 2026 Public Comment Letter. This does not constitute the hard look that NEPA requires.

Contrary to the DAR's conclusion that the PFEA may be relied on in full to adequately describe the Project's anticipated environmental effects, the Forest Service has unlawfully tiered the Project to the nationwide PFEA. *See Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998) ("Nothing in the tiering regulations suggests that the existence of a programmatic EIS for a forest plan obviates the need for any future project-specific EIS, without regard to the nature or magnitude of a project."). Tiering "to a global EIS that omits any site-specific analysis and explicitly pushes review to later implementation-level projects," but then never conducting any site-specific NEPA analysis violates NEPA. *See Klamath-Siskiyou Wildlands Ctr. v. United States BLM*, No. 1:23-cv-00519-CL, 2024 U.S. Dist. LEXIS 105741, at *42 (D. Or. May 24, 2024), adopted in full at *Klamath-Siskiyou Wildlands Ctr. v. United States Bureau of Land Management*, 2025 U.S. Dist. LEXIS 60355 (D. Or., Mar. 31, 2025). That is the analysis of the WPFR Project.

VI. Notice of Public Notification of the Use of ESD cannot provide the only opportunity to comment on the Project.

The public notification of the use of the ESD states that the

> project is authorized as a Forest Health and Fuels Emergency Situation Determination, as defined in USDA Secretarial Memo 1078-006 and the Infrastructure Investment and Jobs Act (IIJA) section 40807. The project area is fully within the mapped Forest System lands identified in the memo and the proposed project activities are consistent with IIJA section 40807. Under this emergency authority, the environmental assessment and finding of no significant impact are not subject to the project-level pre-decisional administrative review ("objections") or any processes set forth in 36 CFR Part 218. This project will follow USDA 7 CFR 1b NEPA regulations.

Although NEPA does not always require the circulation of a draft EA, given the law and the lack of information the agency has offered about the Project, it is required here. NEPA requires that an agency, "when preparing an EA, must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision-making process." *Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Eng'rs*, 524 F.3d 938, 953 (9th Cir. 2008). At this time, the whole of the information the Forest Service has provided about the Project consists of two paragraphs about the scope of wildfires in the agency letter requesting public comments and general descriptions of the purpose and need for the proposal and proposed activities in the DAR. This is simply not enough information to permit members of the public to weigh in with their views on the Project and thus inform the decision-making process. The Forest Service, must therefore either offer the public an opportunity to comment on a draft EA that has been prepared specifically for this Project or otherwise provide significantly more information about the Project so that members of the public are sufficiently informed to weigh in to help guide agency decision-making. Although the PFEA does not say that subsequent NEPA analysis is required, that document itself fails to provide meaningful information about the Project. The Forest Service therefore cannot tier an analysis of the impacts of the Project to the PFEA without also providing a site-specific EA.

VII. The emergency consultation provisions of the ESA are inapplicable here.

From the materials provided to the public, there is no evidence the Project area is currently undergoing an "emergency" for the purposes of ESA consultation. The Forest Service must therefore undertake and complete standard ESA consultation for all threatened and endangered species that may be adversely affected by project activities, prior to approving or implementing the Project, including whitebark pine and wolverine.

The ESA emergency provision "applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc." 50 C.F.R. § 402.5(a). None of these circumstances pertain here. There is no longer any emergency requiring expedited consultation. In the absence of a concrete disaster, distinct from generalized concerns about forest conditions, it would be wholly arbitrary to invoke the ESA emergency provision.

VIII. Conclusion

For the foregoing reasons, WildEarth Guardians and Blue Mountains Biodiversity Project urge the Forest Service not to use the Secretary's ESD for the WPFR Project. Please notify us of any decision or publication of documents relating to this project. Thank you for the opportunity to comment.

Sincerely,

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