



2200 Broadway Street Suite L
Vancouver, WA 98663

www.cascadeforest.org | (503) 222-0055

March 22, 2024

Johanna Kovarik
Forest Supervisor
ATTN: 1750/1950 Objections
987 McClellan Rd
Vancouver, WA 98661

Via project website <https://cara.fs2c.usda.gov/Public//CommentInput?Project=60595>

RE: Yellowjacket Project Objection

Dear Ms. Kovarik:

The Cascade Forest Conservancy (CFC) submits the following objection to the U.S. Forest Service's Draft Decision Notice (Draft DN) Finding of No Significant Impact (FONSI), and Revised Environmental Assessment (Revised EA) upon which the Draft DN is based for the Yellowjacket Project. This project affects the Forest Service lands within the Gifford Pinchot National Forest in the Cowlitz Valley Ranger District. The Responsible Official for this project is District Ranger Theresa Tanner.

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
2200 Broadway St., Suite L
Vancouver, WA 98663
(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 organizational interest in proper and lawful management of the Gifford Pinchot National Forest.

We submitted timely comments on the Forest Service's Notice of Proposed Action. Our comments advocated for a more site-specific hydrologic and water quality analysis, primarily in Section I, Section V, and in the attachments of our Revised EA comment letter dated November 30, 2023. The public notice for the Draft Decision was published on February 8, 2024, in *The Chronicle*. This objection is submitted electronically within 45 days of the publication date and is, therefore, timely under 36 C.F.R. § 218.7.

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 DN, FONSI, and EA violates law, regulation, or policy in the following ways:

- 1. The Forest Service failed to take a site-specific "hard look" at impacts to waterways in violation of NEPA**
- 2. The Forest Service has failed to adequately disclose and mitigate potentially significant impacts to Stepladder Creek rendering a FONSI inappropriate**

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

- 1. The Forest Service failed to take a site-specific "hard look" at impacts to waterways in violation of NEPA**

The National Environmental Policy Act (NEPA) requires "federal agencies carefully weigh environmental considerations and consider potential alternatives to the proposed action."¹ Agencies must take a "hard look" at potential environmental consequences.² "General statements about 'possible effects' and 'some risk' do not constitute a 'hard look.'"³ If the agency's analysis

¹ *Barnes v. U.S. Dep't. of Transp.*, 655 F.3d 1124, 1131 (9th Cir. 2011); see 40 C.F.R. § 1501.5(c)(2) (2023) (requirement to examine alternatives and the environmental impacts of those alternatives in EAs).

² *High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d 630, 639–40 (9th Cir. 2004).

³ *Neighbors of Cuddy Mountain vs U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998).

is not site-specific, then neither the decision-maker nor the public can meaningfully compare the environmental impacts of the alternatives.⁴

For example, in *Southeast Alaska Conservation Council v. U.S. Forest Serv.*, a court found that a “lack of site-specific information in the Project EIS, detracts from a decisionmaker's or public participant's ability to conduct a meaningful comparison of the probable environmental impacts among various alternatives.”⁵ The Court went on to discuss several of the analytical flaws a lack of site-specific information created in the project EIS, including noting as problematic conclusions that are conditional in nature:

And where the Project EIS does differentiate between alternatives, it does so in partly conditional terms due to its lack of site-specific information. For example, when discussing impacts to high productive old growth habitat, the EIS concludes that Alternative 2 “may result in two [Wildlife Analysis Areas] dropping below 50% habitat remaining.”⁶

Similarly, in *Cal. v. Block*, the 9th Circuit found that the Forest Service's two-page summaries supporting designating specific lands as nonwilderness was not site-specific enough and, although the required analysis would be a heavy lift, concluded “the Forest Service may not rely upon forecasting difficulties or the task's magnitude to excuse the absence of a reasonably thorough site-specific analysis of the decision's environmental consequences.”⁷ Although *Southeast Alaska Conservation Council* and *Block* focused on deficiencies in EISs, agencies are also required to meaningfully examine alternatives and their environmental impacts in EAs. “NEPA's requirement that agencies ‘study, develop, and describe appropriate alternatives... applies whether an agency is preparing an [EIS] or an [EA].”⁸ In other words, the agency must thoroughly disclose and analyze environmental impacts before making a determination that no significant impacts exist.⁹

⁴ See “[W]hat matters is that [the agency] adequately disclose the potential environmental impacts of any decision it makes, and that it does so in a timely fashion [T]he mere assertion that overall environmental consequences may be reduced if all goes according to plan does not allow it [the agency] to avoid conducting a transparent and complete analysis in a timely fashion. To hold otherwise would turn NEPA into a dead letter.” *Oak Ridge Envtl. Peace Alliance v. Perry*, 412 F. Supp. 3d 786, 857-858 (E.D. Tenn. 2019); see also *Se. Alaska Conservation Council v. U.S. Forest Serv.*, 443 F. Supp. 3d 995 (D. Alaska 2020) (Court found that the EIS's ambiguity about “location, concentration, and timing of timber harvest and road construction” violated NEPA.).

⁵ *Se. Alaska Conservation Council*, 443 F. Supp. 3d at 1013.

⁶ *Id.* at 1014.

⁷ *Cal. v. Block*, 690 F. 2d 753, 765 (9th Cir. 1982).

⁸ *W. Watersheds Project v. Abbey*, 719 F. 3d 1035, 1050 (9th Cir. 2013) citing *N. Idaho Cmty. Action Network v. U.S. Dep't of Transp.*, 545 F.3d 1147, 1153 (9th Cir. 2008) (finding an EA's lack of site specific analysis did not constitute a “hard look” at grazing impacts on Monument objects violating NEPA); see 40 C.F.R. § 1501.5(c)(2) (2023) (requirement to examine alternatives and the environmental impacts of those alternatives in EAs).

⁹ See *Blue Mountain Biodiversity Project v. Blackwood*, 161 F. 3d 1208, 1216 (9th Cir. 1998) (finding that the “Forest Service has not discharged its obligation to undertake a thorough environmental analysis before concluding

The hydrologic analysis currently does not include enough site-specific information for the public or decision-maker to meaningfully examine the environmental impacts of the proposed action. In the Revised EA and in underlying specialist reports, the impacts to water quality and quantity, particularly the hydrologic analysis, were all done at the subwatershed scale. The hydrology report and Revised EA did not look at peak flows or sediment delivery at the site scale (which, as an example, would be the Stepladder Creek drainage) but instead rolled site-specific impacts into a larger watershed, diluting the true impacts of the project. As noted in our comments¹⁰ one of the primary papers cited by the hydrologic report, Grant 2008,¹¹ notes that the site scale is not the subwatershed scale but instead is the drainage or catchment scale. Therefore, to implement the site scale analysis noted in Grant and required by NEPA, an analysis of peak flows should have also included a discussion of impacts at the drainage or catchment scale.

Although the APR analysis was appropriate for the subwatershed's degree of hydrologic impairment to be accurate, that does not excuse the Forest Service from its site-specific analysis obligations under NEPA.¹² Relying on just the APR constrains the analysis to the subwatershed scale. The Revised EA states, "[a]reas thinned to a canopy closure of less than 40 percent are considered hydrologically immature and therefore *would potentially contribute* to increased runoff at the stand scale"¹³ and then goes on to conclude that "the limited number of treatment units with less than 40% canopy cover show little risk of overall change to peak flows at the subwatershed scale."¹⁴ Although that conclusion might be true at the subwatershed scale, it fails to account for acute impacts to particular sites like Stepladder Creek, where 67% of the entire drainage is slated to be thinned to less than 40% canopy cover. This type of acute impact demonstrates there are hydrologic concerns within this project that need to be addressed at the site-specific level. Without a site-specific analysis, the EA and hydrologic report is left to conclude "would potentially contribute to increased runoff," making the type of conditional conclusion the Court in *Southeast Alaska Conservation Council* found to be flawed.¹⁵ In other words, the subwatershed scale in this case is not rigorous enough to analyze the environmental consequences of the proposed action as required by NEPA.

that no significant environmental impact exists from salvage logging sales in the Tower Fire area."); *see also Ayers v. Espy*, 873 F. Supp. 455, 469-470 (D. Colo. 1994) (Finding that a lack of site specific soil data meant the analysis of the proposed alternatives, mitigation measures, and the conclusion that regeneration would happen within 5 years were all flawed); *Se. Alaska Conservation Council*, 443 F. Supp. 3d at 1013.

¹⁰ CFC Revised Yellowjacket EA Comment Letter Section V, Footnote 37.

¹¹ GORDON E. GRANT, U.S. FOREST SERVICE PACIFIC RESEARCH STATION, EFFECTS OF FOREST PRACTICES ON PEAK FLOWS AND CONSEQUENT CHANNEL RESPONSE: A STATE-OF-SCIENCE REPORT FOR WESTERN OREGON AND WASHINGTON 14, 37 (2008) (notes that "site scale" for hydrologic analysis is (area <10 km²) or drainages and catchments).

¹² *See Block*, 690 F. 2d at 765. (the agency cannot "rely upon forecasting difficulties or the task's magnitude to excuse the absence of a reasonably thorough site-specific analysis.").

¹³ REVISED DRAFT ENVIRONMENTAL ASSESSMENT: YELLOWJACKET PROJECT, 31 (Feb 2024) (emphasis added).

¹⁴ *Id.* at 32.

¹⁵ *Se. Alaska Conservation Council*, 443 F. Supp. 3d at 1013-1014 ("may result in two [Wildlife Analysis Areas] dropping below 50% habitat remaining").

Additionally, failure to address cumulative impacts from multiple nearby treatments in particular drainage basins is yet another flaw that is analogous to a faulty study referenced by the 9th Circuit in *Kern*.¹⁶ The Court in that case, while discussing what level of analysis is required by NEPA, cited another 9th Circuit case where the National Marine Fisheries Service failed to consider the cumulative effects from multiple projects on particular sites:

[T]he record contains no proof that the cumulative effect of site specific degradation was considered in reaching a no jeopardy opinion at the regional watershed level.... [The agency's] disregard of projects with a relatively small area of impact but that carried a high risk of degradation when multiplied by many projects and continued over a long time period is the major flaw in NMFS study.... If in fact [the NMFS] disregards [the effects of individual projects] as "localized" when they can have significant aggregate effects, it acts arbitrarily and capriciously.¹⁷

Although the study was under the Endangered Species Act, the 9th Circuit found the flawed study helpful for illustrating what would also be a flawed analysis under NEPA.¹⁸ The lack of analysis regarding cumulative impacts from all of the high-intensity treatment units in Stepladder Creek illustrates that the hydrologic analysis in Yellowjacket suffers from the same flaw found to be fatal by the 9th Circuit in *Kern* and *Pacific Coast Federation of Fishermen's Ass'n*.¹⁹ In other words, an analysis at the site-specific scale, the drainage or catchment scale,²⁰ is required to allow for a meaningful review of the proposed action and to address the current uncertainty regarding how the proposed treatments will cumulatively impact water quantity and quality in particular drainages like Stepladder Creek. As it currently stands, the hydrologic analysis suffers from the same flaws Courts have identified when finding NEPA violations. Therefore, the Forest Service must do a more site-specific analysis at the drainage level for the EA to comply with NEPA.

¹⁶ *Kern v. U.S. Bureau of Land Mgmt.*, 284 F. 3d 1062, 1077 (9th Cir. 2002) citing *Pac. Coast Fed'n of Fishermen's v. Nat'l. Marine Fisheries Serv.*, 265 F. 3d 1028 (9th Cir. 2001).

¹⁷ *Id.*

¹⁸ Although the definition and requirements have changed around cumulative effects over time, currently cumulative effects are still required to be analyzed under NEPA. 40 C.F.R. § 1508.1(g)(3) (2023) ("Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.").

¹⁹ *Kern*, 284 F. 3d at 1077.

²⁰ Grant, *supra* note 11.

Finally, CFC’s comment letter dated November 30, 2023 noted two examples of where significant site-specific impacts seem likely, but the Revised EA and hydrology report failed to analyze, address, or even adequately acknowledge potential significant or uncertain impacts to these particular sites. Our two representative examples were 1) the re-use of decommissioned Forest Road 2810 and 2) the intensity of harvest within the Stepladder Creek drainage. The Draft DN addressed the potential impacts of the re-use of decommissioned Forest Road 2810, finding that “there is uncertainty regarding the possible effects to the environment from this reconstruction”²¹ and removed re-use of much of the 2810 road from the project plans. The response to comment documents when addressing this issue first argues that “[t]he scale of the hydrology analysis is typical for a landscape-level project and environmental analysis” but then goes on to disclose that:

Specific to the currently decommissioned 2810-051 and -052 roads, the interdisciplinary team convened to discuss this concern. After detailed discussion with the responsible official for this project, including discussions of past efforts to decommission this road, *it was determined that some uncertainty still remains regarding environmental effects of this reconstruction, particularly related to soil stability and the quantity of stream crossings along the proposed road alignment.*²²

The response to comments document and the Draft DN makes clear that CFC’s concerns regarding the hydrologic analysis are not unfounded. If the analysis was site-specific enough, then the uncertainty around the environmental effects from re-use of the decommissioned 2810 road would have been addressed in the specialist reports and the Oct. 2023 Revised EA. Although removing the re-use of the 2810 road is a positive change and addresses one site-specific problem, it does not address the underlying issue that the whole hydrologic analysis is not site-specific enough and needs to be redone in order to comply with NEPA’s requirement to take a “hard look” at environmental impacts. It is not clear from the decision documents why the logic used to remove the 2810 road from the project plans—uncertain environmental effects—does not also apply to the harvest plans in the Stepladder Creek drainage. The environmental effects from the intensity of harvest planned for Stepladder Creek suffers from the same flaw the FS admits that re-use of the decommissioned 2810 road suffered from—the lack of a site-specific hydrologic analysis making the environmental effects and/or intensity of effects uncertain. Without a hydrologic analysis at the drainage or catchment scale, the water quantity analysis does not constitute a “hard look” under NEPA.

²¹ YELLOWJACKET PROJECT DRAFT DECISION NOTICE, U.S. FOREST SERVICE, COWLITZ VALLEY RANGER DISTRICT, 1 (Feb 2024).

²² RESPONSE TO COMMENTS ON THE 2023 REVISED DRAFT YELLOWJACKET ENVIRONMENTAL ASSESSMENT, 21 (Feb. 2023) (emphasis added).

Suggested resolution: Revise the EA and Draft DN to include site-specific hydrologic analysis and discussion, particularly around likely increased sedimentation and peak flow impacts in the Stepladder Creek drainage.

2. The Forest Service has failed to adequately analyze and mitigate potentially significant impacts to Stepladder Creek rendering a FONSI inappropriate

To properly issue a DN with a FONSI, the agency must determine “based on the environmental assessment . . . [that] the proposed action will not have significant effects.”²³ If there are significant effects, then either an EIS is required, or mitigation to reduce the effects to a level of nonsignificance is required. Whether impacts are significant is defined in regulation as a series of factors which includes when “the possible effects on the human environment are highly uncertain.”²⁴ Relatedly, the EA must also adequately discuss alternatives and the environmental effects of the alternatives in a manner such that the public and decision-maker can meaningfully review the proposed action and potential environmental consequences.²⁵ Additionally, “omission of a reasonably complete discussion of possible mitigation measures would undermine the . . . function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects.”²⁶ Therefore, the EA and FONSI must be based on a sufficient analysis that allows for meaningful review and does not include any possible significant impacts to the human environment. In this case, the lack of a site-specific hydrologic analysis means the intensity of effects on the Stepladder Creek drainage are uncertain and there is no opportunity for meaningful review, both of which render a FONSI inappropriate.

In our comments dated November 30, 2023, we raised the issue of the harvest intensity in the Stepladder Creek drainage.²⁷ Almost the entire drainage outside of the Riparian Reserves is being harvested, with 453 acres of its 678 acres proposed for high-intensity harvest types, including regeneration harvest, huckleberry enhancement, and high-intensity thinning. That means 67% of the entire drainage is slated to be thinned to canopy covers under 40%. There is no meaningful discussion in the Revised EA or the hydrologic report about potential impacts like peak flow and increased sedimentation to Stepladder Creek or Pinto Creek from this very intensive harvest. There is also no discussion about mitigating the intensity of impacts within the Revised EA. The project documents do mention that we can expect peak flow impacts when the

²³ 40 C.F.R. § 1501.6 (a) (2023).

²⁴ 36 C.F.R. § 220.7 (b)(3)(iii) (2023) *citing* 40 C.F.R. § 1508.27 (b)(5) (2023).

²⁵ 40 C.F.R. § 1501.5(c)(2) (2023) (requirement to examine alternatives and the environmental impacts of those alternatives in EAs); *see Se. Alaska Conservation Council*, 443 F. Supp. at 1013 (finding a lack of site-specific information in the EIS constrained both the public and decisionmakers ability to consider the project’s impacts and therefore violated NEPA).

²⁶ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989).

²⁷ CFC Revised EA Comment letter Section I, Section V, and Attachments (Nov. 30, 2023).

canopy cover is less than 40% but then concludes “[t]he limited number of treatment units with less than 40% canopy cover show little risk of overall change to peak flows *at the subwatershed scale*.”²⁸ In other words, the intensity of impacts to Stepladder Creek are rolled up into the analysis regarding impacts to Yellowjacket Creek, which hides possible significant water quantity and quality impacts to Stepladder Creek and Pinto Creek from the proposed action.

It is also unclear from the EA whether there are sensitive species in the Stepladder Creek drainage or other unique concerns that should have been analyzed and mitigated for to justify issuing a FONSI. Locations of sensitive species do not appear to be included in the analysis at the site-specific scale either, at least in regard to Stepladder Creek. For example, are there any Cascade torrent salamanders in the Stepladder Creek drainage basin? The wildlife report notes they are known to be in headwaters of Pinto Creek, but the report does not note which particular tributaries.²⁹ As we noted in our Nov. 30, 2023 comments, this is a species CFC is concerned about because they are particularly sensitive to the impacts from timber harvest and associated activities.³⁰ If they, other sensitive species, or other unique concerns are present in the Stepladder Creek drainage, those factors are not clearly identified in the EA. This means the EA fails to discuss the severity of impacts we would expect to see in this location and any mitigation measures that are possible to address the cumulative impacts from the proposed harvest in this drainage. In other words, how would peak flows and increased sedimentation from the intense cumulative harvest in the area impact sensitive species residing in the basin? What mitigation measures could be implemented in the Stepladder Creek drainage to address the site-specific cumulative impacts? This level of analysis isn't included in the EA which frustrates the public and the decision-maker's ability to meaningfully review the proposed actions' environmental consequences. The EA also lacks a “reasonably complete discussion of possible mitigation measures” that would have assisted in the public and decision-maker's ability to evaluate the severity of the environmental impacts.³¹ Without a site-specific analysis that includes the type and severity of impacts and any mitigation measures, any determination that there are not significant impacts to Stepladder Creek is inappropriate because those impacts, at least based on the EA, are uncertain.

CFC believes the intensity of harvest within Stepladder Creek renders a FONSI inappropriate due to 1) the unanalyzed intensity of impacts, 2) the lack of discussed mitigation to address those possibly significant impacts, and 3) the inability of the public or decision-maker to adequately assess the severity of impacts to Stepladder Creek. Reducing the intensity of the harvest in the drainage basin while maintaining current riparian buffers is a solution that could address the unanalyzed intensity of impacts to Stepladder Creek and Pinto Creek.

²⁸ REVISED DRAFT ENVIRONMENTAL ASSESSMENT: YELLOWJACKET PROJECT, 32 (Feb. 2023) (emphasis added); REVISED DRAFT ENVIRONMENTAL ASSESSMENT: YELLOWJACKET PROJECT, 32 (Oct. 31, 2023) (emphasis added).

²⁹ JOHN JAKUBOWSKI, YELLOWJACKET BIOLOGICAL EVALUATION, 16 (Oct 2023).

³⁰ CFC Revised EA Comments Yellowjacket 11.30.2023 Section IV.

³¹ *Robertson*, 490 U.S. at 352.

Suggested resolution: Revise the EA and Draft DN to lessen the overall intensity and/or amount of harvest in the Stepladder Creek drainage.

IV. 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 be 'AS' followed by a horizontal line.

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