



January 16, 2024

Lauren Brown  
Field Manager  
Ashland Field Office  
Bureau of Land Management  
3040 Biddle Road  
Medford, OR 97504  
**Hand Delivered on January 16, 2024**

U.S. Department of the Interior, Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy Street,  
MS 300-QC  
Arlington, Virginia 22203  
**Sent via email: [ibla@oha.doi.gov](mailto:ibla@oha.doi.gov)**

Regional Solicitor  
Pacific Northwest Region  
U.S. Department of the Interior  
601 SW 2nd Avenue, Suite 1950  
Portland, Oregon 97204  
**Sent certified mail: 7020 3160 0001 9543 1257**

**RE: STATEMENT OF REASONS AND REQUEST FOR STAY OF THE BEAR GRUB TIMBER SALE DECISION RECORD**

**NEPA NUMBER: DOI-BLM-ORWA-M060-2020-0001-EA**

On behalf of the Klamath-Siskiyou Wildlands Center (KS Wild), Oregon Wild, and Cascadia Wildlands this letter serves as a notice of appeal, statement of reasons and request for stay of the December 28, 2023 decision to authorize the Bear Grub Timber

Sale. To comply with appeal regulations, this document is double-spaced, and the “statement of reasons” portion of this correspondence is limited to less than 30 pages.

We hereby request that the “case file” be provided by the BLM. This notice of appeal, statement of reasons and request for stay is timely because it is delivered to your office within 30 days of the signing of the project decision record pursuant to 43 CFR part 4.

A hard copy of this document has been hand delivered to the Ashland Resource Area Field Office located in Medford Oregon and the IBLA may confirm service to the Regional Solicitor by using the “track and confirm” feature for certified mail on the US Postal Service’s web site: <http://www.usps.com/>.

**Project description:** The December 28, 2023 Decision Record approves a logging project that targets 1,350 acres of native forests with logging techniques designed to create 4-acre “gap creation” clearcuts regardless of the aspect, land use allocation or seral condition of the proposed logging units. All of the proposed logging is located in existing Northern Spotted Owl (NSO) habitat consisting of 381-acres of dispersal habitat and 1,156-acres of Nesting, Roosting and Foraging habitat. Late Successional “Reserves” along with stands located in the Harvest Land Base would be subject to nearly identical logging prescriptions designed to remove existing late-successional forest canopy cover and structural characteristics.

**Location:** The timber sale is located in Middle Applegate, Little Applegate and Bear Creek Watersheds managed by the Ashland Field Office of the Medford District BLM.

**Deciding Official:** Lauren Brown, Ashland Field Office Manager

## **I. APPELLANTS' INTEREST**

As per 43 CFR part 4, and 43 CFR Subpart 2812, Appellants have standing to appeal this decision to the IBLA. When given the opportunity, appellants regularly provide technical site-specific comments on projects impacting old-growth forests, Northern spotted owl habitat and Late Successional Reserves within the Ashland Resource Area and we did so during both the scoping and EA commenting periods for the Bear Grub timber sale.

Our staff and members have visited the proposed logging units numerous times before and during the timber sale NEPA planning process. Several popular hiking trails including the Jack Ash, Sterling Ditch and East Applegate trails provide views of the proposed logging and fuel reduction sites in the project. Throughout the past two decades the BLM has proposed numerous timber sale and fuels projects in these watersheds some of which have been implemented, some of which were partially implement and some of which were never implemented. KS Wild is in possession of photos of proposed BLM actions in this project area and in these watersheds that go back to 2001.

Appellants would be directly harmed by the impacts of the logging and road construction on terrestrial and aquatic forest values of concern. In particular we are harmed by the proposed removal of late-successional forest canopy currently providing Northern spotted owl habitat in a checkerboard ownership landscape in which such habitat is exceedingly rare due to the long-standing efforts of the BLM and its timber industry neighbors to liquidate late-successional forest habitat.

The Bear Grub project area is at the heart of a massive drought-induced die-off of lower elevation conifer forests. The Medford District BLM is well aware of this reality

and currently has a proposal to log up to 5,000-acres of dead and dying Douglas-fir stands as a partial mitigation measure. See: <https://eplanning.blm.gov/eplanning-ui/project/2027249/510> Yet BLM foresters continue to pretend that the Bear Grub planning area is suitable for sustained yield timber production. In fact, as acknowledged by the BLM, conifers simply will not thrive in many of the proposed Bear Grub logging units as climate change and drought kill off low elevation conifer stands in this project area. Our organizations are harmed by the BLM's self-defeating attempts to conduct sustainable yield forestry in locations and logging units that can no longer support rotation conifer forestry. The BLM's unwillingness to manage the proposed Bear Grub logging units as chaparral, manzanita or hard wood ecosystems harms our organizations, our members, BLM neighbors and future generations. Ultimately it also harms the BLM and the timber industry by perpetuating a cycle of conifer death and mortality that is entirely preventable were the BLM willing to adjust its sustainable yield calculations to reflect ecological reality.

KS Wild is a 501(c)(3) Oregon non-profit corporation based in Ashland, Oregon, dedicated to the preservation and restoration of biological diversity in the Klamath-Siskiyou region of southwest Oregon and northern California. KS Wild is committed to the ecological and biological integrity of forests and aquatic ecosystems located in the Ashland Resource Area. KS Wild members and staff use and enjoy the proposed Bear Grub logging units for dispersed recreation, wildland studies, and to satisfy our human need for direct experience with intact forests. KS Wild members hike, camp, bird watch, identify plants, and otherwise learn from the terrestrial and aquatic ecosystems in the Bear Grub project area where logging, landing and road construction activities are

proposed. The Bear Grub logging units serve a unique habitat purpose due to their location that cannot be replicated by forests elsewhere. Many of these forest stands have been identified as “critical” to the survival and recovery of ESA-listed spotted owl populations. KS Wild, Cascadia Wildlands, Oregon Wild and our members will be directly harmed by the BLM’s unsustainable logging activities within the project area.

KS Wild has an organizational interest in providing our members and the public with information that the National Environmental Policy Act (NEPA) requires the BLM to compile and disclose in its environmental documents. Our members and staff have a right to know the environmental costs and tradeoffs involved in site-specific resource management decisions that are the subject of this appeal. These interests are adversely impacted by the BLM’s failure to comply with NEPA in this instance.

Cascadia Wildlands (CW) is a non-profit, tax-exempt public interest organization based in Eugene Oregon. The mission of the CW is to educate, organize and agitate for a more compassionate and responsible relationship with the ecosystems of our bioregion. Members and staff of the CW regularly use and enjoy the public lands in the Ashland Resource Area for a variety of recreational pursuits. They value the aesthetics of intact native forest ecosystems and healthy watersheds. These values would be directly harmed by proposed activities that remove spotted owl habitat and construct roads in exceedingly rare late-successional forest stands managed by the Ashland Resource Area of the Medford District BLM.

Oregon Wild is an Oregon non-profit corporation headquartered in Portland, with field offices in Eugene, Bend, and Chiloquin. Oregon Wild's mission is to protect and restore Oregon's wild lands, wildlife, and waters as an enduring legacy. Oregon

Wild's goals are to permanently protect federal forestlands and protect and restore habitat for native species. Oregon Wild has over 7,000 members, many of whom recreate in the public lands at issue in this appeal. Oregon Wild's members enjoy hiking, nature appreciation, camping, photography, bird watching, wildlife viewing, and other pursuits. The educational, aesthetic, recreational, scientific, and other interests of Oregon Wild and its members in the old-growth forests affected by the challenged actions will be irreparably harmed if the BLM proceeds with the actions that are the subject of this appeal.

George Sexton is a full-time employee and member of KS Wild. Nick Cady is a full-time employee and member of Cascadia Wildlands. Doug Heiken is a full-time employee and member of Oregon Wild. These individuals are authorized to bring this appeal on behalf of our respective organizations. Mr. Sexton is hereby identified as the “lead appellant.” Mr. Sexton is a member of KS Wild, Cascadia Wildlands and Oregon Wild and submitted scoping comments and EA comments to the BLM regarding the Bear Grub timber sale on behalf of all three of our conservation organizations.

The harm to appellants’ interests is therefore an “injury in fact,” and satisfies IBLA standards for review. Appellants have a long-standing interest in the management of public forestlands in the Ashland Resource Area, and the right to require BLM to comply with resource management plans, laws and federal policies. Appellants have provided information (see above and attached) necessary for the IBLA to conclude that we in fact have standing to appeal this project and would be harmed by the logging of the Bear Grub late-successional forest stands. For further information regarding standing and

harm, please see the Sexton declaration attached to this Statement of Reasons and Request for Stay.

## **II. REQUEST FOR STAY**

Appellants request a stay of the 1,350-acres of logging and 3 miles of road construction authorized in the December 28, 2023 Bear Grub Decision Record (DR) pending a final decision on this appeal by the IBLA, pursuant to 43 CFR Part 4. Please note that our organizations did not appeal and do not oppose the November 3, 2023 DR “stand alone” hazardous fuels reduction treatments that were analyzed in the Bear Grub EA. We support and do not to seek a stay of the proposed hazardous fuels reduction treatments. What we seek to prevent is the willful and unlawful removal of late-successional forest habitat from forest stands that will likely never support conifer forest conditions in the future and that therefore should not be assessed as part of the BLM sustainable yield timber base.

## **III. RELATIVE HARMS TO THE PARTIES IF THE STAY WERE GRANTED OR DENIED**

The removal of forest habitat and canopy through numerous 4-acre gap creation clearcuts involves the downgrading and removal of late-successional habitat necessary for the survival and recovery of Northern spotted owl populations.

The 2023 US Fish and Wildlife Service Biological Opinion for the Medford BLM District timber sale program indicates that the Bear Grub logging units are “likely to adversely affect” spotted owl home ranges in the area. Additionally, the BLM is removing habitat designated as “critical” to the survival and recovery of spotted owl

populations. Also, the BLM is targeting the removal of spotted owl Nesting, Roosting, Foraging and Dispersal habitat from Late Successional Reserves specifically designed and intended to provide late-successional habitat.

Our organizations and members will be directly and irreparably harmed by the logging and removal of spotted owl habitat. Implementation of the Bear Grub timber sale will harm and remove habitat that is needed for the recovery of threatened spotted owl populations. Our staff and members hope to view spotted owls in the late-successional logging units and want future generations to have this opportunity as well.

Denial of this requested stay will have real and immediate environmental impacts on spotted owls and their critical habitat, yet no cost will be borne by the BLM if the stay is granted. Appellants will be harmed by the impacts of logging on terrestrial and aquatic forest resources. Appellants will be further harmed by the irreversible impacts of forest canopy removal and the widespread establishment of gap creation clearcuts. The BLM's instance on conifer timber farming in drought-stricken low elevation locations that are unable to support sustained yield forestry harms KS Wild, the public, our members and BLM neighbors. The proposed late-successional forest logging in Bear Grub would irrevocably alter the terrestrial wildlife habitat values of the logging units for the duration of appellants' lifetimes.

No harm would be borne by the government if the stay were granted. A federal court may enjoin the BLM from implementing the project based on the substantive violations of federal environmental laws. While the Ashland Field Office of the Medford District BLM rarely acknowledges the agency's pattern and practice of law-breaking, federal courts routinely enjoin the illegal environmental harms proposed by the Medford



BLM District. A stay would shield the BLM, timber purchasers and the public from illegal harm to irreplaceable terrestrial forest values.

The BLM's alleged need to immediately log late-successional forests across all land use allocations in order to meet arbitrary timber production targets is unconvincing. The BLM's timber targets are self-created and rely upon sustainable yield calculations that have been rendered useless by the widespread die-off of Douglas-fir stands throughout the Medford District and within the Bear Grub project area. The December 2023 Bear Grub Decision Record at issue here authorizes the commercial timber sale of the Bear Grub project in order to meet unrealistic, baseless, arbitrary, self-imposed political timber targets. The BLM's rush to remove forest canopy from the Harvest Land Base, the Late Successional Reserves, Riparian Reserves and spotted owl Critical Habitat should be temporarily halted to allow the IBLA to issue a timely decision on the merits of this appeal prior to the old-growth forests at issue being logged.

#### **IV. LIKELIHOOD OF SUCCESS ON THE MERITS AND STATEMENT OF REASONS**

##### **i. The 12/28/23 DR Improperly Authorizes Logging Prescriptions Intended to Exclusively to Produce Timber Volume in the Late Successional Reserve Land Use Allocation.**

The BLM's decision to remove existing spotted owl habitat consisting of late-successional forests located in Late Successional Reserves is arbitrary and capricious. The 2016 Southwest Oregon Resource Management Plan (RMP) does not permit the BLM to manage LSRs solely to produce timber volume as is occurring here. Rather, prior to removing late-successional habitat from Late Successional Reserves the RMP requires BLM foresters to cook up an alleged ecological rationale for the removal of late-

successional forests from Late Successional Reserves. The BLM regularly invents reasons to apply HLB logging prescriptions (such as four-acre gap creation clearcuts) throughout the LSR land use allocation- thereby rendering the “Late Successional Reserves” meaningless. Meeting notes, internal emails and direction to the ID Team contained in the Bear Grub Administrative Record make it abundantly clear that the actual purpose of the late successional habitat removal from the Late Successional Reserve land use allocation is to meet the BLM’s internal acreage and timber volume target- not to in some way improve forest health or late-successional forest character through the removal of late-successional forests. Four-acre clearcuts entirely, completely and irrevocable destroy the very forest structure and habitat that LSRs are designed to provide and directly inhibit the purpose and functions of the reserves.

**ii. The 12/28/23 DR is a Post Hoc Decision Designed to Authorize a Timber Sale that Has Already Been Sold.**

The Revised Bear Grub EA literally conducts post-hoc analysis to backfill a decision that has already been made and a timber sale that has already been sold. No other federal agency conducts NEPA in this backwards manner. The entire purpose of NEPA is to foster informed decision-making and meaningful public involvement before a decision is rendered to proceed with the project. That purpose is thwarted when the BLM sells the timber prior to conducting the environmental analysis and accepting public comments. The December 2023 decision document did not alter the Bear Grub timber sale that was auctioned in October of 2020 in any way whatsoever. The die had been cast. The Bear Grub NEPA process was merely a procedural exercise to support the BLM’s singular focus on meeting arbitrary timber targets

regardless of the impacts on wildlife, carbon sequestration, fire behavior, and watershed values. By conducting the NEPA analysis after having sold the Bear Grub timber sale the BLM precluded meaningful collaboration, meaningful analysis and unbiased decision making. Ultimately the Medford District BLM's "my way or the highway" approach is both ineffective and counterproductive. The neighboring Forest Service District that retained, rather than eliminated, the Applegate Adaptive Management Area (AMA) regularly offers timber projects that serve a wide variety of public purposes (in addition to timber production) and that enjoy relatively broad public support. Additionally, the BLM's Forest Service neighbors conduct project NEPA analysis and public commenting prior to auctioning timber projects.

Through crafting an extremely narrow project "need statement" the BLM assured that the NEPA process would result in a pre-ordained and inevitable outcome in which late successional forests are logged in the HLB and LSRs in order to meet arbitrary timber targets that the BLM has established for itself.

While the Bear Grub REA contained three separate logging alternatives, the biased and narrow preference (not need) for the BLM to produce a specific volume of timber precluded a reasoned analysis of project tradeoffs or an informed project decision, especially concerned LSR logging units. The biased need statement is designed not to implement the flexibility and discretion in harvest types that is clearly allowed for in the RMP, but instead to ensure an outcome that reflects the BLM's preference for logging both the HLB and LSR land use allocations regardless of the significant impacts to wildlife, watersheds, recreation and fire hazard in the project area. Further, the units were laid out, the trees had been marked and the timber had been sold prior to release of the

REA. Hence *the timber industry, the BLM and the public all knew exactly which action alternative would be selected in the DR and why*. The entire purpose of the REA and the DR was to paper over a timber sale that had already been sold. This is the very definition of “bias.” It is hard to envision a planning process more preordained and insular than occurred here.

The courts have held that in defining a very narrow purpose and need, planning agencies run afoul of NEPA:

The “purpose” of a project is a slippery concept, susceptible of no hard-and-fast definition. One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing “reasonable alternatives” out of consideration (and even out of existence). The federal courts cannot condone an agency’s frustration of Congressional will. If the agency constricts the definition of the project’s purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act. *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 666 (7th Cir. 1997) (citations omitted).

The courts have recognized that agencies bring a degree of expertise to determining the scope of a particular project, but this deference is not unlimited:

Deference . . . does not mean dormancy, and the rule of reason does not give agencies license to fulfill their own prophecies, whatever the parochial impulses that drive them. Environmental impact statements take time and cost money. Yet an agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action, and the EIS would become a foreordained formality. *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991) (citation omitted).

The stated goal of a project necessarily dictates the range of “reasonable” alternatives and an agency cannot define its objectives in unreasonably narrow terms. *Id.*

“Project alternatives derive from an [EIS’s] ‘Purpose and Need’ section.” *City of Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1155 (9th Cir. 1997). Thus, a court begins by determining whether or not the Purpose and Need Statement was reasonable. *Id.*; see also *Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1066-67 (9th Cir. 1998); *Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853, 865 (9th Cir. 2004). The BLM’s statement of Purpose and Need in the Bear Grub REA is not reasonable.

In a project area adjacent to many homes and communities deeply vested in public lands and their management, the BLM failed to include in its purpose and need the RMPs direction for Uneven-aged Timber Area (UTA) land use allocations (LUAs) to “[t]reat fuels to improve, enhance, or maintain landscape and ecosystem resilience. Identify sites for fuels treatments based on risk of large-scale, high-intensity/high-severity fire, operationally strategic locations, or proximity to highly valued resources and assets.” (RMP, 69). The BLM authorized commercial harvest and fuels reduction adjacent to knowledgeable and involved communities yet fails to acknowledge the impacts to those persons most directly affected.

In fact, prior to the pointless REA commenting period, the initial EA comment period and the online public meetings regarding this project, the BLM had already marked the timber sale harvest units, attempting to ensure that four-acre “group selection” (gap creation) clearcuts would occur in both the HLB and LSR land use allocations. This confirms that the BLM intended to remove hundreds of acres of NRF habitat across the landscape and prevent the project and decision from being altered by

the agency's analysis or by public commenting. The BLM concocted a "purpose and need" designed to produce a specific policy outcome prioritizing timber production, rendering the NEPA planning process largely irrelevant to that preordained result. NEPA does not permit the BLM to rig the planning process in this manner.

Further, BLM's myopic stated purpose and need to produce timber volume at all costs and no matter what the impacts are conflicts with the RMP's management direction and purpose of designating Extensive Recreation Management Areas (ERMAs) and Special Recreation Management Areas (SRMAs). Figure 3-10 in the initial EA indicates that most of the Bear Grub project area is designated as an ERMA or SRMA. There are even SRMAs within ERMAs and ERMAs within Areas of Critical Environmental Concern (ACECs). These layered special designations reflect the unique ecological values present in this landscape that the BLM has chosen to ignore.

**iii. The Bear Grub Timber Sale is Not Implementing Sustained Yield Forestry as Required by the 2016 RMP and the O&C Act.**

It is incontrovertible that conifer forest stands in the Bear Grub project area and logging units are dying at unprecedented rates due to the combination of drought, extreme heat domes and insect infestation. See: <https://eplanning.blm.gov/eplanning-ui/project/2027249/510>

Yet BLM timber planners persist in authorizing 4-acre clearcuts of conifer stands in both the HLB and LSR land use allocations (see DR page 10) to be followed by low elevation conifer plantation establishment (see DR page 38). Such an approach violates both the 2016 RMP and the O&C Act by undermining the BLM sustainable yield timber production mandate and models. The BLM cannot on one hand assert that Douglas-fir

mortality throughout the region necessitates mortality logging of all diameter classes on all land use allocations while on the other hand clearcutting intact late-successional forest canopy and replacing those stands with conifer plantations that will likely fail due to drought, heat domes and insects. Page 39 of the December 2023 DR indicates that the BLM believes that the 2016 TPCC soil designations absolve BLM timber planners of any duty to assess the ability of the agency to reforest the late-successional forest stands that it intends to remove. This assertion is arbitrary and capricious. The TPCC soil designations are dated. Conifer mortality has greatly increased since 2016. Further, the TPCC mapping look only at soil and slope characteristics and does not address the new reality of drought, heat domes and insect infestation. Incredibly, at page 45 of the DR BLM timber planners contend that they are under no duty to “disseminate information” to the public about TPCC designations. Perhaps their forthcoming briefing will disclose if the agency believes that it has an obligation to disclose such information to the IBLA or if it believes that the ability of the BLM to reforest Bear Grub logging units is nobody’s business but its own.

**iv. The BLM Refuses to Analyze and Disclose Significant Cumulative Impacts**

In our Bear Grub scoping comments we asked the BLM to provide a thorough cumulative impacts analysis of the proposed logging and road construction in combination with other federal logging and private logging activities and Off Road Vehicle (ORV) use. The BLM denied this request and instead mistakenly contends that the 2016 RMP anticipates and discloses every significant impact that could possibly occur at any place or scale from logging activities in the Ashland Resource Area.

One of the specific requirements under NEPA is that an agency must consider the effects of the proposed action in the context of all relevant circumstances, such that where “several actions have a cumulative...environmental effect, this consequence must be considered in an EIS.” *Neighbors of Cuddy Mountain v. US Forest Serv.*, 137 F3d 1372, 1378 (9th Cir. 1998) (quoting *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990)). A cumulative effect is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable actions regardless of what agency (Federal or non-Federal) or persons undertakes such other actions.” 40 C.F.R. § 1508.7.

The requirement under NEPA to complete a thorough analysis of cumulative effects has been affirmed repeatedly:

[C]ases firmly establish that a cumulative effects analysis “must be more than perfunctory; it must provide a useful analysis of the cumulative impacts of past, present, and future projects.” *Klamath-Siskiyou Wildlands Ctr. v. BLM*, 387 F.3d 989, 994 (9th Cir. 2004) (quoting *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 361 F.3d 1108, 1128 (9th Cir. 2004)). To this end, we have recently noted two critical features of a cumulative effects analysis. First, it must not only describe related projects but also enumerate the environmental effects of those projects. *See Lands Council v. Powell*, 395 F.3d 1019, 1028 (9th Cir. 2005) (holding a cumulative effects analysis violated NEPA because it failed to provide adequate data of the time, place, and scale” and did not explain in detail “how different project plans and harvest methods affects the environment”). Second, it must consider the interaction of multiple activities and cannot focus exclusively on the environmental impacts of an individual project. *See Klamath-Siskiyou*, 387 F.3d at 996 (finding a cumulative effects analysis inadequate when “it only considers the effects of the very project at issue” and does not “take into account the combined effects that can be expected as a result of undertaking” multiple projects).

*Oregon Nat. Res. Council Fund v. Brong*, 492 F.3d 1120, 1133 (9th Cir. 2007).



Given the repeated acknowledgements in the BLM's watershed analysis regarding the impacts of past BLM logging and road activities on the hydrological and terrestrial health of the project area, it is vital that the BLM analyze and disclose the cumulative impacts of past activities and its future plans.

In an apparent attempt to obfuscate the impacts of its logging agenda, the BLM asserts that the programmatic land management plan fully analyzes project-specific cumulative impacts on the environment. The Ninth Circuit has held that a programmatic Forest Plan cannot substitute for the site-specific cumulative impacts analysis required of project-level environmental analyses under NEPA. *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990). Government lawyers have repeatedly argued in court that agencies cannot conduct a meaningful analysis of cumulative effects in the context of a Forest Plan. Counsel for the Federal government have contended that: "any particularized discussion in the . . . FEIS concerning the cumulative impacts of future timber harvesting would necessarily be highly speculative at best." *Citizens for Env'tl. Quality v. U.S.*, 10th Cir. No. 89-1362 (appeal denied).

The cumulative terrestrial and hydrological impacts from the significant logging throughout the "checkerboard" land use pattern in the planning area must be disclosed and analyzed in an EIS. The level of logging and road construction on both BLM and private industrial timberlands in the area is extreme, and has significantly altered the species and seral composition across thousands of acres. The impacts of logging practices on wildlife connectivity must be fully disclosed and analyzed prior to rendering a decision to build more logging roads and remove more forest canopy.

We bring to the IBLA's attention that the BLM previously found that, in the watersheds impacted by Bear Grub, "[e]levated sediment and turbidity levels are occurring as a result of an extensive road network and other disturbances such as OHV use." (Sterling Sweeper EA, 3-44). Yet now the BLM refuses to acknowledge or analyze the very cumulative impacts that it has previously acknowledged.

Additionally, the Ashland Resource Area has previously acknowledged in this planning area that "[p]ast harvest techniques such as clearcutting or overstory removal, which resulted in stands of young, more flammable trees, contributed to the current fire hazard ratings . . . ." (Sterling Sweeper EA, 3-18). Now the BLM proposes removing forest canopies via four-acre gap-creation clearcuts and increasing the amount of early-seral flammable trees while denying and ignoring the cumulative impacts of its actions. The Ashland Resource Area has previously acknowledged that "[p]ast harvest techniques such as clearcutting or overstory removal, which resulted in stands of young, more flammable trees, contributed to the current fire hazard ratings . . . ." (Sterling Sweeper EA, 3-18). Now the BLM proposes removing forest canopies via gap-creation clearcuts and increasing the amount of early-seral flammable trees while denying and ignoring the cumulative impacts of its actions.

**v. The BLM Refused to Take a Hard Look at Significant Issues Identified by the Public**

The BLM's contention in the DR that it's limited "purpose and need" statement for Bear Grub allows the agency largely ignore the foreseeable spread of invasive plants due to ground-disturbing logging activities is in error.

The BLM is correct that the NEPA analysis fails to analyze or address the significant impacts (and controversy) associated with logging the Wellington Land with Wilderness Characteristics.

The BLM's refusal to address the impacts of the Bear Grub timber sale on NSO critical habitat in the project REA is arbitrary and capricious.

The BLM's contention that clearcutting (group selection) logging on up to 30% of forest stands "will not impact the hydrologic cycle" is in error.

The BLM's contention that the agency adopted a Resource Management Plan for itself that precludes incorporation or consideration of the concerns of neighboring landowners is arbitrary and capricious.

The BLM's refusal to acknowledge or analyze the actual historic size (>1-acre) of gaps in dry forest types is arbitrary and capricious.

The BLM refusal to analyze or disclose the impacts of reforestation and early seral stand initiation on fire hazard following gap creation logging is arbitrary and capricious.

The BLM contention that logging in the middle and outer portions of the riparian reserve LUA has no effect on stream shading and temperature is in error.

The BLM is correct in acknowledging that the REA fails to disclose to the public or the decision maker the extent, location or efficacy of the generic BMPs and PDFs relied upon in the REA.

The BLM's refusal to conduct site-specific analysis concerning the impacts of proposed habitat removal on Northern spotted owls is arbitrary and capricious.

The BLM's refusal to consider or analyze action alternatives that would retain large trees and spotted owl habitat is arbitrary and capricious.

The BLM's contention that it has provided the public with "meaningful involvement" in project planning is false. The BLM's 2020 Timber Sale Plan and arbitrary timber targets precluded meaningful public involvement and assured a pre-ordained Bear Grub timber sale had been sold at auction. The BLM's belief that it insulated itself from public input through adoption of the 2016 RMP is incorrect. Belated public commenting periods concerning inalterable and inflexible BLM timber sales that have already been sold do not constitute "meaningful" public involvement.

The BLM's contention that it need not analyze and disclose the impacts of its logging agenda on recreation so long as the agency elects not to completely "eliminate forests from the landscape" is in error.

The BLM is mistaken in its contention that it need not acknowledge, analyze or disclose the values that local citizens find in the Wellington Wildlands.

The BLM's refusal to acknowledge, analyze or disclose the cumulative impacts of widespread ORV use in the project area is arbitrary and capricious.

The BLM is incorrect in its assertion the number and location of large trees to be removed should not be disclosed to the public or the decision maker.

The BLM refusal to fully analyze the site-specific impacts of its logging and planting practices on fire hazard is arbitrary and capricious.

The BLM's decision to clearcut (via group selection logging) up to 25% of LSR logging units and up to 30% of HLB units will result in significant environmental effects necessitating completion of an EIS for this project.

The BLM refusal to disclose the number, location and impacts of old-growth trees >170 years of age (but less than 36" DBH) to be removed is arbitrary and capricious.

The BLM's contention that it need not disclose or analyze in detail the effects of logging on TPCC slope gradient soils with high potential for surface ravel is mistaken.

The BLM's refusal to conduct a site-specific analyze the impacts of road construction and reconstruction on soils is arbitrary and capricious.

The BLM's refusal to analyze and disclose the impacts of the timber sale on migratory birds is arbitrary and capricious.

The BLM is mistaken in its contention that the existence of a non-NEPA Biological Assessment relieves the agency of its duty to analyze and disclose the impacts of logging on critical habitat for the Northern spotted owl in the REA.

It appears that every single acre of logging is intended to remove currently suitable habitat for the Northern spotted owl, including logging within the LSR LUA. This is a significant impact necessitating completion of an EIS for the Bear Grub logging project. It also appears that the BLM is unable or unwilling to develop or consider logging prescriptions that maintain, rather than remove, suitable late-successional habitat for ESA-listed species.

The BLM is mistaken in its belief that the existence of a non-NEPA Biological Assessment relieves the agency of its duty to disclose the location of Nesting Roosting and Foraging NSO habitat to the public and the decision maker in a NEPA document.

The BLM's refusal to retain forests with late-successional character qualifying as "RA 32" stands violates FLPMA and the ESA. The BLM's refusal to analyze or disclose the effects of logging RA 32 stands violates NEPA.

The BLM is mistaken in its contention that it need not analyze or disclose the impacts of its actions on Bureau Sensitive Species.

The DR contends that the BLM need not address the impacts of fuels units on federally listed Gentner's Fritillary populations because the 2013 BA "remains relevant and valid." This is an odd contention given that in 2016 the BLM withdrew from the NW Forest Plan in order to increase clearcut timber production through projects like Bear Grub. The BLM attempts to address this problem by stating in the DR that "while the RMP changes some strategies, locations and intention for proposed actions, it did not change the actions themselves." This is simply false. In fact, the 2016 RMP eliminated the survey and manage program and increased the use of gap creation clearcuts as are proposed in Bear Grub thus undermining the assumptions and analysis contain in the 2013 BA.

The BLM is incorrect in its contention that the Water Quality Restoration Plans for West Bear Creek and the Applegate Sub Basin are reflected or incorporated into the Bear Grub REA.

It is telling that BLM timber planners simply forgot about the existence of the Woodrat ERMA.

The BLM's contention at page 21 of the DR that it's clearcuts will consist of openings "less than two acres" is simply false. As acknowledged on page 10 of the DR in fact the clearcuts will be twice that size and will cover up to 30% of HLB stands and 35% of the so-called Late Successional Reserve forest stands.

The BLM's rejection of the request by the Southern Oregon Forest Restoration Collaborative to retain chaparral habitat in the Bear Grub project area for songbird habitat is telling. There appears to be no reasonable conservation sideboard that the public or scientists can suggest that the BLM will in fact consider, analyze or implement.

Page 23 of the DR discloses that BLM planners are aware that the natural canopy gap size for dry forest types in the Bear Grub project area was on the order of 0.1 acres but that they nevertheless prefer creating 4-acre clearcut openings. This subjective preference is not supported by analysis, data or reasoning of any kind.

**vi. The BLM Failed to Analyze Impacts to Pacific Fisher and Pacific Fisher Habitat**

The BLM failed to analyze and disclose whether or not special status species occupy or use the Bear Grub logging units. The REA does not analyze or disclose if habitat for such species will be removed by the timber sale and what the impacts of habitat removal will be on special status species. The REA also fails to disclose if the BLM's logging agenda will contribute to the need to list species under the ESA.

The contention on page 68 of the REA that the Pacific fisher is no longer a "candidate species" for listing under the ESA by the USFWS is factually incorrect. In fact the USFWS settled a lawsuit pertaining to a listing petition to which we are party by agreeing to revisit the agency's decision not to list the fisher across the range of the species. Further, USFWS field biologists have repeatedly recommending listing Pacific fisher populations as threatened across their range. We realize that the BLM will not willingly protect fishers or their habitat unless absolutely forced to do so by a court of law, yet there is nothing prohibiting the agency from protecting rather than harming this at-risk species. Regardless, the BLM is not permitted to simply ignore the impacts of the Bear Grub timber sale on Pacific fishers and their habitat.

Please note that no actual quantitative or qualitative information is provided in the REA about the baseline Pacific fisher population dynamics or habitat in the planning area

in the context of the No Action Alternative. The BLM has previously acknowledged in general terms that the agency is aware that overstory reduction, road construction, and fragmentation are all threats to the continued existence of this species. Yet additional overstory reduction, road construction and forest fragmentation are all authorized in the Bear Grub timber sale DR while the actual impacts of these practices to the Pacific fisher are not disclosed to the public or the decision maker.

The unknown, undisclosed, and unanalyzed impacts of this project on Pacific fisher are particularly important because “[d]ispersal into and through the project area probably represents a pinch point because it is surrounded on three sides by open agricultural lands and rural development.” (Sterling Sweeper EA, 3-91). Note that the Bear Grub REA makes no reference to, or acknowledgment of, this conclusion contained in the BLM’s Sterling Sweeper EA concerning this planning area.

Rather than disclose (or avoid or mitigate) the impacts of its logging agenda on Pacific fisher, the BLM points to the only caselaw it is willing to acknowledge, an unpublished opinion from a district court. *Klamath Siskiyou Wildlands Center v. U.S. Bureau of Land Mgmt.*, 2007 WL 2688125, 2007 U.S. Dist. LEXIS 67452. The BLM’s reading of this case is highly suspect.

Unlike in the case cited by the BLM, fishers are present in the Bear Grub project area, and the issue here is not supplementation of prior analysis, but agency compliance with its RMP guidance for Bureau Special Status (BSS) species. The district court opinion cited by the BLM as “precedent” regarding use of northern spotted owl habitat as a proxy for management of the fisher population has no such legal authority, and it is completely off-point from the instant case. Prediction of effects to fisher using habitat as



a proxy is permissible only where the agency's "knowledge of what quality and quantity of habitat is necessary to support the species and . . . method for measuring the existing amount of that habitat are reasonably reliable and accurate." *Oregon Nat. Res. Council Fund v. Goodman*, 505 F.3d 884, 890 (9th Cir. 2007) (quoting *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1175-76 (9th Cir. 2006)).

Indeed, previously the Ashland Resource Area has acknowledged that "southwest Oregon NRF habitat varies greatly and one or more of these habitat components might be lacking or even absent." (Ashland Resource Area Cottonwood EA, 1-4). The BLM does not supply any reasonable basis to assure that its proxy method is reliable—indeed, its analysis in the Cottonwood EA undermines the reliability of its method in the Bear Grub REA. The BLM double-counts spotted owl NRF habitat as fisher denning and resting habitat even as it admits that owl habitat may not contain the structural elements required for habitat selection by fishers.

Zielinski et al. (2006) revealed a low correlation of spotted owl and fisher habitat at multiple scales in northern California, and cautioned:

Although owl and fisher habitat are moderately correlated on federal lands, we cannot assume that federal lands can play the same relative role (i.e., contribution to overall population viability) for the fisher as they have been expected to do for the owl (USDA Forest Service and USDI Bureau of Land Management, 1994). Thus, we should not assume that fisher viability in northern California is insured by protections for the spotted owl included in Northwest Forest Plan.

This scientific information was included in the Sterling Sweeper EA and, again, overlooked by the BLM in the Bear Grub REA. (Sterling Sweeper EA, C-8).

Research funded by the U.S. Fish and Wildlife Service on denning ecology of female Pacific fishers in northwest California noted that coniferous trees no smaller than

105 cm (41.3 inches) diameter were selected as dens. Higley and Matthews 2006. Other research in California reported rest habitat selection by both sexes in the very largest available forest structure: the average size of live conifers selected for resting was 117.3 cm (46.2 inches) diameter, and the average snag was 119.8 cm (47.2 inches) diameter. Zielinski et al. 2004. High-quality late-successional forest habitat as is known to be selected by fisher is present at very few locations in the Bear Grub project area, and the proposed timber sale will remove structural elements of preferred denning and resting habitat.

Where the BLM can quantify cumulative impacts to fisher habitat on Federal lands it fails to do so. The BLM fails to even disclose the location of NRF habitat it intends to downgrade and remove, let alone the impacts of that removal. There is no analysis or data to support the cursory conclusions reached in the REA and the DR.

**vii. The 2016 Southwest Oregon Resource Management Plan Requires Late Successional Reserves be Managed for Late Successional Habitat**

The BLM's proposal to manage LSRs primarily for timber production runs afoul of the RMP and is a significant action necessitating completion of an EIS for the Bear Grub timber sale. The proposed project would inhibit the maintenance or establishment of late-successional forest characteristics in the LSR land use allocation.

The BLM withdrawal from the Northwest Forest Plan and establishment of the 2016 RMP included the following "purposes":

- Provide a sustained yield of timber.

- Contribute to the conservation and recovery of threatened and endangered species, including—
  - Maintaining a network of large blocks of forest to be managed for late-successional forests; and
  - Maintaining older and more structurally-complex multi-layered conifer forests.
- Provide clean water in watersheds.
- Restore fire-adapted ecosystems.
- Provide recreation opportunities.

-RMP, 20.

To implement these purposes, the BLM's 2016 RMP is directs the agency to:

- [I]mplement timber harvest consistent with the concepts of Ecological Forestry, which incorporate principles of natural forest development, including the role of natural disturbances, in the initiation, development, and maintenance of stands and landscape mosaics. (RMP, 23).
- [T]hrough the extensive reserve network and application of Ecological Forestry concepts, will provide flexibility in addressing the uncertainties associated with climate change. *Id.*
- [C]ontribute to restoring fire-adapted ecosystems in the dry forest landscape of southern Oregon by increasing fire resiliency. The Proposed RMP will increase stand-level fire resistance and decrease stand-level fire hazard from current conditions. The Proposed RMP will result in a greater increase in the acreage of High and Mixed fire resistance and a greater decrease in the acreage of High fire hazard. (RMP, 26).
- [A]pply an uneven-aged forest management approach in the dry forest and will provide flexibility in stand treatments in the Late-Successional Reserve and Riparian Reserve in dry forests to address fire resiliency, consistent with the concepts of Ecological Forestry, as advised by the U.S. Fish and Wildlife Service in the owl recovery plan. Through these forest management approaches, the Proposed RMP recognizes the unique ecological conditions and management challenges of the dry forest portions of the decision area. *Id.*

Yet the BLM fails to implement these tactics to meet the RMP objectives in the Bear Grub project. Basal area targets for LUAs in the HLB and the LSR have nearly identical logging prescription in the project despite the different objectives and management directions identified for these distinct LUAs in the RMP. In both the LSR

and the HLB the BLM intends to create 4-acre gap creation clearcuts throughout late-successional forest stands. BLM falsely claims, “The harvest actions proposed in Bear Grub are consistent with the 2016 ROD/RMP, such as Selection Harvest and Riparian Reserve Thinning, depending on the land use allocation involved.” All of the post-harvest basal areas among all LUAs have the same target range. Gap creation clearcutting is not a form of “selection harvest” or “thinning.” Functionally, BLM timber planners treat all BLM managed lands as HLB and fail to incorporate the objectives or direction that distinguish the purposes of different land use allocations.

In creating the LSR land use allocation, land management direction directs the BLM to:

“Manage for large blocks of northern spotted owl nesting-roosting habitat that support clusters of reproducing spotted owls, are distributed across the variety of ecological conditions, and are spaced to facilitate the movement and survival of spotted owls dispersing between and through the blocks.” (RMP, 70).

BLM is incorrect in its interpretation that it cannot implement RA32 and RA10 of the spotted owl recovery plan as directed by the RMP because the creation of the LSR network serves as their contribution to those recovery actions. The RMP itself allows that:

The BLM may implement additional site-specific project-level mitigation measures including additional BMPs that are consistent with RMP management direction as determined necessary through site-specific analysis at the time of the project. Such additional site-specific project-level mitigation measures are not specifically listed in the approved RMP.

-RMP, 29.

The BLM intends to log LSR stands that have 64% canopy (one of the measures of NRF habitat) down to 36% canopy, precluding its use as even dispersal habitat. This significant canopy removal would result in forest stands that could not recover to provide Nesting and Roosting habitat (60% canopy) for over 50 years. Additionally, the BLM is contemplating clearcutting (4-acre group selection logging) on up to 25% of treated LSR stands.

Page 64 of the REA reveals that all of the modeled LSR logging units will downgrade/remove existing late-successional forest canopy to less the 60% for 50 years or more and greatly reduce the number of large diameter late-successional trees >20" DBH and remove canopy layering. Hence the BLM conclusion that its LSR logging agenda will be preclude establishment of N/R habitat for more than 20 year (compared to No Action) is arbitrary and capricious. Table 3-4 in the REA confirms that the proposed LSR logging will artificially lower canopy cover in LSR stands to below 50% at both the 30 and 50 year time scales effectively preventing the LSR from providing late-successional NRF habitat.

The BLM's own model clearly demonstrates that the proposed logging within LSR timber units will not speed the development of or increase the quality of spotted owl nesting and roosting habitat in the long term, but rather delay the establishment of nesting and roosting habitat by more than 20 years. The BLM subsequently ignored the results of its own model and instead relied on an unsupported assumption that canopy cover will fortuitously exceed the results predicted by the agency's own data model after 50 years post treatment. *See* REA at 60 ("the BLM assumes a range of at least 10-20 percent additive canopy cover with natural regeneration post-harvest (specifically for the

treatment to 30 percent RD) grown over 50 years and at least 10 square feet of additive basal area.”). This assumption is unsupported by data, evidence, or analysis.

Appellants are extremely concerned that the BLM’s own data and model illustrate that the Bear Grub timber sale will in fact preclude recovery of LSR stands, which currently provide NSO foraging habitat, for decades. This violates the RMP. Further, as acknowledged in the REA the widespread LSR logging would not increase the QMD more than the No Action Alternative. In other words, the BLM is proposing LSR logging to produce timber volume rather than to produce larger trees or forest canopy that can be utilized by late-successional associated species.

Please note that at page 51 of the REA the BLM indicates that natural forest gaps “were historically >2 acres and generally less than 1 acre.” Yet no rationale is provided for why BLM foresters insist on punching 4-acre gaps into 25% of LSR forest stands.

### **IMMEDIATE AND IRREPARABLE HARM WILL RESULT IF THE STAY IS NOT GRANTED**

A stay is needed because once forest canopy is removed in gap creation clearcuts those logging units will cease to be forests. Once spotted owl habitat is downgraded and removed from the Late Successional Reserve land use allocation it will be lost for our lifetimes. Once logging roads and landings are constructed, impacts to soil resources will persist for decades. The direct impacts of road construction and landing establishment to soil resources would last for the duration of appellants’ lifetimes. The harm to appellants’ interests in the environment therefore would be irreparable. As acknowledged by the US Fish and Wildlife Service spotted owl habitat removal in this highly logged and fragmented watershed is likely to adversely affect listed species and their habitat. The

BLM's haste to log these late-successional forest stands in order to meet arbitrary and self-imposed timber volume and LSR acreage targets is entirely of its own making. It is unfortunate that the BLM hopes to remove late-successional forests from Late Successional Reserves prior to the IBLA issuing a decision on the merits of this appeal.

## **V. PUBLIC INTEREST FAVORS A STAY**

Holding the BLM accountable to relevant plans and policies “invokes a public interest of the highest order: the interest in having government officials act in accordance with the law.” *Seattle Audubon Society v. Evans*, 771 F. Supp. 1081 (W.D. Wash. 1991), *aff'd*, 952 F.2d 297 (9th Cir. 1991). The merits of this appeal demonstrate that the BLM is out of compliance with its Resource Management Plan, FLPMA, APA and NEPA. The BLM's belief that its timber sale activities should always be immune from a stay by the IBLA puts the federal government, and taxpayers, at risk of financial liability should this project proceed while the BLM is aware that a legal action, and an injunction, are likely. The requested stay will maintain the current condition of irreplaceable spotted owl habitat in the project area. A stay will also shield the government from liability should the IBLA remand the decision back to the BLM or should a federal court find the project illegal.

## **VI. CONCLUSION**

Removing and reducing mature forest canopy in the few remaining late-successional forest stands in this heavily fragmented watershed is a shortsighted and counterproductive way of attempting to meet arbitrary BLM timber targets. Instead, the agency should work with interested stakeholders to develop projects that increase, rather than decrease, forest and watershed health. In both the short- and long-term substantive

partnerships that acknowledge all of the interests in America's public lands are more effective than are proposals that primarily serve a narrow set of timber interests.

Sincerely,



George Sexton  
Conservation Director  
Klamath Siskiyou Wildlands Center  
562 A Street  
Ashland, OR 97520  
[gs@kswild.org](mailto:gs@kswild.org)



Nick Cady  
Cascadia Wildlands  
Legal Director  
PO Box 10455  
Eugene, OR 97440  
[nick@cascwild.org](mailto:nick@cascwild.org)



Doug Heiken  
Conservation and Restoration Coordinator  
Oregon Wild  
PO Box 11648  
Eugene, OR 97440  
[dh@oregonwild.org](mailto:dh@oregonwild.org)