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October 15, 2008

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**Oregon Chapter Sierra Club & League Of Wilderness Defenders – Blue Mountains Biodiversity  
Project Objection to the HFRA Dads Creek Wildland Urban Interface Project EA**

Pursuant to 36 CFR 218, the Oregon Chapter Sierra Club and the League Of Wilderness Defenders – Blue Mountains Biodiversity Project are filing this objection concerning the Malheur National Forest’s Dads Creek Wildland Urban Interface Project EA. Our organizations have reviewed the EA and proposed project actions. Our organizations have a specific interest in this HFRA project, including the collaborative process out of which it was initiated. Both the Oregon Chapter Sierra Club and LOWD-Blue Mountains Biodiversity Project have previously indicated our interest in the Dads Creek Wildland Urban Interface Project by participating throughout the Blue Mountains Forest partners collaborative process, commenting throughout the planning process, meeting with agency officials and planning staff, attending field trips to the project area, and by both of our organizations’ past and continued involvement in the management of the Malheur National Forest (MNF). Objectors’ continued interest and involvement in this project creates standing to object to this decision according to 36 C.F.R. § 215.11(a)(2) and to the provisions of the HFRA and 36 CFR 218.

***Objection Background***

We are filing this objection reluctantly, after having been part of the Blue Mountains Forest Partners collaborative process from its inception, which initiated and creative the common ground foundation for this HFRA project. We are filing the objection primarily to ensure the Dads Creek Wildland Urban Interface Project decision honors the collaborative agreements, restoration objectives, common ground units, and implementation focus and methods developed and recommended to the Forest Service over the course of the past two years spent creating this project. We file this objection to meet the necessity of maintaining legal standing to address the three objections filed respectively by King Williams, Dr Johnson's Prairie Wood Products, and Grant County's Boyd Britton (as well as any additional objections that may be filed); ensuring the project is not unduly changed from its collaborative common ground restoration intent and effectiveness.

We continue to have significant conservation concerns with portions of the Dads Creek Wildland Urban Interface Project's ecologically excessive commercial logging-thinning and road construction plans. We also have significant concerns with the omission of needed actions to effectively restore the area's Oregon State 303(d) listed waterways, recover forest wildlife and rare plant populations that are or may be evidencing declining population and distribution trends, and better reduce ecologically harmful roads and potential OHV use and abuse in the greater project area. Despite significant scientifically-based conservation concerns, originally our organizations had planned to forgo remaining issues and not file an objection - preferring instead to let this first Malheur Forest Service - BMFP collaborative project go through, accepting the Dads Creek Wildland Urban Interface Project as proposed as representative of the best common ground we could reach in two years of collaborative process. However, attempts to reach common ground with the timber industry, Grant County, and other area objectors have proven unsuccessful. At this point given the existent objections and the possibility of other objections being filed in addition to these, our organizations are legally forced to file to ensure legal standing to prevent this first collaborative project from being turned into an unwarranted ecologically harmful timber sale.

We state herein that our objection, while substantive, is conditional: if all objections are withdrawn, and the project goes through as currently proposed - unchanged, as noted above we are willing to accept the Dads Creek Wildland Urban Interface Project as embodying the best common ground restoration project planning that both the Malheur Forest Service and the participants of the Blue Mountains Forest Partners collaborative group have been able to achieve, concluding the past two years of project planning and development. As such, despite our remaining significant concerns and legal issues, if all other objections are withdrawn we can agree to withdraw our objection also. However, until satisfactory resolution has been reached, as long as all other objections are active our objection remains active also. Additionally, if this project is changed as such that it would increase logging volume levels, construct additional roads, result in greater environmental impacts, or reduce or impair non-logging-thinning restoration actions, our objection remains active until such time as those ecologically detrimental changes are withdrawn, and the objection process is concluded.

Our organizations have participated in the collaborative development of the Dads Creek Wildland Urban Interface Project to help restore the ecological integrity, wildlife and aquatic forest habitat of the project area. Our organizations conservation priority is focused first upon protecting existing forest integrity, wildlife habitat, and watersystems – preventing additional significant irreparable ecological harms to public lands. Secondly, our organizations focus is upon restoring the ecological functioning, resilience, native species habitat, biodiversity, hydrological functioning, salmonid populations and habitat, and water quality of damaged and degraded public lands. It has been with these two focal priorities that our conservation organizations have participated in good faith in the development of the Dads Creek Wildland Urban Interface Project. As the county and industry participants in BMFP have chosen to object to BMFP's scientifically-based common ground consensus restoration recommendations for the Dads Creek Wildland Urban Interface Project, we have no choice but to file this objection to prevent this project from becoming a harmful one.

It is important to note that the success or lack thereof of this objection process to keep the Dads Project as one of generally legitimate restoration within BMFP parameters, and the willingness or lack thereof of the Malheur National Forest and the area's county and timber industry BMFP participants to honor common ground agreements in the Dads Creek Project, and in other current and future projects, will ultimately decide whether it is in our organizations' best interests to continue to participate in the area's ongoing collaborative processes. We must assess our continued participation in the further development of additional collaborative projects that may again only end up going through appeals/objections and/or potential legal challenges.

It is our hope at this point, given the timber industry's and county's insistence on filing objections, that this will be a strong learning process for all - helping BMFP participants fully understand the meaning and boundaries of consensus collaboration and legitimate restoration. It is with reluctant regret as such, as we had tried diligently to resolve these issues beforehand, that our organizations file this objection.

It is important to note that we appreciate the intent, learning dialogue and process of BMFP collaborative efforts. It remains our hope that BMFP common ground agreements and scientifically sound restoration objectives will be honored, with all objections being willingly withdrawn and the Dads Creek Wildland Urban Interface Project kept as currently proposed. As objectors, the Malheur Forest Service, and BMFP participants are willing to engage within and honor respectful consensus collaboration, incorporating the recommendations of greater scientific consensus and site-specific project location conditions regarding restoration objectives, locations, and methods - including protecting and restoring the habitat of the region's imperiled wildlife, aquatic, and native botanical species, our organizations hope to rejoin the area's ongoing collaborative process. If however, common ground agreements are to be violated or repeatedly challenged, and the best intent of collaborative projects such as Dads is sabotaged to meet ecologically unwarranted timber industry demands for higher board foot volumes and/or additional roaded access, the process by which the Dads Creek Wildland Urban Interface Project has been created would no longer be a feasible or legitimate collaborative one.

### ***Objectors' Interest***

The Dads Creek Wildland Urban Interface Project directly and significantly affects the members and volunteers of the Oregon Chapter Sierra Club. The Sierra Club represents over 23,000 members throughout Oregon, including the Club's Juniper Group, which has over 1,000 members throughout central and eastern Oregon. Sierra Club members feel strongly about nature, wilderness, natural forest ecosystems, wildlife, fisheries, and the environment. Sierra Club members regularly enjoy hiking, camping, wildlife watching, birding, ecological study, and photography within the national forests of central and eastern Oregon, including the project area within the Malheur National Forest. Implementation of the Dads Creek Wildland Urban Interface Project would adversely affect the Objectors because the proposed commercial logging and road construction activities are in excess of legitimate restoration needs and would result in degradation of the ecological integrity and wildlife habitat in and around the analysis area. Additionally, it is apparent from review of other similar projects as noted herein below, and by a thorough review of pertinent scientific research (submitted in the accompanying "Exhibit A" CD), that this project as currently designed is likely to increase the risk of severe fire and further harm the ecological integrity and resilience of the forest ecosystem within the project area rather than achieve its stated purpose and need goals. Objectors have a long-standing and well-documented interest in the management of the area in which the Dads Creek Wildland Urban Interface Project is located.

The concerns, issues, and recommendations in this Objection can be employed to assist the agency in ensuring this project protects and restores the ecological integrity of the project area and effectively reduces the risk of severe fire to residential property in the surrounding private lands as well. This objection is submitted in an effort to cooperatively work with the agency, Grant County, area residents, regional conservation groups, and other participants in the Blue Mountains Forest Partners collaborative process to ensure an ecologically beneficial, effective, and legally compliant restoration project. It is our hope that this project's initial collaborative and restoration objectives can serve as a foundation to incorporate additional ecological provisions and modifications in the Dads Creek Project as may need be, ensuring the long-term ecological recovery, integrity, and resilience of the area's forest ecosystems and waterways.

Lastly, we file this objection because we have no remaining recourse to comment and influence the final decision. The recently released Dads Creek Wildland Urban Interface Project EA is our first

opportunity to review the proposed final version of this project in full detail. Providing the project is retained as proposed, or modified to reduce its logging levels and extent and adding reasonable, scientifically based ecologically protective provisions, with effective enforceable implementation provisions, it may be that the project can successfully incorporate scientific conservation recommendations, and thus more capably meet its stated restoration goals. While there appear to be a number of potentially ecologically beneficial provisions and actions inherent in some of the project's design and proposed actions, there exists significant scientific controversy on the appropriateness and efficacy of logging-thinning as interpreted and proposed by the agency with this and other similar projects.

Many of the ecological, scientific, and legal issues with the Dads Creek Project have been raised as applicable with other Malheur and regional NF projects, including Canyon Creek, Crawford, Reynolds, Mossy, SF Deer, Jobs, Billy, Mule, Thorn, Black Rock, Egley, and Ant in the Malheur; Lava Cast, Kelsey, Oz, EXF, Snow Fuels, West Tumbull, and in our recent prevailing lawsuits halting the Five Buttes project and the Black Crater Project in the Deschutes; Wildcat, Farley, Sunflower Bacon, Rimrock, and Falls Meadowbrook in the Umatilla; and East Maury, Spears, Bandit I & II (including our successful lawsuit on Bandit II), Deep, and Upper Beaver in the Ochoco NF. As our comments, appeals, and successful litigation on these projects are both public and agency record and as such are available to agency decision-makers and planning staff, we herein incorporate these by reference in this objection.

### **The Dads Creek Project:**

The proposed action alternative involves:

- 3890 acres of fuel reduction, including
  - 2668 acres of mechanical thinning
  - 2532 acres of prescribed fire
- 1 mile of temporary road construction in four separate segments of approx. ¼ mile or less each
- 1.4 miles of road closures
- Plan amendments allowing reductions in cover in big game winter range and relocating old growth designations

Our organizations are participants in the Blue Mountains Forest Partners, a Grant County based collaboration group that works on improving federal forest management to achieve local forest restoration and ecologically sustainable objectives. We herein join Oregon Wild in their objection recommendation that all parties withdraw their Dads Creek Project objections and focus their good faith energies and resources on current ongoing and future collaborative common-ground projects instead. However, given that objections have been filed and not withdrawn, we have the following conservation ecological and legal concerns and reasons for objecting, including:

- excessive soil disturbance, including compaction;
- heavy machinery mechanical damage to soil integrity and subsurface soil microbial communities;
- impaired soil hydrology and water retention;
- project induced erosion and sedimentation, and
- consequent harms to area waterways including Oregon State 303(d) listed watersystems and dependent downstream ESA-listed salmonid populations and habitat;
- the need to retain all mature and old characteristic trees including small old trees;
- the ecologically unwarranted logging-thinning of inherently fire resistant medium diameter maturing trees which provide essential wildlife habitat and forest structure in the area's over-logged forests;

- the ecologically detrimental impacts of unwarranted new road construction, including the construction of so-called “temporary roads” (ecologically road beds require several decades to centuries to recover, and as such cannot legitimately be considered “temporary” despite the duration of their active use);
- the lack of effective provisions to prevent harmful resource damage from increased OHV access and likely use and abuse in the project area;
- the lack of provisions mandating adequate periods of grazing allotment rest following the implementation of project thinning-logging and burning (generally scientific recommendations require a minimum of five years of rest from livestock grazing in burned areas and areas of project disturbed vegetation);
- potential harms to forest connectivity and cover affecting interior and unroaded area dependent species – the project would log connective forests between Dixie Roadless area, uninventoried roadless, and forests to the East and Southeast of the project;
- harm to avian species and mammals from the lack of seasonal restrictions on project implementation, and from the removal of forest nesting, foraging, and hiding cover;
- the need for additional non-commercial restoration actions such as: restoring grazing damage and effectively limiting current and future damage, preventing the spread existent and introduction of new exotic invasive plants, restoring water quality in 303(d) listed watersystems, identifying species of concern that utilize or have habitat in the project area and implementing actions that protect and restore their habitat – including native wildlife, avian, aquatic, and botanical species, etc;
- Forest Plan amendments are not permitted as part of HFRA projects;
- potential project incursions into unroaded areas that have not been properly disclosed and addressed;
- cumulative impacts issues from recent, concurrent and future projects and management actions that have not been adequately disclosed and addressed.

### **Need to retain all old trees including small old trees.**

The HFRA says that the structure and composition of old growth shall be fully maintained and restored. Where plans do not “fully maintain and restore” old-growth, the Act (at §102(f)) requires that projects— “focus largely on small diameter trees, thinning, strategic fuel breaks, and prescribed fire,” and, to the extent consistent with fire resilient stands, “maximize the retention of large trees” appropriate to the forest type. All large and old trees need to be retained to meet this standard.

The HFRA only authorizes the removal of “hazardous fuels.” It does not authorize the removal of large and old trees that do not increase fire hazard. Nor does the HFRA authorize the logging removal of maturing trees that are inherently fire resistant, and/or are essential for forest structural integrity and wildlife habitat viability. Generally trees evidence fire resistance as the grow beginning around 5 to 8 “ in diameter as trees develop thicker bark and higher branch height from the forest floor. The Dads Creek project includes the scientifically controversial and legally deficient planned logging of many inherently fire resistant trees, contrary to the intent and requirements of the HFRA. Removal of fire resistant trees only increases the risk of future severe fires, as such trees are soon replaced by more fire-prone brush, vegetation, and small diameter young trees. To effectively reduce fire risk the Forest Service must retain trees that provides useful shade that helps keep fuels moist and cool and that helps reduce wind speed and suppresses the growth of brush, small ground vegetation, tree seedlings and other future ladder fuels.

The Forest Service failed to adequately disclose and consider the scientific evidence that removing canopy fuels has complex effects that are more likely to increase rather than decrease fire hazard, fire severity, and extent of spread. Removing canopy fuels generally accomplishes little to reduce crown-to-crown fire spread, as accompanying wind strength and speed is increased in canopy thinned forest stands, spreading sparks and embers further, exacerbating severe fire risk. Science research clearly shows that removing canopy cover increases fire hazard by making forest stands hotter, dryer and windier — (eliminating canopy increases solar insolation which causes fuels to warm and dry and increases wind speeds). Removing shade trees also frees site resources (light, water, nutrients) that can stimulate the growth of future ladder fuels, increasing the risk of severe future fires and also increasing the cost of maintaining fuel treatments. <http://forest.moscowfsl.wsu.edu/fuels/urm/>

### **Excessive soil disturbance and road construction.**

Soil conservation is a critical aspect of complying with the forest plan and meeting HFRA's mandate to restore forest structure and composition. Excessive ground based logging and road construction is inconsistent with these standards. There are several tributary streams in the project area that contribute water to salmon and steelhead producing streams. All impacts to these watersheds must be disclosed and not harmfully impact the salmonid fisheries.

### **Need for comprehensive restoration (e.g., additional non-commercial actions to limit grazing damage, limit the spread of weeds, etc).**

When conducting commercial thinning restoration projects, it is important that other critical aspects of watershed restoration be included and implemented, including reducing the impacts of the road system and livestock grazing and recovering ecological processes that will allow streams and fire regimes to recover.

Livestock grazing and invasive exotic plants have impacts on forest structure that have direct implications on the HFRA mandate to fully restore old forest structure and composition. Livestock grazing and invasive plants have a direct detrimental impact to watersheds and salmonid fisheries.

More road restoration and road removal, and the prohibition of any new roads including temporary roads are needed to improve the watershed quality, functioning, and aquatic habitat.

### **Plan amendments are not allowed as part of HFRA projects.**

This project involves two plan amendments — one to allow violation of cover requirements in big game winter range, and one to relocate designated old growth.

HFRA requires that authorized projects be consistent with the applicable forest plan standards and guidelines. HFRA Section 102(b) says, “An authorized hazardous fuel reduction project shall be conducted consistent with the resource management plan and other relevant administrative policies or decisions applicable to the Federal land covered by the project.” HFRA only authorizes projects that are consistent with the forest plan. If this project calls for any plan amendment, the agency must use the traditional NEPA process and consider a full range of alternatives. The legislative history of the HFRA makes clear that plan amendments are allowed as part of a separate planning process but were not contemplated as part of project level decision-making under HFRA. Plan amendments must also be subject to full NEPA and administrative appeal, but HFRA has limited NEPA procedures and allows “objections” but not appeals. See [House Report 108-096 - Part 1 - HEALTHY FORESTS RESTORATION ACT OF 2003](#). (“All hazardous fuels reduction projects must be conducted in a manner

that is consistent with the land and resource management plan ... LRMPs need to be examined periodically to ensure management assumptions and guidance is correct, and new scientific information becomes available. The primary process for ensuring that planning direction is kept current is the amendment process. ... The Forest Supervisor shall review the conditions on the land covered by the plan at least every 5 years to determine whether conditions or demands of the public have changed significantly. All amendments and revisions are subject to public notice and comment, environmental review under the National Environmental Policy Act, and administrative appeal.”)

**REQUEST FOR RELIEF:** If all objections are not withdrawn, reasonably resolved, or dismissed and the project allowed to go forward as proposed as noted above, the Oregon Chapter Sierra Club and Blue Mountains Biodiversity Project respectfully request that the Forest Service either implement the project as currently proposed without increasing logging volume levels, logging extent, or road construction; or withdraw the EA and prepare a new NEPA analysis with a full range of scientifically based alternatives and follow the notice-comment-appeal regulation at 36 CFR 215 - and modify the proposal as follows:

- Retain all trees with mature and old-growth characteristics and all maturing trees with inherent fire resistant characteristics, regardless of size and species;
- Refine basal area formulations to optimum wildlife habitat levels for site-specific stand Plant Association Groups (PAGs) and verifiable area Historic/Natural Range of Variability (HRV/NRV) levels;
- Retain sufficient available forest structure to meet forest plan requirements and management objectives for deer and elk hiding and thermal cover and migration routes;
- Address and incorporate the Objection concerns of conservation organizations to protect communities and area forests from unwarranted harms;
- Do not construct any temporary roads, reduce overall road density, and avoid skid trail and soil impact harms from heavy logging machinery (one effective option is to require the use of light on the ground machinery only, and utilize effective soil and vegetation protection methods);
- Change all units that can only be accessed by temporary roads to non-commercial thinning only or drop these units;
- Close the project area to OHV use and ensure OHVs do not enter closed road areas;
- Strengthen Best Management Practices provisions for the prevention of invasive plants and protection of soils and habitat features, removing undue loopholes and exceptions to compliance with these provisions;
- Re-assess project impacts utilizing actual impacts from recent and current thinning-logging projects, and develop effective provisions to prevent excessive harms to area soils, forest structure, wildlife habitat, and natural resources;
- Effectively address issues of project slash and fire-prone fuels, providing for the timely and safe removal of project generated fuel loads from the area;
- Do not permit the accumulation and burning of large or numerous slash piles as these increase fire risk and irreparably damage forest soils;
- Incorporate effective protection provisions, including additional seasonal implementation restrictions, for wildlife species of concern known or reported to be within the project area, including neotropical migrant and native birds, additional raptors including goshawks and owls, and small mammals including arboreal and ground squirrels, badgers, bats, and prey species of management indicator and species of concern within the greater project area;
- Revise the project to meet these objections, incorporate the recommendations of pertinent scientific research and stay within the parameters of greatest scientific consensus;
- Revise the project to ensure there will be no detrimental effects from sedimentation, erosion, loss of shading, roads, or other project actions to area waterways;

- Revise the project to include effective restoration actions recovering water quality of the area's 303(d) listed watersheds and restoring salmonid habitat and populations, both downstream and within the project area as historically occurred;
- Suspend livestock grazing beginning the year prior to project implementation and concluding five to ten years post project – or longer as may be needed for the full natural recovery of the affected project area;
- Revise the project to include buffer areas of at least ¼ to ½ mile between uninventoried roaded areas/inventoried roadless areas and project units;
- Retain and increase the size and connectivity of current designated old growth areas, in addition to the designation of new old growth areas to meet wildlife habitat requirements;
- That this project be modified to meet the Objections presented in the Statement of Reasons;
- That the project be revised to ensure consistency with the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), the Clean Water Act (CWA), the Migratory Bird Treaty Act (MBTA), the Endangered Species Act (ESA), the Healthy Forest Restoration Act (HFRA), these statutes' implementing regulations, and the Malheur National Forest Land and Resource Management Plan (MNF LRMP) as amended by the "Eastside Screens."

## STATEMENT OF REASONS

### *Objection Overview*

First, we appreciate the intent of the agency to meaningfully involve community members, including area residents and conservation organization representatives, in the development of this collaborative project. We appreciate the agency's attempt to honor the common ground recommendations of the BMFP collaborative group by keeping the Dads Project within the parameters of the BMFP agreements and in near accord with ecologically and scientifically sound restoration objectives, and the incorporation of area residents' reasonable ecological and community safety concerns. The EA's contention that this has been a "collaborative" HFRA project however is highly inaccurate. As our organizations are active participants in a number of collaborative projects across this region, there is considerably more diverse and varied local community public involvement in proposed project design and development, and greater responsiveness and incorporation of collaborative participants' concerns and recommendations than the agency has achieved with this project. First, there cannot be real collaboration in a community where many local conservation concerned citizens feel they cannot safely and openly participate. Due to the past and ongoing (with the poisoning of a doctor's well) contemporary history of direct and indirect harassment, threats, and personal and property damage to local citizens who dared to publicly represent conservation issues, local community residents – including members and associate volunteers of our conservation organizations, have not felt that they could safely participate in the BMFP Dads Creek collaborative project development. To date the Forest Service and BMFP have not effectively or adequately addressed this significant issue of real public participation, respectful democracy, and public safety. As such, this project is more a moderated compromise between the Forest Service, timber industry, county officials, generally pro-timber residents, and participating regional and national conservation organizations. Within this still pioneering but as yet only semi-collaborative process, the Forest Service and BMFP participants are under repetitious timber industry and political pressure for higher timber volumes and greater logging extent than is ecologically and scientifically warranted. The current timber industry and county objections to this common ground project, and the extent of timber industry pressure being placed upon the Malheur Forest Service, exemplify the ongoing lack of respect for common ground agreements and scientifically based conservation values and restoration objectives. Until real respect is evidenced, and the inherent democratic rights of all the area's citizens to be meaningfully and safely heard are respected, the area's collaborative efforts will continue to be a false veneer attempting to hide the real lack of respect and safety of the area's conservation-concerned citizens. The

failure of the EA to disclose or address its inability to meet the community collaborative intent and objectives of the HFRA, and the consequent false assertion that this is a collaborative community project, violates the letter of both the HFRA and the NEPA federal environmental policy laws.

The project EA and its proposed decision fail to effectively incorporate restoration objectives that project protect all mature and old characteristic trees, retain sufficient forest stand ecological structure and natural stand distribution patterns, include adequate provisions for wildlife leave patches, protect ecologically significant features, protect soils and native forest vegetation from excessive disturbance, prevent the further spread or new introduction of invasive exotic plants, protect state water quality listed waterways, comply with the forest plan, and overall limit project actions to those meeting the recommendations of greater scientific consensus to achieve actual fire risk reduction and forest resiliency, and avoid the unwarranted logging removal of inherently fire resistant maturing, mature, and old trees.

Additionally, since the previous comment period, meetings, and field trip, our organizations have begun surveys monitoring the impacts and efficacy of other purported “fuels reduction” projects in the region’s National Forests. Among the project areas being reviewed are the Deschutes NF’s Lava Cast, East Tumbull, Fall River, Five Buttes, Seven Buttes Return, and Red Plague; the Ochoco’s Spears project; the Umatilla’s Rimrock project; and the Malheur’s 16 Road, Thorn, and Crawford projects. To varying degrees, all the above projects as implemented have caused serious ecological harms, both directly in their affected project areas, and cumulatively to the ecological integrity, biodiversity, and habitat viability of the area’s greater forest landscape. Projects such as Seven Buttes Return, Red Plague, West Maury, and Spears (among others) have excessively opened forest canopy and structure to the effects of wind and solar drying; irreparably degraded wildlife habitat; irresponsibly left excessively high levels of extremely fire-prone fuels; and severely damaged forest soils, native forest vegetation, and botanical diversity and abundance. Overall these projects have significantly increased the risk and likelihood of severe fire across the greater project landscapes. Logging in the Spears sale by local John Day contractor Iron Triangle Logging evidenced little care to protect forest soils or abide by riparian buffer requirements, with the contractor caught by agency staff in a breach of contract violation of buffer areas, and by our surveyors in additional buffer and soils provision violations. It is considered likely that the Dads creek project, which contains similar agency provisions, would also result in similar harms and violations. The failure to disclose the actual impacts of such projects accurately violates the NEPA, the failure to effectively address the prevention of such harms violates the NFMA, the CWA, and the ESA.

While vegetation may soon again cover soils damaged in the above “thinning” timber sales, scientific research notes that the full recovery of soils harmed by heavy logging machinery and disturbance can require several decades to more than two centuries – as soil microbial communities and the abundance of diverse native species they support slowly recover. As project area soils and native vegetation have previously been severely damaged by past clearcut and other harmful logging practices, the recent additional logging only further sets back the full recovery of the areas ecological resiliency, including the moisture retention and infiltration capabilities of area soils. Soils play a foundational role in providing and maintaining microbial communities, nutrients, and moisture necessary for forest ecological integrity, resilience, and inherent resistance to disturbance events such as fires and insects.

Continuing to propose the implementation of additional projects such as Dads Creek would be an ecologically unwise and legally foolish management course, given the preponderance of evidence on project design deficiencies, implementation harms, and failures to meet the purported ecological objectives, or remain within the parameters of greater scientific research consensus and recommendations. As similar harms are likely to occur if this project is implemented as proposed, these issues must be effectively addressed and the project modified as need be to meet the stated purpose and need goals and comply with the intent of the HFRA and applicable federal environmental policy laws.

## *Ecological & Wildlife Issues and Concerns*

- A. The project contains important forest edge habitat, which is known as a preferred habitat for various raptors, including goshawks. Scientific research concludes logging within habitat for many raptor species has significant adverse impacts upon raptors and their prey species. It is important that additional provisions be incorporated into this project to protect wildlife habitat for diverse species of concern, including greater retention of cover habitat and mature trees between 14” to 21” dbh. Edge habitat areas in this otherwise homogeneous area’s stands are particularly important. Mandating retention of trees above 14” dbh near rock outcrops, waterways, springs, unroaded areas, and old growth areas will help better provide for the continued viability of numerous wildlife species, including forest raptors, large and small mammals, and neotropical and native birds.
- B. Retaining an increased percentage of unthinned, or lightly thinned (using variable dbh limits ranging between 12” to 16” dbh) can help reduce the project’s adverse impacts upon many wildlife species dependent upon forest canopy closure, mature and old forest structure, dense forest areas, connectivity, and snags (including cavity nesters and excavators). The agency’s current guidelines for snag retention and retention of green replacement trees must be updated to incorporate new scientific research to ensure these are capable of providing for viable populations of wildlife species.
- C. Retaining adequate vegetative and forest cover and connectivity for dispersing and migrating wildlife species should be better incorporated in this project.
- D. The analysis and proposed decision must effectively address the expansion of OHV use and potential trash dumping throughout the project area. These cumulatively result in further degradation of the area’s soil, water quality, plant communities, wildlife habitat, etc. This is a fundamental cumulative effects/cumulative impacts issue, which must be incorporated into project provisions and design. Leaving additional areas untreated, creating effective OHV barriers, road closures, enforcement, and other measures as appropriate must be incorporated into this project.
- E. Many neotropical migrant and native birds are forest-canopy dependent, and are known to be imperiled by significant continuing population declines, due largely to logging projects as well as loss of area habitat to human encroachment/development. Restrictions on project activities during nesting and fledging periods, as well as protection of suitable habitat must be better incorporated into the project design. Cumulative impacts to neotropical and native avian species of concern must be addressed by this project, with regards to the agency’s other management projects, regional development, OHV use, and other cumulative impacts.
- F. We have several concerns regarding Northern Goshawk and other raptors that may be in the project area, including other hawks, eagles, and owls. Goshawks historically have utilized the forests of the proposed project and surrounding areas for nesting, fledgling, and foraging. Goshawks and many predatory raptor species, rotate their nesting and foraging territories over time, so as to not deplete their prey species populations and thus maintain their viability over the long-term. As such, to ascertain potential Goshawk and other raptor use, agency surveys must be conducted seasonally each year to determine the rotational patterns of raptors for the project and adjacent area forests. Goshawks and many raptors also have an extensive foraging territory. It is likely that nesting pairs may utilize significant portions of the greater project area’s more mature and older forest areas, as well as maturing forests and forest edge habitat. It is also known that younger stands and open-forest edge areas may be utilized as foraging territory by this species. The EA fails to adequately address impacts to this species such as how logging removal of forest canopy

cover and structure, and further fragmentation of the area's forests, will affect adult and juvenile Goshawks and other raptors, or other direct, indirect, or cumulative effects to goshawks and other raptor species. The EA fails to adequately address impacts to Goshawk nesting areas, including sufficiently assessing historic nesting areas, within or adjacent to the proposed logging project. Similarly, the EA fails to adequately disclose and address potential direct and cumulative impacts harms to existing raptor nests of other species in the area. Several scientific studies exist regarding significantly detrimental logging impacts to Goshawks due to logging within or near Goshawk PFA's, as well as from fragmentation of natural forest habitat. (Reynolds et al, 1982, 1989, 1991; Moore and Henry, 1983; Fleming, 1987; Hall, 1984; Saunders, 1982; Crocker Bedford et al, 1988, 1990, 1991; Patla, 1991; Hayward and Escano, 1989; Kennedy, 1988; Shuster, 1980; Speiser and Bosakoski, 1987; Woodbridge et al, 1988; Bendire, 1892, Bull, 1988; Hargis et al, 1991; Bryan and Forsman, 1987; Andeson and Shommer; among others ). Some of these studies were conducted for the agency. However the EA violates the NEPA by failing to adequately and accurately disclose or assess this pertinent information. As such and the agency fails to uphold its responsibility to address these issues thoroughly as required by both the NEPA and the NFMA. The EA fails to address the cumulative impacts of the proposed project along with past, present, and reasonably foreseeable future actions, in violation of NEPA, 40 C.F.R. § 1508.7. We are concerned about the affect of the planned transformation of the commercial logging units from relatively dense recovering maturing forests, to more open forest areas preferred by other raptors such as red-tailed hawks, which could extirpate forest raptors currently using the area from logged units and adjacent areas. It is reported that suitable forest raptor habitat exists in the project area. The project will remove necessary foraging, fledgling, and nesting habitat, which may result in the loss of potential Goshawk and other forest and edge area raptor nesting habitat, as these features are inextricably linked within the greater Goshawk territory, thus resulting in fewer pairs of nesting birds within the area, or a loss of either or both fledgling juveniles and/or adults to predation or other mortality associated with logging impacts. The failure of the project's proposed actions to protect goshawk and other raptor habitat would further reduce potential nesting and foraging habitat and thus violate NFMA's requirement to maintain viable populations of these and many other forest canopy-dependent species, 36 C.F.R. § 219.19. It is clear that the agency must prepare additional analysis to deal with this issue legally and adequately.

### ***Neotropical Migrant and Native Birds***

Neo-tropical migrant and native forest-dependent birds (as well as numerous other forest species) are in serious decades-long population declines due to the adverse cumulative impacts from over a century of commercial logging in Oregon (see "Avian Population Trends" by Brian Sharp and Partners in Flight research). The EA for this planned project fails to fully and adequately disclose the current population status and trends of native forest dependent Neotropical migrant and native avian species within the analysis area and adjacent forest. While the EA does acknowledges the presence of some avian species of concern that may be in the area, it fails to disclose recent to protocol surveys for these or other species that may occur in the greater project area and fails to address specific direct and cumulative impacts to these species from the proposed project. Compliance with both the NFMA and the MBTA requires that all alternatives presented within the EA must be capable of protecting forest habitat for these many native forest species, and of reversing any current downward population trends. Such a course of proactive protective action is also required by the ESA and the NEPA, Presidential and USFS directives, and the Migratory Bird treaty Act, as well as credible conservation science and ethical integrity. However, in violation of these legal and ethical requirements, the EA presents a proposed decision which would

degrade habitat and further imperil neotropical and native avian species populations, resulting in both individual mortality to these species as well as irreparable habitat and population level harms.

The proposed timber sale(s) would significantly impact migratory birds in violation of the Migratory Bird Treaty Act, 16 U.S.C. §§ 703—712 (1994). It is well known amongst the conservation-science community that many migratory birds which are currently experiencing severe population decline trends are “strongly associated” with interior forest and related habitat. The proposed commercial “thinning” logging and burning would likely directly kill nesting and fledgling migratory birds. The proposed logging would significantly reduce existing forest-dependent migratory bird habitat, which has already been significantly diminished due to the cumulative impacts of past management throughout much of the Malheur National Forest, including the project area.

The proposed logging units would irreparably fragment migratory bird habitat. Areas that were not logged would also be negatively impacted by generalist bird species favored by the environmental conditions created in highly fragmented logged forests. Other avian and predator species more adapted to open logging thinned forests could move into the project area, further adversely impacting interior mature and old forest dependent neotropical and migrant avian species. The impact these abundant and highly competitive bird species would have on sensitive bird species dependent on less fragmented forests should have been adequately disclosed and evaluated in the EA. The adverse impacts that the proposed logging would have on migratory birds are supported by multiple scientific studies.

Forest fragmentation, including loss of viable nesting habitat within central and eastern Oregon’s national forests, is considered to be a primary cause behind declines observed in many forest songbird species. Further loss or fragmentation of habitat could lead to a collapse of regional populations of some forest birds (Robinson *et al.* 1995). As landscapes become increasingly fragmented, regional declines of migrant populations may result (*Id.*). In the Pacific Northwest, researchers have found that old growth forests and natural forest processes (including natural fire-recovery) are integral to the survival of migratory birds. The past and continuing logging-oriented management of the forests of Oregon and Washington, which provide nesting and fledgling habitat for numerous migratory birds, has resulted in severe ongoing population declines in forest canopy-dependent migratory and native birds. (*reference: “Avian Population Trends in the Pacific Northwest” by Brian Sharp*). This information was not adequately addressed in the EA’s proposed action alternatives and mitigations, despite the obvious direct adverse impacts to many migratory and native bird species from the removal of forest canopy cover, forest structural continuity, and burning of ground nesting, foraging, and hiding cover, which would occur with the implementation of this project. Failure to sufficiently disclose and comprehensively analyze this pertinent, essential, scientific information violates provisions of the NEPA. Implementation of this project would violate both NFMA and the Migratory Bird Treaty Act.

In August 1999, the FWS outlined what it perceived to be the agency’s legal obligation in terms of migratory birds and timber harvest. FWS stated that agencies should take “an extremely cautious position with respect to the intentional take of migratory birds by federal agencies.” *Letter from Acting Director, United States Fish and Wildlife Service, to Regional Directors, Regions 1–7 and Assistant Director, Refuges and Wildlife (August 17, 1999), 3.* FWS also cautioned that “the Service should not assert in any communication or correspondence that federal agencies are not covered by the prohibitions of the MBTA [Migratory Bird Treaty Act].” *Id.*

In July 2000, the Eighth Circuit Court of Appeals held that federal agencies are required to obtain a take permit from FWS prior to implementing any project that will result in take of migratory birds. *Humane Soc’y of the United States v. Glickman*, 217 F.3d 882 (8<sup>th</sup> Cir. 2000). Due to this litigation, the FWS is operating under the assumption that the Migratory Bird Treaty Act applies to the Forest Service

and its activities. 16 U.S.C. § 703 et seq. The Act states that “it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill . . . any migratory bird.” 16 U.S.C. § 703.

In January 2001, President Clinton signed Executive Order 13,186 that outlined the federal government’s responsibility to comply with the Migratory Bird Treaty Act. Exec. Order No. 13,186, 66 Fed. Reg. 3,853 (2001). President Bush has not rescinded this Order. Recent legal analysis confirms that the Forest Service must actively prevent the take of migratory birds, or obtain a permit for incidental take of individual species. *Helen M. Kim, Chopping Down the Birds: Logging and the Migratory Bird Treaty Act, 31 Env’t. L. 125 (2001)*.

The Forest Service has failed to comply with these legal and scientific obligations. Until the agency can demonstrate that it has complied with the requirements of the Migratory Bird Treaty Act, the EA for this project must be withdrawn and a new EIS must be prepared.

The lack of adequate scientific assessment of these issues fails to meet NEPA’s requirement for high quality scientific analysis that would satisfy the “hard look” standard. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9th Cir. 1998) *cert. denied*, *Ochoco Lumber Co. v. Blue Mountains Biodiversity Project*, 119 S.Ct. 2337 (1999).

### **Timber Volume Targets Driving NW Timber Sales**

Over the past years, conservation efforts have achieved many negotiated changes, upholding federal laws and limiting timber sales to protect old growth, forest ecosystems, wildlife, and fish. Recently negotiation attempts have been detrimentally affected as Forest Service staff throughout the Pacific Northwest region acknowledge they are expected to meet the elevated timber quota targets adopted by the agency in April 2007. Due to the expected quota contribution to timber volumes from local national forests and ranger districts, the ability of agency planners and decision-makers to modify timber sales to lessen harms to wildlife, salmon, and other important ecological concerns has been unreasonably severely reduced. Yet agency NEPA project documents fail to disclose the significant determining role timber quotas have in shaping projects, or the effect these quotas have in discouraging agency decision-makers from modifying the logging extent of projects if such modification would reduce final timber volumes. The region’s Forester at the time, Linda Goodman, wrote the following internal agency letter (included *italicized* in full below), confirming the existence of board foot volume targets driving the region’s timber sales.

While the agency may believe it has the discretion to impose timber volume quotas, continuing to issue logging project “purpose and need” statements and analysis documents that fail to publicly disclose timber volumes are a major purpose behind the region’s projects violates environmental policy laws. NEPA requires that the public as well as the decision-maker have all pertinent information concerning proposed projects. As these quotas exist, the agency must comply with environmental policy laws and clearly disclose their existence, the specific timber target goals for the affected forest and district, and the percentage of these the particular project is expected to contribute.

The failure of the NEPA analysis to disclose the existence of Pacific Northwest Regional timber volume target quotas, and their expected local national forest and ranger district percentages, driving agency projects and influencing the development and selection of alternatives violates the clear disclosure requirements of the NEPA. The failure to disclose that decision-makers are influenced in their selection of an alternative by the expectation that their forest must meet its expected contribution to the region’s timber quotas violates the requirements of the NEPA. Holding appeal resolution meetings wherein undisclosed quotas set the parameters limiting the decision-maker’s ability to modify a project violates

the NEPA, violates agency compliance with environmental policy laws, and violates agency accountability to the affected public.

NEPA requires unbiased, scientifically-based, objective analysis and a full range of reasonable scientifically-sound alternatives. The existence of undisclosed quotas unduly influencing this project towards meeting predetermined agency timber volume targets violates the requirements of the NEPA. Quotas sabotage agency projects, illegally predisposing agency analysis towards developing ecologically unwarranted logging-driven alternatives. This predisposes decision-makers to approve scientifically controversial or unfounded logging that is likely to result in significant harms to imperiled wildlife and biodiverse forest ecosystems. Such is the case with this project, which fails to disclose the existence or influence of timber volume quotas.

Written in “obfuscate-speak” style, one doesn’t have to work hard to read between the lines of the former Regional Forester’s April 2007 internal letter to understand timber corporation economics trump wildlife and ecological concerns in Pacific Northwest Region Forest Service projects.

Among the ever-growing ranks of harmful sales spawned by timber quotas are: Five Buttes, Snow Fuels, BLT, Black Crater, and GW in the Deschutes; Spears and East Maury in the Ochoco; Thorn, Knox, Black Rock, Crawford, and Egley in the Malheur; and Farley, Wildcat, Monument, Skull, Flat, Sugarbowl, and Otter Fire in the Umatilla. Together these and other sales total many thousands of acres and millions of board feet. The logging they plan to implement would harm wildlife and salmonid spawning habitat, destroy spotted owl nesting habitat; harm pileated, black-backed, and white-headed woodpeckers; degrade habitat for marten; wolverine; lynx; goshawk; neotropical migrant and native birds; pygmy, flammulated, and great gray owls; and many other biodiverse native species of concern.

It is doubly ironic that this is done under Northwest Forest Plan cover – prioritizing timber volume goals above this plan’s original focal objectives of recovering the populations of threatened-listed spotted owl and other imperiled old growth forest-dependent species of concern and protecting essential forest habitat from logging and other management harms. The plan has failed dismally to meet population recovery and old growth habitat protection goals for spotted owls and other wildlife, whose populations continue to decline steadily. As noted in the letter, eastside forests are expected to meet westside NFP timber targets – jeopardizing eastside wildlife and forests as well. This latter is illegal, as eastside volume must be based upon LRMPs and site-specific project analysis, not westside timber volume targets which have no relevance or legal bearing on eastside national forests. The agency’s blanket requirement of the region’s forests to meet arbitrary timber targets violates federal environmental policy laws. Failure to disclose and analyze the impacts of this additional timber directive violates the NEPA. The following is the timber quota letter announcing the increased timber quotas in the Pacific Northwest Regional Forester’s own words:

*“Linda Goodman - Regional Forester, Pacific Northwest Region:”*

*“As we get older, we accumulate things. Sometimes our closets show our life story by the old shirts, slacks or shoes that “hang out” in them. And sometimes, we face the need to downsize our closets and find the usable items that may have benefit to others. We often provide clothes, appliances and other useful items for the greater good of others.*

*Sometimes, our forests resemble those closets—a bit cluttered and in need of “tidying up.” This tidying up not only aids the environment by creating a healthier forest, it also can provide benefits to our local communities.*

*It takes money and time to do this. For a long time, we have known we didn’t have the funds to get this work done. That has changed.*

*The President and Congress have given us an additional 24.7 million dollars to use for our fuels management and timber program. These dollars come with an expectation for us to increase our timber volume for the Northwest Forest Plan and also the east-side Forests.*

*We’re going to increase our timber offered program to 675 million board feet this year, and 800 million board feet in fiscal year 2008. That is up from 520 million board feet last year. We’re*

*going to do this in both young and mature stands to accelerate growth, reduce hazardous fuels, and improve wildlife habitat. This work will help us fulfill the requirements of the Northwest Forest Plan.*

*One of the key provisions of the Northwest Forest Plan is to provide economic stability to local communities. Unfortunately, due to a host of factors, the local communities have not seen the stability as envisioned by the Plan. By offering an increased volume of timber, local communities will benefit, both in terms of jobs, revenue, and healthy forests.*

*I realize this work, so late in the fiscal year, won't be easy, and will require a united approach to handle the work. I've appointed Willamette National Forest Supervisor Dallas Emch to spearhead our efforts. Dallas will be working with Forests to make sure we can get the work done in a timely and efficient manner. We know you already had a full schedule of work so we want to look at a full range of options to assist employees in meeting our work. Our goal remains to do this work in a collaborative effort, with counties, partners and citizens all working together for the good of the land and the people*

*"Tidying up" our forests and providing benefits to local communities makes good sense."*

Interesting letter for interesting times? Yet forests are not "closets." Forests are an integral part of Earth's interwoven ecosystems, supporting innumerable biodiverse species, supplying clean waters, and providing all with the wondrous beauty of untrammelled nature. Forests should not be subject to the political wiles of corporate timber, which has already imperiled not only spotted owls but numerous other LOS dependent wildlife and salmonid species, decimated old growth, and left forest ecosystems in fragmented tatters. We respectfully call for these Northwest Forest Plan dollars to be employed for legitimate restoration, forest protection, and recovery of imperiled species – and not used to toss more irreplaceable trees into the black hole of insatiable timber profits. The agency must begin to responsibly address the failure of their Northwest Forest Plan provisions to prevent the continuing serious decline of ESA threatened-listed spotted owls, and a host of other imperiled forest species of concern. Similarly, the agency must also address the failure of their Eastside "Screens" provisions to adequately protect and recover the populations and habitat of numerous old growth forest dependent species of concern. The current proposed decision needs to be revised as noted herein to incorporate additional reasonable scientifically and ecologically based restoration needs.

### ***Wildland Urban Interface Areas & Interior Forest Wildlands***

Accurately defining the extent of the Wildland Urban Interface area must be based upon scientifically sound research and site-specific conditions. Congress, in the HFRA, established WUI's as extending only a mile from human residences, or up to at most one and a half miles if conditions warrant. Foremost in protecting private-lands residences is creating defensible space in the area immediately surrounding the residence, especially within a 200 foot diameter area surrounding it. Pruning lower limbs on large trees, which could otherwise act as ladder fuels for fire to reach the tree canopy, thinning out small trees and dry ground fuels and vegetation near structures, and utilizing fire resistant materials in the surface construction of structures – such as metal or tile roofing instead of flammable cedar shakes, etc. – can make or break whether such areas and their structures survive fire or not. Forest canopy closure is an issue if the private residences are located within an area of contiguous forest canopy. Forest canopy closure more than ¼ mile distant from area homes poses little real risk to properly constructed, well-maintained homes whose owners have created safe defensible space around their dwellings within their property. The project must include private landowner cooperation, with effective efforts to reduce fire risk and create defensible space immediately around residences. The EA fails to note a truly collaborative community involvement of all project area residents and land owners towards attaining the stated fire risk reduction goals of this project. The project as such must be presented to the community as a whole, with the involvement of the majority of residents in the area who could be affected by the purported fire risks. Further, thinning interior forest is not necessary far from private lands residences. The extent of the

proposed project needs to be scaled back to what is actually necessary across this extensive area. BLM recently adapted a 16” dbh limit throughout its La Pine HFRA project, and designed the project as a series of differing management bands varying in thinning provisions based upon agency stand objectives and distance from residences, with those farthest away having more cover and greater tree retention based upon the recommendations of scientific research. This project must be redesigned to incorporate similar scientifically sound provisions.

***The EA is premised upon erroneous, arbitrarily selective, and scientifically controversial management assumptions and actions, which are incapable of meeting the ecological goals and objectives of the project’s purported HFRA purpose and need.***

The purpose as expressed above is illusory and the analysis in the EA is unsound for at least two reasons. First, the historic forest conditions and forest health justification for this project is inherently flawed due to the belief that logging can correct past bad management practices, including fire suppression. While there is limited scientific support for the removal of small diameter trees and flash fuels in frequent fire-interval low elevation ponderosa pine forests, this scientific support is premised upon the incorporation of important ecological protection provisions – some of which are absent from the proposed project, including the protection of forest stand structure and ecological integrity, the retention of inherently fire resistant maturing, mature, and old trees, the protection of soils and restoration of soil hydrological functioning, avoiding additional road construction and including provisions for the closure and reclamation of excessive resource damaging roads, and effective protections for native species of concern in the greater project area. Indeed, the EA selectively presents and fail to disclose the full extent of credible peer-reviewed scientific research recommendations that evidence the project’s proposed actions are incapable of achieving its stated purpose, and instead would increase the risk and extent of severe fires in the project area (see Exhibit A). The underlying assumption that a forest is generally healthier if properly functioning parts of the forest are removed is similarly unsupported by fact.

The agency’s interpretations of scientifically controversial research addressing regional forest ecology is based upon the selective and contextually inappropriate misuse of a combination of limited scientific studies, agency assumptions, and politically-contrived timber volume agendas. While there is emerging scientific consensus concerning pre-European settlement era forest stand compositions and varied historical fire patterns in the region, the Forest Service has largely misapplied scientific recommendations in this project’s interpretation of “historic conditions” and in developing its planned actions within the planning area. The resulting project is a result of partially accurate historic stand assumptions mixed with erroneous partial and misapplied scientific interpretations. Consequently, overall the project’s logging plans will result in far more ecological harm than benefit to the area’s recovering forest ecosystem and the area’s dependent wildlife, forest soils, and native vegetation.

The agency is correct that many portions of the planning area are exhibiting overstocked conditions – however this is primarily among young trees less than 10” to 12” dbh. The area is largely deficient in trees >14” to 16’ and above, due to excessive past logging. Much of the area’s stand overstocking occurs primarily among young understory trees that have little if any merchantable timber value. Significant portions of the project also contain areas with unnatural logging created openings, old logging skid trails, far too many resource damaging unmaintained logging and user created roads, harmful OHV incursions, evidence of some trash dumping, and overall degraded forest ecosystem conditions due to a combination of past and ongoing management, including logging, road building, fire suppression, invasive plant introduction and spread, and growing frequency of OHV and user abuse.

Past and ongoing logging projects across the greater area have exacerbated current fire risk by removing fire resistant old growth, mature, and maturing trees, damaging forest soils and hydrological functioning, and leaving logging slash spread across area forests. Fire resistant trees removed by logging have been – and are being - replaced relatively quickly with more fire prone vegetation including grasses, invasive plants, shrubs, forest vegetation, and small seedling and young trees.

As past high-grade logging removed many of the largest ponderosa pines, significantly altering the area forests, much of the project's forest stands are still in the process of natural recovery from past over-logging. Scant remaining old and mature trees, and the area's larger maturing trees, including many of those planned for logging removal, play an essential role in the ongoing natural recovery process of the area's forests. As many of the area's old growth and large mature trees have been removed during past logging, the area's remaining trees greater than 14" to 16" in diameter provide essential forest stand structure for wildlife habitat viability and the long term ecological integrity and recovery of the area. Removing many of these inherently fire resistant old and maturing trees as planned would be in contravention to the recommendations of the majority of scientific research studies and to the purported HFRA purpose of this project. Such logging removal also cannot be justified under the stated fuels reduction needs for this project.

As noted by scientific research, trees begin to exhibit fire resistant characteristics as they mature, with increased height of branches, thickening bark, vigorous growth, deepening roots, and greater moisture capacity retention. Varying somewhat by tree species and localized conditions, inherent effective fire resistance of growing trees starts early and begins to be attained between 8" to 14" diameter. Ponderosa pine, western larch, and doug fir are particularly fire resistant as they begin to mature. Indeed, former Forest Service Chief Dombeck has been quoted as stating there is no valid rationale for removing trees greater than 12" diameter to meet fuels and fire risk reduction goals. As noted herein, removing too much of an area's basically fire resistant maturing tree forest stand structure actually increases the risk of fire severity and extent of spread, due to greater solar drying, higher wind speeds, and greater prevalence of fire prone brush, vegetation and small diameter trees that soon replaces the more fire-resistant shade-providing/moisture retaining trees removed. Additionally, logging slash that remains in the forest increases the risk and extent of severe fires far above the pre-project implementation risks. Slash piles and scattered fuels from past and recent logging can be found throughout the region's forests, including areas to the south and east of the proposed project. Excessive access and resource abuse in the project area, and human caused fires in the greater area, are also concerns, yet this issue is not effectively disclosed or addressed by this project.

***Plan for Reducing Fire Risk does not use the Best Available Science and is Scientifically Controversial***

There is ample scientific controversy about whether mechanical fuels treatment reduces fire risk. Fuels treatments that reduce stand density and open up the forest actually enhance fire spread, as fire moves more readily through an open environment. (Morrison and Smith, 2005; Rhodes, 2007) An opened forest allows fuels to dry out faster and winds to blow through the stand. (Morrison and Smith 2005; Rhodes, 2007) Thinning the understory is more effective at reducing fire risk than thinning the overstory. (Carey and Schumann, 2003) Complex and varied canopies may actually prevent the spread of wildfire better than dense, young, single-storied canopies. (Morrison and Smith, 2005) The Forest Service plan to disturb the canopy and interior forest conditions fails to accurately interpret the best available applicable science. "Although the assertion is frequently made that reducing tree density can reduce wildfire hazard, the scientific literature provides tenuous support for this hypothesis." (Carey and Schumann, 2003, page 14). The Forest Service fails to adequately disclose the varying peer reviewed recommendations and ongoing scientific controversy about the role of mechanical fuels treatment in reducing the risk of fire in the project EA, instead selectively presenting portions of scientific research that are more amendable to agency plans while ignoring or misrepresenting and arbitrarily dismissing others.

There is no scientific support to show that commercial thinning reduces fire risk. (Carey and Schumann, 2003) Despite the stated intention to protect habitat, the project EA focuses more heavily on commercial logging than it does on "fuels treatments." Commercial thinning is especially controversial when insufficient diameter limits are in place to prevent the cutting of mature fire resistant trees. Science

overwhelmingly concludes that cutting large, fire resistant trees does not reduce the risk of fire and actually can contribute to more intense fires. (Brown et al 2004; Carey and Schumann, 2003; Noss et al, 2006; Rhodes, 2007; Morrison and Smith, 2005; Baker et al, 2006) A percentage of the trees to be logged in this project will be between 14” to 21” DBH, yet this total is not accurately disclosed in the EA nor are the impacts adequately assessed and disclosed. The Forest Service apparently erroneously concludes that *commercial logging* of fire resistant mature trees up to 21” dbh is the only way to reduce the risk of fire in the planning area. However the EA fails to disclose relevant science that supports this contention. The Forest Service does not need to cut trees up to 21” DBH, or cut any trees that evidence fire resistant mature and old characteristics to reduce fire risk. The Service’s proposal to cut an undisclosed number of old and mature large fire-resistant trees does not utilize the best available science. Also, the EA never “disclose[s] the extent to which the impact of the proposed action is scientifically controversial,” regarding the Forest Services’ decision to reduce fire risk by commercially thinning maturing recovering forest stands. 40 C.F.R. 1507.27(b)(4).

The EA also does adequately address science that shows how slash piles from logging create a greater risk of fire. Slash from commercial logging units is generally left sitting on the ground for 1 or 2 years or more after a project is implemented. Slash from previous logging projects in the Deschutes is still largely untreated, exacerbating if not outright causing increased fire risk in the region’s forests. The EA fails to address these accumulations of untreated slash, revealing no timeline for the clean-up of cumulative slash across the Malheur or within the project area, despite this being a purported fuels reduction project, and despite slash being a major factor increased fire risk throughout the greater project area. The EA fails to adequately address how slash can increase the risk of fire. Mechanical fuels treatments generate slash, which are highly flammable and increase the risk of fire. (Rhodes, 2007). Post-wildfire studies have shown that there are severe effects to the landscape if a project’s slash is not cleaned up before the next fire occurs. (Carey and Schumann, 2003). Indeed the severity and extent of regional fires have been documented as exacerbated by untreated slash from fuels “reduction” thinning projects. Slash is not often cleaned up before the next fire; even if the land manager has plans to clean up the slash, the clean-up often lags years behind the thinning or fuels treatment project occurs. (Rhodes, 2007). The Forest Service must disclose how it will deal with the slash that is generated by this project in addition to how it plans to address cumulative slash build-up across the greater project area, and analyze the increase in fire risk due to slash left in the project area and the backlog of untreated slash needing to be removed.

The Forest Service uses models that are not based in best available science. It relies heavily on unscientific Community Wildfire Protection Plans and Fire Regime Condition Class (FRCC), which is a highly controversial method of determining the ecological status of a forest. (Morrison and Smith, 2005) The FRCC model is overly simplistic and is based on subjective estimates and guesses about the general fire regime over a large landscape. *Id.* “The use of the FRCC model as the primary basis for forest and landscape planning is an oversimplification of complex systems and does not make use of the best available science.” *Id.* at page 9. The FRCC model also assumes that a land manager can reduce the risk of fire by changing the condition of the forest to Class 1. “However, this idea does not have adequate support in practice and is currently the subject of much scientific controversy.” *Id.* at page 10. The EA fails to adequately address the scientific controversy surrounding the use of Fire Regime Condition Class or the methodology used in its fire risk modeling for this project. The EA also fails to disclose the lack of scientific basis and scientific controversy related to the Grant County Community Wildfire Protection Plan.

***Cumulative Impacts have not been adequately analyzed***

The Forest Service is required to discuss and fully analyze the cumulative impacts of a project. 40 C.F.R. 1508.8. “‘Cumulative impact’ is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. 1508.7. Recently, the Ninth Circuit has held, “[a] proper consideration of the cumulative impacts of a project requires some quantified or detailed information; . . . [g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.” Klamath-Siskiyou Wildlands Center v. Bureau of Land Management, 387 F.3d 989, 993 (9<sup>th</sup> Cir. 2004) *quoting* Neighbors of Cuddy Mountain v. United States Forest Service, 137 F.3d 1372, 1379 (9<sup>th</sup> Cir. 1998) (internal quotations omitted).

The greater project area has been tremendously impacted during the past century with management actions and impacts ongoing during recent years. Beyond a mere listing of other area recent or known future projects, the project EA does not analyze the cumulative impacts of this project area in the requisite meaningful assessment and disclosures. There is very little discussion of the cumulative impact of other area projects on the project area within the EA. The EA reveals insufficient “quantified or detailed information” on any of the projects that have occurred in the area; such “quantified or detailed information” is required by Klamath-Siskiyou Wildlands Center v. Bureau of Land Management. Merely disclosing that an activity has, will, or is occurring is inadequate: the Forest Service must discuss the environmental consequences from the activities. Lands Council v. Powell, *See* 379 F.3d 738, 745 (9<sup>th</sup> Cir. 2004). As past and concurrent projects have a direct impact upon both viable wildlife habitat and fire risks in the area, for example the Crawford and 16 Road projects recently began removing forest structure necessary for wildlife species of concern while generating increased slash and consequent severe fire risks, it is imperative these issues be addressed adequately within the project’s analysis.

The Ninth Circuit has recently held that a project on LSRs on BLM lands, the Timbered Rock post-fire logging project, did not adequately analyze cumulative effects because it did not analyze the effects of fire suppression in the project area, creation of firelines to wildlife and natural resources, and salvage logging on private lands. Oregon Natural Resources Council Fund v. Timber Products, No. 05-35063 (9<sup>th</sup> Cir 2007) (cumulative impacts analysis must enumerate environmental effects of related projects and consider the interaction of multiple activities) (attached). The Five Buttes Project legal ruling also concluded that the agency failed to address cumulative impacts as well as scientific controversy. Here again, the agency is repeating some of the very same analysis failures of the Five Buttes and Timbered Rock projects, necessitating that this proposed decision and EA be withdrawn and an EIS conducted.

Cumulative effects analysis must also include actions that are “reasonably foreseeable.” Mechanical fuel treatments have only transient effects on fuel conditions. (Rhodes, 2007) Opening the forest canopy will increase the growth of the most flammable small fuels in the short-term, creating more fire risk. *Id.* This project would create a future need for more thinning if the Forest Service really intends to reduce fire risk in the area. There is inadequate provisions for future maintenance of forest “fuels,” which would be needed for this project to really have an impact on fuels reduction.

Lastly, the project EA fails to adequately address livestock grazing allotments in the Dads Creek project area, and fails to adequately address cumulative impacts of grazing, logging, burning, and other management actions. The EA also makes inadequate provision for project area recovery following logging and burning, failing to sufficiently address livestock presence on burned and logging impacted area soils and vegetation.

### ***The Project As Designed Will Increase Fire Risk***

The basal area formulas proposed by the agency fail to be based upon the natural range of variability of the area's historical forest conditions, including localized variations of stand site productivity and topography. The excessive thinning planned will increase the risk of severe fires in the project area. Logging formulas that significantly reduce forest canopy closure create the conditions for future severe fires by:

1. Opening extensive areas of the forest floor to solar exposure, resulting in loss of soil and vegetative moisture retention – creating dry surface fuels and reduced moisture retention for area trees during the seasonal dry periods in these fire-ecology forests.
2. Reducing viable habitat for forest canopy dependent wildlife species, especially cavity nesters and other species that predate upon forest insects such as bark beetles. Increased tree mortality, resulting from unchecked insect population increases due to lack of forest woodpeckers and other interior forest wildlife species in the project area, will result in incrementally increasing fuel loads and more extensive areas of the forest floor exposed to solar drying over time, increasing the likelihood of future severe fires.
3. More open forests are more subject to the ravages of extreme weather events, resulting in increasing fuel loads from wind throws and edge effect tree mortality.
4. Over-thinning encourages the spread of brush and invasive plants, which can carry fires across the area, requiring repeated cycles of active management to reduce fire risk– such as controlled burns or brush removal.
5. Increasing fire prone fuels throughout the project area with logging generated slash and scattered woody debris, increasing the risk and potential extent of severe fires.
6. Additionally, logging operations have often been the cause of many severe fires, and have resulted in the destruction of significant expanses of private lands, including residences. Logging this area to decrease fire risk carries inherent within it an increased fire risk of its own.

As an HFRA fuels reduction project the planned actions must be revised to comply with scientifically based recommendations for achieving real fuels reduction goals. Greater basal area retention, lower dbh cutting limits, and a greater percentage of the area left strategically untreated are among the changes warranted to accomplish project goals and HFRA mandates.

### ***This project violates the HFRA so the Forest Service must use the regular NEPA process.***

HFRA is just one of this nation's federal lands management laws. HFRA projects must comply with all existent federal environmental policy laws, and as such must be used appropriately and responsibly. Utilization of federal lands projects' normal NEPA processes better accomplishes HFRA fire risk reduction and forest resiliency objectives, in part because the full NEPA process requires careful development and consideration of a range of scientifically sound alternatives that can more capably accomplish the project's purpose and need goals. HFRA requires the agency to maintain inherently fire resistant mature and old forest structure and area ecological integrity. By utilizing basal area formulations, and failing to adjust these by retaining all mature and old characteristic trees and fire resistant trees of all species; by failing to adjust the project's commercial thinning – judiciously utilizing scientifically controversial logging methods within the parameters of greater scientific consensus where such actions may have beneficial effect; by failing to meaningfully incorporate the concerns and ecological objections of area residents in this *collaborative* project; and by proposing environmentally harmful actions including: road construction (ecologically there is no such thing as a “temporary” road – these exist for several decades to hundreds on years on the landscape); basal formula felling of mature and old characteristic trees; excessive logging removal of forest stand structure and degradation of ecological integrity; logging generated slash and solar exposure increasing the risk of severe fire in the area; and

other harmful actions as noted herein, this project fails to meet the requirements of the HFRA, NEPA, NFMA, and the MBTA.

1. HFRA only grants authority to remove “hazardous fuels” (HFRA §6512(a)). The Forest Service cannot remove any tree that provides useful shade that helps keep fuels cool and moist or that helps suppress the growth of future ladder fuels. Most trees over 14” dbh and the overstory trees in project units are fire resistant and help reduce fire hazard, so they are not hazardous fuels. Removing these larger fire resistant trees is not authorized by HFRA because these are not “hazardous fuels.”
2. HFRA requires that authorized projects be consistent with the applicable forest plan standards and guidelines. HFRA Section 102(b) says “An authorized hazardous fuel reduction project shall be conducted consistent with the resource management plan and other relevant administrative policies or decisions applicable to the Federal land covered by the project.” HFRA only authorizes projects that are consistent with the forest plan. This project will have adverse impacts upon area management indicator species and deer winter range that violates forest plan and eastside screens objectives. In the HFRA Congress struck a balance between competing objectives by accelerating only those fuel reduction projects that are fully consistent with the pre-existing forest plan. The Forest Service cannot alter the will of Congress by approving logging that is inconsistent with the forest plan.
3. This project will degrade the area’s recovering forests in violation of the HFRA and the east side screens. The low levels of basal area retention fail to comport with the varied mosaic of stand conditions and PAG topography in the area. This project consequently will unavoidably remove inherently fire resistant trees <21” dbh that have mature and old characteristics such as yellow-orange or deeply furrowed bark and/or fire scars (evidence of having survived past fires), or that are maturing trees with little ladder fuels and with thickening bark inherently resistant to fires.

The Forest Service must retain and protect all mature and old trees and mature and old forest characteristics because:

- HFRA requires the FS to maintain and restore old-growth forests regardless of tree size. The HFRA says that the structure and composition of old growth shall be fully maintained and restored.
- The east side screens require that all vegetation management projects move stands toward the historic range of variability. Since smaller mature and old trees and large snags are below the area’s HRV in many portions of the project, the FS must retain large snags and pre-fire suppression era mature and old trees regardless of whether they may be <21” dbh.

HFRA §102(f) requires that projects— “focus largely on small diameter trees, thinning, strategic fuel breaks, and prescribed fire,” and, “maximize the retention of large trees” appropriate to the forest type. As there are little remaining mature and old trees in the project area, maturing trees >12 to 14” dbh are essential for forest structure and ecological integrity and resilience.

### ***The Need to Scale Down the Project &/or Conduct an EIS***

Either the Dads Creek HFRA project must be revised to incorporate the scientific and ecologically sound definitions of the extent of a true Wildlands Urban Interface area project, or – the Forest Service must conduct an EA NEPA process for this proposed timber sale project. Due to extensive significant cumulative impacts in the area, the similarity and number of agency “fuels reduction projects, and

recurrent unresolved legal and scientific issues, a programmatic or multiple project EIS rather than an EA would be more ethically and legally appropriate for this and other regional NF fuels reduction projects.

If the agency feels there is an urgent need to alleviate the potential risk of severe fires near private lands residences, then we suggest that the project be redesigned and restricted to within ¼ mile of area homes. Private landowners could elect to voluntarily participate in creating defensible space around their dwellings on their own lands, and the agency could thin fire-prone small diameter trees within this area, remove lower limbs that could act as ladder fuels, remove excessive ground fuels through localized prescribed fires, and reduce contiguous forest canopy closure within this area to private lands structures where truly necessary. Such a project should still be designed to protect natural resources within this area, including active wildlife habitat, and maturing, mature, and old growth trees that are inherently fire resistant.

Coupling the desire for a smaller impact, true WUI project with a commercial timber sale, such has been done to large extent in this proposed project, can only needlessly delay the implementation of protection measures for area private lands dwellings. If the agency desires to address desired restoration in the area surrounding the ¼ mile WUI area as well, this would best be done in a separate EIS process that can comprehensively address the many scientific, legal, and cumulative impacts issues (including those raised herein) inherent in such a larger scope project. The greater watershed area could potentially benefit from restoration based upon sound conservation-biology, accurate site-specific analysis, and scientific research. We encourage the agency to consider focusing on a separate collaborative NEPA EIS process for the greater landscape scale forest ecosystem, after it has completed a scaled down version of the current proposed project for the area immediately surrounding private homes in the watershed.

NEPA requires the Forest Service to prepare an EIS for all major federal actions that “may significantly affect the quality of the human environment.” 42 U.S.C. § 4332(2)(C). If an agency decides not to prepare an EIS, it must supply a “convincing statement of reasons” to explain why a project’s impacts are insignificant. *Blue Mtns. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998) (also holding that a “plaintiff need not show that significant effects will in fact occur” that it is enough for the plaintiff to raise “substantial questions whether a project may have a significant effect” on the environment). Because this decision includes widespread scientifically controversial commercial logging actions in an area with significant community and natural resource values, which has extensive past and ongoing cumulative impacts issues and significant concerns, NEPA requires an EIS for this proposed project before a decision may be issued.

### ***Soils & Roads Concerns***

The proposed project will have detrimental impacts on soil, including destruction of microbiotic organisms, soil compaction, and soil erosion. The EA fails to fully address these harms. Use of low impact light equipment in appropriate areas is also not adequately addressed or incorporated in project actions.

So-called “temporary” roads would introduce new roads into presently unroaded forest, which will effectively increase the adverse impacts of forest fragmentation, spreading harmful impacts to previously unroaded areas. Ecologically, there exists no-such-thing as a “temporary” road. Roadbeds, even obliterated ones, remain on the landscape for many decades to centuries, disrupting wildlife habitat, hydrological patterns. Overall the project’s proposed logging actions, including the proposed road, would harm soil infiltration, disrupt forest habitat continuity, and further degrade the area.

### ***The EA does not adequately discuss or propose mitigation measures***

As part of the scope its analysis, an agency must include mitigation measures in the discussion of alternatives. 40 C.F.R. 1508.25 (b)(3). When a decision reached, the agency must adopt a monitoring and enforcement program for any mitigation intended to avoid or minimize environmental harm. 40

C.F.R. 1505.2. The National Environmental Policy Act requires that mitigation measures be analyzed in detail and that the effectiveness of mitigation measures be disclosed. Courts have ruled that a mere listing of mitigation measures is insufficient to qualify as a reasoned discussion by NEPA. Planning documents must analyze mitigation measures in detail and explain the effectiveness of such measures. Best management practices (BMPs) are not adequate mitigation. The Northwest Forest Plan explicitly prohibits using mitigation or restoration to substitute for habitat degradation (S&G page C-37).

There is no monitoring and enforcement program set up to minimize the environmental harm done by this project. Mitigation measures are briefly mentioned, but not as part of an enforceable program to lessen the effects of the project. Instead, many essential mitigation provisions have loophole exception clauses such as “as possible” that render them open to purchaser/logging contractor and/or agency discretion. Absent clear enforceable provisions, such mitigations are generally meaningless.

Soils require rehabilitation under the Malheur LRMP, and area soils are likely to require recovery efforts post project. There is insufficient analysis addressing these issues in the EA, without which the public and decisionmaker do not have all the information they need to ensure a good decision.

#### ***Mycorrhizae & subsurface soil microbial communities.***

The EA did not sufficiently recognize the importance of mycorrhizal fungi and subsurface soil microbial communities on forest growth and productivity. The EA failed to adequately discuss how mycorrhizae and soil microbial communities will be impacted by the proposed timber project. The EA failed to sufficiently assess how logging has affected mycorrhizae in areas nearby the analysis area. The EA also fails to disclose or assess the present state of ongoing natural ecological recovery processes in this recurrently logged and soil damaged area. Scientific evidence suggests that mycorrhizae and other soil organisms and processes are extremely important and are easily destroyed by ground-based logging, including thinning using BMPs as well as post-logging subsoiling, which devastates subsurface soil microbial communities upon which healthy functioning forests depend. Affected wildlife species, including prey species for great gray owls and other raptors and predators also rely on the fungi, but there is no discussion of how the project will affect this important food source for these species. Without an adequate discussion of the impacts to soil mycorrhizae, including the harmful impacts of subsoiling and ineffectiveness of BMPs, the public and the decisionmaker are precluded from making an informed decision regarding the proposed project, and the USFS cannot assert that there will be no permanent impairment and/or irreversible cumulative harms to the soil. 30 C.F.R. §§ 219.27(a)(1), 219.14(a)(2) (prohibiting activities unless technology is available to prevent impairment of soil resources).

#### ***Concerning Forest Insects & Disease***

This project’s analysis fails to accurately reflect the site-specific diversity of the area’s forests, waterways, and soil hydrology. The analysis fails to incorporate credible contemporary scientific research on fire ecology forests. The EA fails to disclose or address the conclusions of a report by the Xerces Society “Logging to Control Insects.” This report is a synthesis that reviews over 150 scientific studies and Forest Service research reports concerning managing efforts in forest ecosystems. Many of the studies cited offer guidance in addressing the restoration needs of the proposed project area, and should be utilized in developing an EIS and action alternatives for this project. Among the many essential needs are: The need to maintain or restore all habitat components for interior forest wildlife species, including large diameter snags, large downed logs, forest structure within the area’s HNRV, forest canopy closure, soil stability and quality, area moisture retention, native biodiversity, and healthy watershed functioning. Intact and restored forest ecosystems within their historic natural ranges of variability are far more resistant to the ravages of fire, and thus less likely to burn severely. The forests of the Malheur evolved with fire as a natural component, and have survived many thousands of years of periodic fires. While fire cycles over time may – during times of prolonged drought – result in severe widespread fire-caused forest

stand mortality, maintaining and restoring healthy old and mature forest stands with their inherent time-proven resiliency is the best management method available to provide a reasonable measure of protection against severe wildfires, as well as protection against unexpected human-caused fires. In interior forests areas, especially beyond ¼ mile of private lands residences, there is little or no valid rationale for cutting trees over 9 to 12 inches dbh to reduce fire-risk. This project must be redesigned to reflect this nature and scientifically proven reality.

### **Towards Cooperative Community Conservation**

As the need to address fuel loads and current fire risk near private residences may be imperative, our organizations herein again note that we are willing to withdraw this objection provided that all other objections are simultaneously withdrawn, and the project is not changed from its current proposed decision. Otherwise, we would potentially accept a revised project that was founded on the areas of greatest scientific consensus as noted herein, and meaningfully incorporated the above listed concerns. We also herein incorporate by reference our previous comments on this project, our comments on the 16 Rd and Crawford projects (including our prior Crawford appeal), and the BMFP collaborative recommendations, initiation letter, agreements, and our discussions during project area field trips and meetings on this BMFP project. As noted above, we have sincere appreciation for the BMFP collaborative process, and the agency's current common ground proposed decision for the Dads Creek Project. We remind all BMFP participants including all objectors, that this is best resolved by all parties withdrawing their objections, allowing the agency's decision to go forward as currently proposed (despite issues on all sides), and focus our collaborative energies on learning from this process and developing better common ground on other current and future collaborative projects. We look forward to discussing the above issues and resolving existent objections, allowing the BMFP's first collaborative restoration project, Dads Creek, to go through as recommended and currently proposed by the agency.

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**Oregon Chapter Sierra Club  
&  
League Of Wilderness Defenders – Blue Mountains Biodiversity Project**

**Objection of the Malheur National Forest  
Prairie City Ranger District  
HFRA Dads Creek Wildland Urban Interface Project**

**October 15, 2008**

**Exhibit A:** CD compilation of applicable scientific research, reports, and judicial caselaw, etc. – Fire, Thinning, & Forest Science Volumes I & II

• **Fire Thinning Science Volume I Contents:**

1. Effects of Fire and Post-fire Salvage Logging on Avian Communities in Conifer-dominated Forests of the Western United States (Kotliar, 2002)
2. Fire on the Mountain: Birds and Burns in the Rocky Mountains (Kotliar, 2005).  
*The collective influence of fire and human activities on the landscape influences avian community structure and dynamics.*
3. The Effects of Postfire Salvage Logging on Cavity-Nesting Birds (Hutto & Gallo, 2006).
4. Appeal from the United States District Court: Appeal the district court's denial of preliminary injunction to halt the implementation of several United States Forest Service post-fire logging sales in the Umatilla National Forest.
5. Fire, Fuels and restoration of ponderosa pine-Douglas fir forests in the Rocky Mountains, USA (Baker et al, 2005).  
*A restoration model based on low-severity fire modeling, focusing on thinning and prescribed burning to restore historical forest structure.*
6. Be careful what you wish for: the legacy of Smokey Bear (Donovan & Brown, 2007).  
*An alternate approach to wildfire management.*
7. Postfire management on forested public lands on the western United States (Beschta et al, 2004).
8. Overstory and understory development in thinned and under-planted Oregon Coast Range Douglas fir stands. (Chan, et al, 2006).
9. Postfire logging hinders regeneration and increases fire risk (Donato, et al, 2006)
10. Postfire logging hinders regeneration and increases fire risk (Donato, et al, 2006)
11. Postfire impacts on forests and wildlife (Hutto, 2005)
12. Executive Summary: Interim protection for late successional forests, fisheries and watersheds (1993).

13. Study: Reforestation rich after fires: looking at the aftermath of wildfires in the forests of southwestern Oregon and Northern California (Barnard, 2007).
14. Fire regime considerations: Key issues in fire regime research for fuels management and ecological restoration (Veblen, 2003).
15. Forest Dreams, forest nightmares: An ecological and economic look at the Blue Mountains and the changes that have taken place since settlement (Langdon, 1995).
16. Preemptive and salvage harvesting of New England forests: When doing nothing is a viable alternative, (Foster & Orwig, 2006).
17. Changes in downed woody material and forest structures after prescribed fire in ponderosa pine forests, analyze changes in downed woody material and forest structure (trees and snags) measured within one year after prescribed fire treatments completed in Arizona and New Mexico in order to see effects on wildlife populations and their habitat (Saab).
18. Toward meaningful snag-management guidelines for postfire salvage logging in North American conifer forests. Effects of postfire logging on black-backed woodpecker and cavity nesting birds (Hutto, 2006).
19. Birds in the black: *Through following avian wildlife, a UM scientist has discovered that burned forests play a critical role in the health and diversity of the Western landscape* (Jamison, 2005).
20. Research Article: A landscape model quantifies error in reconstructing fire history from scars. *Errors in reconstruction may lead to a misunderstanding of the role of fire or incorrect restoration prescriptions. Here, a stochastic landscape model is used to quantitatively assess the accuracy of a commonly used statistic* (2005).
21. Logging to control insects: The science and myths behind managing forest insect “pests”. (Black, the Xerces Society for Invertebrate Conservation, Portland, Oregon, 2005).
22. Neo-tropical migrant and native birds: The impacts of timber logging on neo-tropical migrant and native birds.
23. Fire severity in conifer forests of the Sierra Nevada, California (Odion & Hanson, 2006).  
*A study of both spatial and temporal patterns of contemporary fires in the Sierra Nevada Mountains, California and how they are linked to species diversity.*
24. Fire ecology of Ponderosa Pine and the rebuilding of fire-resilient Ponderosa Pine Ecosystems (Fitzgerald, 2005).
25. Research Proposal: Post fire management of snag forest habitat in the Sierra Nevada, (Hanson, 2006).

*Investigation of the association of three woodpecker species with four habitat strata following fire in the Sierra Nevada, assessment whether one species in particular, the Black-backed Woodpecker, may generally be restricted to forest recently burned at high severity (“snag forest habitat”). Also investigates the factors that best explain post-fire conifer mortality, and thus the creation of snag forest habitat, as well as the extent of natural conifer regeneration in snag forest patches that are left unmanaged following severe fire.*

26. Scorched forests best left alone, study finds. Biscuit salvage – Logging after the fire killed seedlings and added tinder, research by an OSU-led team says. (Milstein, 2006, Oregonian).
27. Summary Report – Winter habitat use by Spotted Owls on BLM within the boundaries of the Timbered Rock fire (Andrews & Anthony, OCFWRU, DFW, OSU, 2004).
28. Short-term effects of wildfires on spotted owl survival, site fidelity, mate fidelity, and reproductive success (Bond et al, 2002).
29. Associations between forest fire and Mexican Spotted Owls, (Jennes et al, 2004).
30. Stress (Waring, OSU, 2004)

*A brief analysis of the kinds of tolerance and avoidance mechanisms that trees evolved to withstand specific stresses.*

31. Studies to find danger to forests in thinning without burning (Robbins, New York Times, 2006).

*Missoula, Montana – Thinning forests without also burning accumulated brush and deadwood may increase forest fire damage rather than reduce it, researchers at the Forest Service reported in two recent studies.*

32. Thinning and nitrogen fertilization in a Grand Fir stand infested with Western Spruce Budworm. Part IV: An ecosystem management perspective (Waring, 1992).  
*Allowing pine forests to be replaced with fir through fire protection and selective logging has increased the nitrogen demand beyond that readily supplied in the ponderosa pine/true fir type. Fertilizing with one application of nitrogen at the time of an insect outbreak may reduce mortality and associated fire hazard through a period of up to 5 years.*
33. United States Court of Appeals – Oregon Natural Resources vs. Timber Products.
34. Assessment of site index and forest growth capacity across the Pacific and Inland Northwest U.S.A. with a MODIS satellite-derived vegetation index (Waring et al, 2006).

*Foresters, scientists, and policy makers would benefit if region-wide maps of potential forest productivity were available at decadal intervals to record changes, seek causes, and plan for the future.*

35. The watershed impacts of forest treatments to reduce fuels and modify fire behavior (Rhodes, 2007). (Pacific Rivers Council)

*This report examines the effects on watersheds and aquatic resources from forest fuel reduction treatments aimed at modifying wildland fire behavior on public lands.*

• **Exhibit B Fire & Thinning Science Vol. II Contents:**

- Wildfire Charcoal and Soil Processes, Thomas H. DeLuca et al
- Contributions of Pinus Ponderosa Charcoal to Soil Chemical and Physical Properties, Christopher M. Briggs in Briggs, Breiner, Graham, 9 May 2005.
- Chemical composition of forest floor and consequences for nutrient availability after wildfire and harvesting in the boreal forest, E. Thiffault<sup>1</sup>, K. D. Hannam<sup>2</sup>, S. A. Quideau<sup>2</sup>, D. Paré<sup>1</sup>, N. Bélanger<sup>3</sup>, S.-W. Oh<sup>4</sup> and A. D. Munson<sup>5</sup>, March 2008.
- Nitrogen mineralization and phenol accumulation along a fire chronosequence in northern Sweden, Zhanna Yermakov<sup>1,2</sup> and David E. Rothstein<sup>1</sup>, May 2006.
- Changes in understory composition following catastrophic windthrow and salvage logging in a subalpine forest ecosystem, Cristina M. Rumbaitis del Rio, 2006
- Contributions of Pinus Ponderosa Charcoal to Soil Chemical and Physical Properties, Christopher Briggs, 2005.
- Biochar: A Soil Amendment that Combats Global Warming and Improves Agricultural Sustainability and Environmental Impacts, recent report compilation of scientific research.
- Communication on BioChar and its implications for forest and societal management, and role in ongoing climatic change.
- Biogeochemical Consequences of Wind and Salvage Logging Disturbances in a Spruce-Fir Forest Ecosystem, C.M. Rumbaitis-del Rio and C.A. Wessman.
- *And several additional new studies also....*