



**NORTHWEST ENVIRONMENTAL DEFENSE CENTER**

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Wednesday, July 17, 2002

Orchard Project  
Jeff Walter, District Ranger  
Clackamas River District  
595 N.W. Industrial Way  
Estacada, OR 97023

**RE: COMMENTS ON ORCHARD PROJECT ENVIRONMENTAL ASSESSMENT**

Dear Mr. Walter,

Below please find the Northwest Environmental Defense Center (NEDC) comments on the Orchard Project environmental assessment (EA). NEDC is a non-profit, public-interest organization dedicated to preserving, protecting and improving the natural environment in the Pacific Northwest. NEDC is based in Portland, Oregon, and has been working since 1969 to protect the environment and natural resources of the Pacific Northwest by providing legal support to individuals and grassroots organizations with environmental concerns, and engaging in litigation independently or in conjunction with other environmental organizations. NEDC's membership consists of a Board of practicing attorneys and law students, as well as local citizens interested in the shared goal of protecting the environment through legal means. The members of NEDC derive educational, scientific, aesthetic, recreational, spiritual and other benefits from the protection of our nation's biodiversity.

NEDC is pleased to see the Forest Service working to make the Orchard Project conform to applicable laws and regulations. However, we have a number of concerns with the Orchard Project EA, project plans, and project implementation.

**The EA Fails to Include Reasonable Alternatives as Required by the National Environmental Policy Act (NEPA)**

Although the EA includes alternatives required by NEPA, the alternatives are not reasonable within the meaning of 40 C.F.R. § 1502.14. Alternative B (proposed action) fails to address key issues of concern identified during the scoping process. Other Action Alternatives attempt to address a single concern at the expense of other key issues of concern. The Action Alternatives propose harvest in a Peregrine Falcon protective zone; Northern Spotted Owl, Pine Marten and Pileated Woodpecker habitats; designated forage area for deer and elk, and in riparian areas (except Alternative D). Alternatives B, D and E propose road-building activity that could affect water quality and fish habitats in the South Fork Clackamas River watershed and Memaloose Creek subdrainage, as well as affect soil quality in the project area. See generally *EA*, Chapters 2, 3.

NEPA requires that all reasonable alternatives must receive rigorous exploration and objective evaluation, especially those that might enhance environmental quality, or avoid some or all of the adverse effects. 40 C.F.R. § 1502.8(a)(4). The alternatives presented in the Orchard Project EA do not propose opportunities for enhancement of environmental quality nor for reduction of adverse environmental effects. Rather, the alternatives propose to cause increased damage to the environment through riparian thinning, road-building and tractor and skyline harvest in threatened and sensitive species habitats. The EA lacks reasonable alternatives as required by NEPA, and thus violate the law. 40 C.F.R. § 1502.14.

## **The EA Fails to Adequately Address Harvest Methods and Harm to Soils**

The alternatives presented in the EA fail to adequately address issues of soil compaction, effects upon mycorrhizae, and displacement of soil and organic matter by harvesting and site preparation equipment and erosion. The Action Alternatives propose skyline and tractor harvest systems. Skyline harvesting leads to gouging of the soil and substrate, and tractor harvesting can lead to compaction and other soil disturbances that can reduce the productivity of the soil.

The EA fails to adequately discuss how the proposed skyline and tractor harvesting will impact soils in the project area, or how tractor harvesting and the resulting compaction will effect mycorrhizae and soil productivity. Similarly, the EA fails to identify unstable or sensitive soils in the Orchard Project area, nor does it discuss mitigation measures as required by *USDA OIG Report*, 16. Finally, the EA fails to describe how the Action Alternatives listed meet soil productivity, soil compaction and soil disturbance standards set by the Mt. Hood and Northwest Forest Plans. The United States Forest Service (USFS) has a duty to conserve soil resources and not impair productivity, and is required to minimize soil disturbance as a result of timber harvest. 36 C.F.R. § 219.27(a)(1), *ROD*, C-44. The EA fails to adequately address the proposed skyline and tractor harvest systems' deleterious effects on soil productivity and soil fungi. NEDC is concerned that the project will damage these important resources and urges the USFS to consider its duty to conserve them. 36 C.F.R. § 219.27(a)(1), *ROD*, C-44.

The Action Alternatives also include regeneration as a harvest method for approximately four acres of second growth stands. Regeneration is rarely considered an acceptable harvest method. The EA does not describe how the proposed regeneration meets the guidelines set by the Northwest Forest Plan. Again, the EA neglects to discuss the effects of regeneration and site preparation equipment upon soil quality.

The EA also does not adequately describe proposed thinning methods. The Action Alternatives propose thinning of approximately 230 acres of second growth stands, but do not include discussion of the definition of “thinning”—e.g. how many trees will be removed per acre and how many trees will be left standing per acre. NEDC would like to see a more detailed description of thinning methods and anticipated results.

### **The EA Fails to Adequately Address Environmental Impacts of Road Construction**

The Action Alternatives not only propose harvest methods that will likely have adverse impacts to soil quality and productivity, but also propose building temporary roads that could cause loss of soil productivity, contribution of sediment to streams, increased peak flows, fragmentation of habitat, and introduction of exotic species. The EA does not provide an in-depth discussion of the anticipated adverse environmental effects of the proposed road building upon project area soil and water quality, plants or wildlife, nor how the agency will mitigate these particular effects in the Orchard Project area.

The EA also does not provide sufficient detail regarding the proposed temporary roads. In addition to consideration of anticipated adverse environmental effect of the temporary roads, NEDC would like to see discussion of the permanence of the proposed temporary roads—including when the roads will be used again, when the road will be closed, and how permanent the road closure will be.

### **The Action Alternatives Do Not Sufficiently Address Concerns About Riparian Reserves**

Action Alternatives B, C and E propose thinning of approximately 16 acres in riparian reserves. The Northwest Forest Plan generally prohibits harvest in riparian reserves. The EA does not adequately discuss why the Orchard Project’s proposed thinning in riparian reserves does not violate the Northwest Forest Plan. The EA does not describe in sufficient detail the no-cut buffer zones to be maintained adjacent to all streams in the project area, and also lacks

satisfactory discussion of non-economic reasons for preference of Alternative B over Alternative D (no riparian thinning).

### **Discussion of Threats Threatened, Sensitive and Indicator Species Is Insufficient**

The EA failed to describe how the USFS will maintain viable species populations as required by 36 C.F.R. § 219.19, nor does the EA mention how the agency will monitor population trends as it is required to do under 36 C.F.R. § 219.19(b). The Endangered Species Act (ESA) requires the USFS to use the best available scientific and commercial data in assessing impacts to threatened, endangered and sensitive species, as well as requires the agency to ensure the continued existence of threatened, endangered and sensitive species and their critical habitat. 16 U.S.C. § 1536(a)(2). The habitat included in the Orchard Project area is suited to a variety of threatened and sensitive species, such as the Northern Spotted Owl, Peregrine Falcon and the California Wolverine. The habitat is also home to Pine Marten, Pileated Woodpecker, Deer and Elk, among many other species. The EA lacks any discussion of how the USFS plans to ensure the continued existence of threatened and sensitive species, or how the agency will monitor population trends. NEDC would like to see discussion of these issues, or alternately, completion of an Environmental Impact Statement (EIS) in order to determine the projects effects on these species and USFS's mitigation plans.

#### Northern Spotted Owl

NEDC is concerned about the proposed action's and Action Alternative's thinning of Northern Spotted Owl dispersal habitat. We are concerned that the four-year-old data used to determine the project's effects may not be the best available scientific data required by the ESA to determine impacts to listed species. 16 U.S.C. §§ 1531-1544.

#### Peregrine Falcon

NEDC is concerned that thinning activity will interfere with Peregrine Falcon's nesting near the project area. The project area falls within the falcons' protective zone. The EA does not

provide information about how the USFS will work to maintain viable falcon populations in the Orchard Project area. It also does not discuss in sufficient detail the project's impacts to Peregrine Falcons, nor does the EA provide information about the agency's plans to monitor population trends. NEDC would like to see the agency discuss how its actions will impact Peregrine Falcons and other threatened, endangered and sensitive species, as well as its plans for monitoring populations or maintaining viable populations as required by law. 16 U.S.C. §§ 1531-1544; 36 C.F.R. § 219.19(b)-219.19(b).

#### California Wolverine

NEDC is concerned about the Action Alternative's thinning of California Wolverine habitat. Although the EA states that the presence of California Wolverine has not yet been established in the watershed, it does acknowledge that the project area includes potential habitat for this sensitive species. The EA again fails to discuss in adequate detail how its actions will impact California Wolverine and other threatened, endangered and sensitive species, as well as its plans for monitoring populations or maintaining viable populations as required by law. 16 U.S.C. §§ 1531-1544; 36 C.F.R. §§ 219.19(b)-219.19(b).

#### Pine Marten and Pileated Woodpecker

NEDC is concerned that the project area does not currently support viable populations of indicator species Pine Marten and Pileated Woodpecker. The EA indicates that the USFS does not plan to manage the area for Pine Marten and Pileated Woodpecker, based on the recommendation of the South Fork Clackamas River Watershed Analysis. The EA offers no further explanation and includes no information identifying the scientific methodologies used to arrive at its conclusion that the area should not be managed as Pine Marten and Pileated Woodpecker habitat. NEDC would like to remind the USFS that it is obligated to use accurate and reliable science in support of its actions, and urges the agency to discuss its scientific methodologies. 40 C.F.R. § 12502.24.

**The Economic Effects Analysis Does Not Adequately State the Cost-Benefit Analysis and Fails to Disclose the Negative Social and Economic Impacts of Logging or the Positive Social and Economic Impacts of the No Action Alternative as Required by NEPA and the Improving Economy and Efficiency Act**

The EA should have considered the positive effects of the No Action Alternative—such as increased regulation of water flow and prevention of flooding, increased water quality and increased carbon sequestration required to counteract effects of global warming, among others. NEPA and implementing regulations require disclosure of positive effects. 42 U.S.C. §§ 4321-4347d, 4331 (1994 & Supp. III 1997); 40 C.F.R. § 1508.8(b). These factors contribute directly and indirectly to the economy, for example—increased revenues from recreational visitors for local communities; decreased or stabilized costs to local municipalities because they are not forced to pay increased costs for water filtration due to increased sedimentation from logged areas; or decreased or stabilized costs to local municipalities for flood clean-up because the water retention ability of the forest was diminished by logging. Without consideration of factors such as these, the public has not been provided with adequate knowledge upon which to base its opinions regarding the proposed action and Action Alternatives and the NEPA process has been violated. NEDC would like to see the USFS revise the Orchard Project EA to adequately discuss the positive effects of not thinning or regenerating the project area.

The negative impacts of the Action Alternatives were similarly overlooked in the EA. Examples of these negative effects are: increased costs to municipalities due to increased water treatment regimes and environmental clean-up costs (i.e. increased flood damage, sedimentation), and increased costs to the public for maintenance and construction of logging roads and reforestation. Again, without this information the public cannot make informed decisions or opinions about the proposed action and the EA violates the NEPA process. NEDC

would like to see the USFS revise the EA or, alternatively, withdraw the Orchard Project from consideration.

It is not apparent from the EA that the benefits of the proposed action equal or exceed the costs as required by the Forest Service Manual, or that the agency has selected alternatives that maximize net public benefits, as required by the Forest Service Handbook. FSM § 2403.4; FSH § 1909.17.11.1. The EA also fails to fully consider economic and social impacts, as required by FSM § 1950.2.2. NEDC requests that the USFS revise the EA in order to meet these requirements.

### **Conclusion**

While NEDC appreciates that the USFS is working to make the Orchard Project conform to applicable laws and regulations, we do not believe that the agency has taken the necessary steps to bring the EA and proposed action into compliance with these laws and regulations. We recommend that the USFS revise the EA, or alternatively, withdraw the project from consideration. If the USFS should choose to revise the EA, we look forward to commenting and approving the EA provided that it complies with the aforementioned laws and regulations.

Sincerely,

Katie Jo Keppinger  
Volunteer, Northwest Environmental Defense Center

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