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Via web portal: <https://cara.ecosystemmanagement.org/Public/CommentInput?project=58050>

Shane Jeffries, Forest Supervisor
Ochoco National Forest
3160 NE Third Street
Prineville, OR 97754

In Reply To: Forest Management Direction for Large Diameter Trees in Eastern Oregon
(Eastside Screens) Preliminary EA
85 Fed. Reg. 48,500 (Aug. 11, 2020); 85 Fed. Reg. 55,409 (Sept. 8, 2020)

Dear Mr. Jeffries:

The American Forest Resource Council (AFRC) submits these comments on the Preliminary EA (PEA) for the Eastside Screens. AFRC is a regional trade association whose purpose is to advocate for sustained yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. We do this by promoting active management to attain productive public forests, protect adjoining private forests, and assure community stability. We work to improve federal and state laws, regulations, policies and decisions regarding access to and management of public forest lands and protection of all forest lands. AFRC represents over 50 forest product businesses, forest landowners, and counties throughout the West. Many of our members have their operations in communities adjacent to the six eastern Oregon/ southeast Washington National Forests that this amendment will impact, and the management on these lands ultimately dictates not only the viability of their businesses, but also the economic health of the communities themselves. Some of our county members have a considerable amount of their lands managed by the National Forests and have depended on those Forests in the past for job creation. Oregon's forest sector employs approximately 61,000 Oregonians, with AFRC's membership constituting a large percentage of those jobs. Rural communities, such as the ones affected by this proposal, are particularly sensitive to the forest products sector in that more than 50% of all manufacturing jobs are in wood manufacturing. Timber provided by these Forests supports jobs not only in Oregon but also in Idaho and Washington.

AFRC strongly supports the **Adaptive Management Alternative**
as described in section 2.4 of the Preliminary EA.

OVERVIEW OF PREVIOUS COMMENTS

AFRC expressed its support for the Forest Service’s proposal to amend the 21-inch dbh limit (21-inch rule) from the Eastside Screens in our letter dated June 8. In that letter, we emphasized the flawed nature of attempting to manage diverse forest conditions across two-thirds of the State with a single diameter limit. Expecting professional foresters and other land managers to effectively attain desired end results of any kind using such a firm metric is irrational. A quarter of a century of attempting to do so has proven this ineffectiveness as Forests in eastern Oregon either fail to reach their desired conditions of late and old structure or repeatedly pursue project-specific plan amendments to modify the 21-inch rule. As the PEA notes, the original selection of the 21-inch threshold was the result of negotiations, not science. PEA at 5. The Forest Service’s proposal to permanently amend this outdated rule is commendable. We urge you to select an alternative based in science that will assist, not prohibit, management professionals in attaining desired end results.

Our June letter also identified numerous scientific documents that are relevant to both the ecological and social facets of the proposed amendment. Upon reviewing the preliminary EA, we see that the Forest Service ultimately cited **186** individual scientific documents to inform the proposed amendment alternatives. This level of scrutiny is also commendable and validates the scientific merit that this proposal’s foundation is built upon.

However, the value of this scrutiny will be marginalized unless the Forest Service respects what the science concludes by adopting the alternative that:

- (1) attains the highest level of ecological integrity,**
- (2) attains the described Purpose and Need of the proposal at a high level,**
- (3) and advances the objective of the Interim Wildlife Standard of the Eastside Screens, which is to maintain and develop late and old forest structure.**

In addition to expressing general support for the proposed amendment and providing substantive scientific information, our June letter also outlined several potential alternatives that could replace the existing 21-inch rule. In developing these alternatives, we focused on adaptive guidelines that would assist forestry professionals in attaining late and old structure while not burdening them with arbitrary descriptive elements that would act as barriers to attaining that structure. Among those proposals was an alternative that simply removes the 21-inch rule completely. The existing Interim Wildlife Standard section d.2.b requires the Forest Service to “manipulate vegetative structure that does not meet late and old structural conditions, in a manner that moves it toward these conditions.” The 21-inch rule, identified in section d.2.a, serves simply as a prescription to attain what is described in d.2.b. Therefore, its removal would not alter the overarching directive in the Standard. The body of scientific evidence demonstrates, instead, that removing the 21-inch rule is necessary to allow the Forest Service to meet its obligations under d.2.b to move the forest toward land and old structural conditions.

The varied and diverse nature of “vegetative structure” across eastern Oregon is the very reason why the current descriptive element is counterproductive. After much thought and consideration, we could not identify another descriptive element that would be adaptable to the diverse “vegetative structure” across eastern Oregon in a way that would assist forestry professionals with attaining “late and old structural conditions” effectively. **Therefore, our full support falls upon the Adaptive Management Alternative as described in 2.4 of the Preliminary EA.** The Forest Service should recognize that the “emphasis” on large and old trees in the proposed alternative *already exists* in the Interim Wildlife Standard. Re-emphasizing this is unnecessary and redundant. Below are our specific comments to the Preliminary EA.

PRELIMINARY EA COMMENTS

In considering which alternative to select, the Forest Service should choose the one that both best attains the proposal’s Purpose and Need and best attains the objective of developing and maintaining late and old forest structure as described in the Interim Wildlife Standard of the Eastside Screens. The Purpose and Need of the proposal is to analyze a “durable, science-based alternative to the 21-inch standard in the Eastside Screens.” The “goal” of the proposal is somewhat synonymous with the Purpose and Need and aligns with the Interim Wildlife Standard which is to “maintain the abundance and distribution of old forest structure.” The PEA does not explicitly define the term “durable” in the Purpose and Need statement so it is difficult to determine the term’s meaning in the context of this proposal and subsequently assess which alternative best meets the Purpose of “durability.” Page 6 of the PEA suggests that the durability refers to social, political, and ecological factors. Therefore, we are assuming that the term durable applies to how effective an alternative is for a long period of time without deteriorating social, political or scientific effectiveness over its lifetime. Such an alternative, and its associated guidelines or standards, must be adaptable to future unforeseen conditions including those created by climate change, forest disturbance agents (insects, disease, fire, etc.), and shifting public values. Developing and imposing descriptive standards or guidelines that may seem appropriate in 2020 may not be appropriate in 2025 or 2040 due to these ever-changing conditions and, therefore, lack the durability that the Forest Service values.

In fact, adopting such a standard or guideline today would represent a replication of the lack of foresight that was exercised in 1994 when the 21-inch rule was formally adopted as a standard. Perhaps that rule seemed appropriate and effective 25 years ago, but in retrospect it certainly was not durable. We urge the Forest Service to not make the same mistake again. Adopting a different version of the 21-inch rule with new descriptive elements today will surely prove un-durable to future land managers and stakeholders. **The only truly durable alternative described in the PEA is the Adaptive Management Alternative that allows land managers the flexibility to adapt to future unforeseen ecological and social conditions.**

The assumptions outlined on pages 23-34 of the PEA support the durability of the Adaptive Management Alternative from an ecological perspective. However, the Forest Service failed to recognize an integral socioeconomic assumption that we believe is important to consider. That assumption is outlined in a document that AFRC cited in our June 8 letter.

Skog, K.E.; McKeever, D.B.; Ince, P.J.; Howard, J.L.; Spelter, H.N.; Schuler, A.T. 2012. *Status and trends for the U.S. forest products sector: a technical document supporting the Forest Service 2010 RPA assessment*. Gen. Tech. Rep. FPL-GTR-207. Madison, WI: U.S. Department of Agriculture, Forest Service, Forest Products Laboratory. 35 p.

This document, which was not cited in the Preliminary EA, concluded that consumption of wood products in the United States has risen in recent decades and that U.S. lumber production is projected to increase through 2040. It also concluded that the forest products sector helps sustain the social, economic, and ecological benefits of forestry in the United States. The selected alternative should be durable and adaptive to future public needs. The most ubiquitous need of the public ascertained from federal forests is wood products, which every citizen uses every day. We urge you to incorporate this document and its assumptions into the Final EA. Doing so will allow the decisionmaker the ability to properly weigh the durability of the proposed alternatives based on future public wood product needs.

In addition to selecting the alternative that is the most durable, the Purpose and Need also compels the Forest Service to select the alternative that is “science-based.” The scientific integrity of the alternatives is revealed in the effects analysis in the EA, which is based on the review of over 180 scientific documents. The PEA compares the environmental effects of each alternative considered across several factors ranging from vegetation to socioeconomics. As we stated earlier, the purpose of the 21-inch rule as it is written in the Interim Wildlife Standard is to assist the Forest Service in attaining late and old forest structure. Page 8 of the PEA states that “the goal of this proposed amendment is the need to maintain the abundance and distribution of old forest structure.” Therefore, we believe that the most important factor to consider is how well each alternative impacts late and old structure forests as informed by the science. Section 3.1.6.2 of the PEA considers the environmental effects to late and old structure forest. This analysis made the following conclusion regarding the Adaptive Management Alternative as it applies to “Open Conditions in Dry and Moist Forests Inside of LOS”:

Management adaptability to project and site-specific conditions in order to maintain and develop more open LOS will be greater than all other alternatives because tree selection would be based on project and site-specific desired conditions.

PEA at 37. This analysis made the following conclusion regarding the Adaptive Management Alternative as it applies to “Open Conditions in Dry and Moist Forests Outside of LOS”:

Management adaptability to project and site-specific conditions in order to maintain and develop more open conditions would increase more than all other alternatives because tree selection would be based on project and site-specific desired conditions.

PEA at 38. These conclusions clearly indicate that the Adaptive Management Alternative excels above both the Proposed Alternative and the Old Tree Standard Alternative in terms of development and maintenance of late and old structure forest. These conclusions also indicate that the Adaptive Management Alternative meets the Purpose and Need of a “science-based” alternative and the objective of the “maintenance and abundance of late old forest structure” to a higher degree than the other action alternatives. These scientifically analyzed results, coupled

with the Interim Wildlife Standard's objective of "maintaining and enhancing late and old structure forest," should compel the Forest Service to select the Adaptive Management Alternative over the Proposed Alternative. Selecting an alternative that attains the very desired end-results outlined in the current standards to a lesser degree would be puzzling.

The environmental effects analysis of other resource components also concludes that the Adaptive Management Alternative yields superior outcomes.

Regarding Species Composition:

The Adaptive Management Alternative confers the greatest flexibility to managers to shift species composition based on site conditions or desired future conditions. Managers would have greatly increased ability to create diverse post-treatment spatial pattern because there would be no constraints on size or age of trees for removal.

PEA at 36. Further, section 3.1.6.1. of the PEA shows that the Adaptive Management Alternative is the only one that is compatible with restoration of historical conditions and conditions that are likely to maintain old trees into the future.

Specifically, under the Current Management Alternative, "Old ponderosa pine and larch trees will **continue to decrease** in relative abundance to shade tolerant species." PEA at 35 (emphasis in original). Under the Old and Large Tree Guideline Alternative, "succession will continue to promote shade tolerant species like white fir/grand fir while the relative dominance of fire tolerant species **continues to decline.**" PEA at 35 (emphasis in original). And under the Old Tree Standard Alternative, "succession will continue to promote shade tolerant species like white fir/grand fir while the relative dominance of fire tolerant species **continues to decline.**" PEA at 35-36 (emphasis in original). Yet under the Adaptive Management Alternative, "managers will have increased ability to protect individual old fire tolerant trees," though "succession will continue to promote shade tolerant species like white fir/grand fir." PEA at 36.

In short the Adaptive Management Alternative is the only one that, even theoretically, would move species composition toward the ultimate goals. All the others would show continued movement *away* from those goals. This leaves but one reasonable alternative.

Regarding Forest Products Resources, Jobs and Income:

The Adaptive Management Alternative is ranked as having the highest benefit.

We believe that the PEA effects analysis supports the long-term durability of the Adaptive Management Alternative in the context of ecology and socioeconomics. However, the PEA fails to analyze any factors that would inform the decisionmaker of each alternative's "political" durability. So, we are left wondering: how *is* the Forest Service assessing the political durability of each alternative? How can the decisionmaker determine which alternative will be supported by unforeseen future political landscapes? Such a determination seems incredibly speculative and not analyzed in detail in the EA. In fact, how can a decisionmaker gauge the "political durability" in the *current* political landscape? And what exactly is the scale of that

landscape? Eastern Oregon? Oregon? The entire nation? This factor is extremely confusing to us and we are concerned with the Forest Service’s ability to adequately gauge this component of the Purpose and Need and make an informed decision on which alternative best meets the Purpose and Need.

It is unclear, moreover, that a decision based on “political” durability could comply with the Planning Rule. The responsible official “shall use the best available scientific information to inform the planning process required by this subpart for assessment; developing, amending, or revising a plan; and monitoring.” 36 C.F.R. § 219.3. The rule speaks to ecological, social, and economic sustainability. 36 C.F.R. § 219.8. This specifically includes “[s]ocial, cultural, and economic conditions relevant to the area influenced by the plan.” 36 C.F.R. § 219.8(b)(1). It does not include vague feelings of distant officials or citizens. Social sustainability “refers to the capability of society to support the network of relationships, traditions, culture, and activities that connect people to the land and to one another, and support vibrant communities.” 36 C.F.R. § 219.19. The 21-inch rule has worked against the social sustainability of the planning area.

Assessments and considerations of social and political durability should be prioritized at the local level. The local wood manufacturing infrastructure in eastern Oregon counties and communities should be recognized as critical to not only supplying our nation with wood products, but also to completing the necessary restoration work on national forestland that is desired. The removal of small diameter trees is currently extremely economically marginal—losing what infrastructure we currently have will only exacerbate that issue. At the local level, it’s important to remember that when the Eastside Screens were implemented in 1993, eastern Oregon counties were not considered in the political landscape. In fact, those counties were collateral damage in a top-down process and left to falter economically and socially with unemployment rates over 20% in many rural communities. For example, the unemployment rate in Grant County, Oregon was 22.7% in March 1997 while the rest of Oregon and the U.S. thrived. (See chart below). Many eastern Oregon counties have still not completely recovered from the loss of dozens of sawmills and the employment they offered. Unemployment rates in counties such as Klamath, Grant, and Wallowa remained near 7% prior to the Covid-19 pandemic. These conditions are exacerbated by the pandemic, but forestry jobs are fortunately compatible with social distancing and safety protocols. These counties deserve stronger consideration in this new Rule.

Grant County, OR Unemployment Rate by Month

Month/Year	Grant County, OR%	Oregon%	National %
1 / 1997	17.0%	6.9%	5.3%
2 / 1997	19.5%	6.9%	5.2%
3 / 1997	22.7%	6.8%	5.2%
4 / 1997	19.7%	5.9%	5.1%
5 / 1997	12.3%	5.1%	4.9%

Ultimately, the replacement to the 21-inch rule should be one that *assists* land management professionals with attaining the objective of maintaining and developing late and old forest structure. It should be based in science and designed to be an aid not an obstacle. It should be based on the assumption that land managers can be trusted to use their expertise to design silvicultural prescriptions to meet any desired condition rather than on distrust that they need limiting sideboards to attain results. We assume that Forest Service land managers are confident in the professionals tasked with implementing responsible land management consistent with management plan standards. We urge you to give deference to those professionals by empowering them with standards and guidelines that allow them to exercise their professional judgement and expertise freely without the shackles of rigid limitations that are unsupported by science and unadaptable to the diverse forests in eastern Oregon. That empowerment can be realized by adoption of the Adaptive Management Alternative. That alternative, as confirmed by the effects analysis of the EA, also best meets the Purpose and Need of the proposal by adopting “durable” standards and guidelines that are adaptable to future unforeseen conditions and science-based standards and guidelines that attain current desired end results of late and old structure forest better than either the other alternatives analyzed or the current standard. **We urge you to respect this scientifically based analysis and the Purpose and Need and adopt the Adaptive Management Alternative.**

STATUTORY AND REGULATORY CONSIDERATIONS

NFMA Requires Adoption of the Adaptive Management Alternative

Section d.2.b of the Eastside Screens requires the Forest Service to “[m]anipulate vegetative structure that does not meet late and old structural (LOS) conditions (as described in Table 1 of the Ecosystem Standard), in a manner that moves it towards these conditions as appropriate to meet HRV.” The only alternative that does this is the Adaptive Management Alternative. All others move the forest away from the HRV species composition. The Forest Service is not permitted to “abandon desired conditions in favor of different conditions entirely, without consideration of effects in the long term.” *All. for the Wild Rockies v. United States Forest Serv.*, 907 F.3d 1105, 1115 (9th Cir. 2018). Moreover, under all the other alternatives, the direction in d.2.a would preclude compliance with d.2.b. It would foreclose the opportunity to meet HRV in violation of 36 C.F.R. § 219.15(d)(1).

Such glaring internal consistency, of course, violates NFMA and the Planning Rule. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.15(e). It is also arbitrary and capricious, violating the APA. In *WildEarth Guardians v. Jeffries*, 370 F.Supp.3d 1208 (D. Or. 2019), for example, the court overturned an action by the Ochoco NF because the analysis was “internally inconsistent, and arbitrarily and capriciously skew the road density calculations. This also violates the agency’s obligation to be accurate and transparent in calculating figures so that the public is provided with quality information, and to ensure that meets Forest Plan requirements.” *Id.* at 1237. Similarly, the Bureau of Land Management’s methane-flaring rule was held arbitrary and capricious due to internal inconsistencies. “BLM circumvented normal and reasoned administrative processes and failed to provide reasoned explanations from its departure of the 2016 Rule in violation of the APA.” *California v. Bernhardt*, No. 4:18-CV-05712-YGR, 2020 WL 4001480, at *14 (N.D.

Cal. July 15, 2020), *appeal docketed, Cal. Air Res. Bd. v. Bernhardt*, No. 20-16793 (9th Cir. Sept. 16, 2020).

To comply with NFMA and the APA, the Forest Service needs to select the Adaptive Management Alternative.

The CEQ Regulations Should Be Applied

In our June 8 letter, we explained how the amendment to the Eastside Screens should not be considered “significant” under NFMA, NEPA, or the 2012 Planning Rule. We incorporate those previous comments into this comment letter, including the explanation why an EIS is unnecessary.

Since our June letter, CEQ finalized its rules, 85 Fed Reg. 43,304 (July 16, 2020), which revised its regulatory scheme for federal agencies to follow regarding the implementation of NEPA. On September 11, Judge James Jones of the U.S. District for the Western District of Virginia denied a motion for a nationwide preliminary injunction on CEQ’s final rules. *See Wild Virginia et al. v. Council on Env’tl. Quality et al.*, No. 3:20-cv-00045, 2020 WL 5494519 (W.D. Va. Sept. 11, 2020) (AFRC and its partner organization, the Federal Forest Resource Coalition, are intervenors in the case). This order permitted the rules to timely go into effect on September 14.

CEQ’s final rules have replaced the former ten “intensity factors” listed under 40 C.F.R. § 1508.27(b) that were evaluated to determine whether an agency must prepare an EIS for a proposed action. To determine whether an EIS is needed, the following direction now applies:

(b) In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action. Agencies should consider connected actions consistent with § 1501.9(e)(1).

(1) In considering the potentially affected environment, agencies should consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend only upon the effects in the local area.

(2) In considering the degree of the effects, agencies should consider the following, as appropriate to the specific action:

- (i) Both short- and long-term effects.
- (ii) Both beneficial and adverse effects.
- (iii) Effects on public health and safety.

(iv) Effects that would violate Federal, State, Tribal, or local law protecting the environment.

40 C.F.R. § 1501.3; 85 Fed. Reg. at 43,360.

These rules have eliminated the factors at former section 1508.27(b)(4) and (b)(5) which instructed agencies to consider the degree to which the effects of the proposed action are “highly controversial” or “highly uncertain.” CEQ explained it made this change “because the extent to which effects may be controversial is subjective and is not dispositive of effects’ significance. Further, courts have interpreted controversy to mean scientific controversy, which the final rule addresses within the definition of effects, as the strength of the science informs whether an effect is reasonably foreseeable. The controversial nature of a project is not relevant to assessing its significance.” 85 Fed. Reg. at 43,322.

Based on some of the statements during the public workshops, we expect that some members of the public would claim that any change to the Eastside Screens is “highly uncertain” or “highly controversial,” such that an EIS would be required. This opposition is not relevant to the actual significance of the proposal and such voices should not be handed a heckler’s veto.

The Forest Service has the discretion, which it should exercise, to apply the new CEQ regulations. “An agency may apply the regulations in this subchapter to ongoing activities and environmental documents begun before September 14, 2020.” 40 C.F.R. § 1506.13; 85 Fed. Reg. at 43,373.

CONCLUSION

AFRC is pleased to be involved in the planning, environmental analysis, and decision-making process for the Eastside Screens Plan Amendment, and looks forward to playing a constructive role in this process. Should you have any questions regarding the above comments, please contact me at 541-525-6113 or ageissler@amforest.org.

Sincerely,

/s/ Andy Geissler

Andy Geissler
Federal Timber Program Director
American Forest Resource Council