

**APPEAL TO THE REGIONAL FORESTER
OF THE UNITED STATES FOREST SERVICE
REGION 6**

**FRIENDS OF MT. HOOD, BARK, MAZAMAS,
FEDERATION OF WESTERN OUTDOOR
CLUBS, NATIVE FISH SOCIETY,
NORTHWEST ENVIRONMENTAL DEFENSE
CENTER AND OREGON CHAPTER OF THE
SIERRA CLUB**

v.

**CHRIS WORTH, FOREST SUPERVISOR
MT. HOOD NATIONAL FOREST,
DECIDING OFFICER**

**IN RE: APPEAL OF THE
ENVIRONMENTAL ASSESSMENT,
FONSI AND DECISION NOTICE
FOR THE TIMBERLINE SKI AREA
MOUNTAIN BIKE TRAILS AND
SKILLS PARK**

**SUBMITTED BY APPELLANTS: FRIENDS OF MT. HOOD, MAZAMAS, BARK,
FEDERATION OF WESTERN OUTDOOR CLUBS, NATIVE FISH SOCIETY,
NORTHWEST ENVIRONMENTAL DEFENSE CENTER AND OREGON CHAPTER
OF THE SIERRA CLUB**

NOTICE OF APPEAL, STATEMENT OF REASONS, AND RELIEF REQUESTED

**SENT VIA ELECTRONIC MAIL TO:
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Kent Connaughton
Regional Forester - Appeal Deciding Officer
USDA Forest Service
PO Box 3623
Portland, OR 97208

DATED this 11th day of January 2013.

I. NOTICE OF APPEAL

Notice is hereby given pursuant to 36 C.F.R. § 215 et al., that Appellants Friends of Mt. Hood, Mazamas, BARK, the Federation of Western Outdoor Clubs, the Native Fish Society, the Northwest Environmental Defense Center and Oregon Chapter of the Sierra Club (the “Appellants”) appeal the Environmental Assessment (“EA”), Finding of No Significant Impact (“FONSI”), and Decision Notice (“DN”) (signed November 19, 2012, with Legal Notice published on November 27, 2012) for the Timberline Mountain Bike Trails and Skills Park (the “Project”). Appellants believe that the Forest Service’s Environmental Assessment, FONSI and DN (including its Appendices) are in error and not in accordance with the legal requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq., and its implementing regulations, the National Forest Management Act (NFMA), 16 U.S.C. § 1600 et seq., and its

implementing regulations, the Administrative Procedure Act (APA), 5 U.S.C. § 706, the Clean Water Act, 33 U.S.C. § 1251 et seq., the Mt. Hood National Forest Plan, the Forest Service Manual (“FSM”), and the Endangered Species Act, 7 U.S.C. § 136, 16 U.S.C. § 1531 et seq.

II. CONTACTS:

Dennis Chaney, Friends of Mt. Hood, P.O. Box 1023, Mt. Hood, Oregon 97031.

Doug Couch, President, Mazamas, Mazamas Mountaineering Center, 527 Southeast 43rd Avenue, Portland, OR 97215.

Joan Zuber, Federation of Western Outdoor Clubs, 44731 S. Elk Prairie Road, Molalla, OR 97038.

Bill Bakke, Native Fish Society, 221 Molalla Ave., Suite 100, Oregon City, OR 97045.

Mark Riskedahl, Northwest Environmental Defense Center, 10015 SW Terwilliger Blvd., Portland, OR 97219.

Heidi Dahlin, Conservation Chair, Oregon Chapter of the Sierra Club, 1821 SE Ankeny St., Portland, OR 97214-1521

Counsel to Appellants – Ralph Bloemers, Staff Attorney, Crag Law Center, 917 SW Oak Street, Suite 417, Portland, Oregon 97205; (503) 525-2727.

III. APPELLANTS

The members and supporters of Appellants visit and enjoy the area in and around the Project area for educational, recreational, and scientific activities, including hiking, photography, watershed research, and observing wildlife. The members and supporters visit and enjoy the lands and waters that are downstream of the Project area in the Sandy River Basin for fishing, observing wildlife, hiking, camping, watershed research, photography and outdoor recreation.

Appellants will sustain injury to their interests if the Project is undertaken in the absence of a legally and scientifically sufficient analysis of the Project’s environmental impacts. Appellants and their members will sustain further injury because the Project will degrade water quality, diminish aesthetic and historic values, and harm fish and wildlife in and around the Project area and downstream from it. Appellants, their members, supporters and staff have firm plans to return to the Project area where the Project is proposed and to downstream areas in the Sandy River Basin, and their interests will be adversely affected and irreparably harmed by the Forest Service’s disregard of its statutory duties, pursuant to federal and state laws.

Appellant Friends of Mt. Hood is a nonprofit organization dedicated to monitoring development and management of national forest lands on Mount Hood. Friends of Mt. Hood is especially interested in protecting the alpine meadows, wetlands, streams, wildlife, and forested slopes on the mountain. For more than two decades, Friends of Mt. Hood has worked to safeguard the natural environment at ski areas that operate on national forest land under special use permits. These high alpine areas contain fragile alpine meadows, clear flowing streams that

feed into larger rivers downstream, and high alpine stands of mountain hemlock and slow growing white bark pine. Over the years Friends of Mount Hood has opposed various plans for major resort development on Mt. Hood at Mt. Hood Meadows and at the Cooper Spur Ski Area. Friends of Mt. Hood has members and supporters that live, work and play in and around Mt. Hood and that will be negatively impacted by the construction and operation of a downhill bike and skills park in and around Timberline Lodge.

Appellant Mazamas was founded in 1894 on the summit of Mt. Hood. Mazamas is a nonprofit mountaineering education organization that offers over 900 hikes and 350 climbs annually for over 13,000 participants. A variety of classes and activities are offered for every skill and fitness level and are open to both members and non-members. From its origins in 1894, Mazamas has had a long record of conservation and preservation. This continues today. The 2001 membership survey results showed that 80% of the Mazamas' membership believes that the Mazamas should be active in conservation and environmental issues. With this in mind, the Mazamas has a conservation committee that strives to increase the Mazamas' visibility and influence within the community. In short, the Mazamas actively advocates for the protection and management of natural areas to preserve, restore, and enhance healthy ecosystems.

Appellant Bark's mission is to transform Mt. Hood National Forest into a place where natural processes prevail, where wildlife thrives and where local communities have a social, cultural, and economic investment in its restoration and preservation. Bark's members and supporters use and enjoy the lands and waters within and around the Project area and will be negatively affected by the development of the Project.

Appellant Native Fish Society applies the best available science to advocate for and promote the recovery of wild, native fish and the stewardship of the habitats that sustain them. The Native Fish Society works to reform fish hatchery practices and minimize the impacts of hatchery fish on wild fish populations as well as on harvest reform to manage harvest to achieve wild spawner abundance and productivity. Likewise, Native Fish Society focuses on management reform to ensure accountability for recovery of wild, native fish populations and on habitat protection through stewardship. Native Fish Society is deeply invested in the Sandy River Watershed and many of its members and supporters enjoy the lands and waters that will be directly, indirectly and cumulatively affected by the Project.

Appellant Federation of Western Outdoor Clubs (FWOC) seeks to unite its member clubs behind a shared agenda of conservation goals. To help its member clubs become more effective in their own conservation work by educating them on the basic issues, by disseminating information on the challenges and opportunities for conservation and by fostering understanding of effective means for reaching its goals. FWOC lends its support to the conservation campaigns of allied groups that specialize in given issues in pursuit of its shared agenda. FWOC works to secure additional protection for qualified areas of wilderness on public lands and to protect wildlife, native plants, waters and lands in wildlife refuges and through other means. FWOC works to promote stewardship of forests on public and private lands, while preserving remaining old-growth forests and protecting and restoring the quality of air, water, and soils and the integrity of rivers, lakes, wetlands, coasts, grasslands and deserts. The Federation of Western Outdoor Clubs works on behalf of the Cascadians, Chemeketans, Chinook Trail Association, Friends of the Columbia Gorge, Great Old Broads for Wilderness, the Hobnailers, Klamath-Siskiyou Wildlands Center, Mazamas, Mountaineers, Oregon Nordic Club, Santiam Alpine

Club, Sierra Club, Oregon Chapter, Trails Club of Oregon, Washington Alpine Club, Wilderness Watch, Winter Wildlands Alliance and other organizations throughout the West.

Appellant Northwest Environmental Defense Center (“NEDC”) is an independent, non-profit organization working to protect the environment and natural resources of the Pacific Northwest. NEDC achieves this mission by providing legal support to individuals and grassroots organizations with environmental concerns, and engaging in education, advocacy and litigation independently and in conjunction with other environmental groups. NEDC’s members and supporters regularly visit and enjoy Mt. Hood, Timberline Lodge and the lands and waters in and around the project area. NEDC’s members and supporters would be negatively impacted by the implementation of this project without compliance with applicable state and federal environmental laws.

Appellant Sierra Club is a national conservation organization with 580,000 members including over 20,000 members in Oregon. Its principal place of business in Oregon is the Chapter Office at 1821 SE Ankeny Street, Portland, Oregon 97214. Its national headquarters is at 85 Second Street, San Francisco, CA 94105. Sierra Club members use the Mt. Hood National Forest for many purposes including hiking, camping, cross-country skiing, backpacking, fishing, bird watching, nature photography, horseback riding, and biological study. In particular, members of the Sierra Club use the Project area for recreational and other purposes. Sierra Club and its members have been actively involved in planning processes for activities in the Mt. Hood National National Forest. Sierra Club members will be materially and adversely affected by the proposed Project as set forth above.

IV. BACKGROUND

Timberline Lodge and its immediate environment is a very popular and important historic recreation destination for Oregonians. Mt. Hood and the forested flanks in and around Timberline Lodge provide a very important source of clean, cold water that feeds the headwaters of the Sandy Basin Watershed.

When RLK and Company first proposed the concept of a downhill mountain bike park, Forest Supervisor Gary Larsen proposed to approve the project by categorically excluding it from environmental review. Former Supervisor Larsen and certain members of his staff pressured individual Forest Service staff to make a “no effects” call – in other words to figure out a way to approve the project and determine that the project’s impacts would not negatively impact fish, wildlife and the high-alpine environment. The problem with Former Supervisor Larsen’s approach was it put politics before the needs of the resource. Quite apparently, the lens through which he viewed the project was all expansion and development of land designated for developed recreation should be approved.

But when the agency specialists went out on the ground to assess the condition of the landscape, they quickly discovered that his demand was simply not possible. The promises to restore the landscape after the construction of the Jeff Flood Express Lift had not been kept. The proposed project area was in a sorry state. The existing roads, cut banks, and the extensive logging and ground disturbance that took place to build that lift and the associated ski trails had greatly expanded the drainage network and, in turn, resulted in significant delivery of sediment

to the system. A lot of work was needed to restore the ecological function of the landscape, and bring it into compliance with applicable standards designed to protect fish and aquatic life.

The Forest Service received comments from numerous groups asking them to consider other locations for the proposed project. For example, the Sandy River Basin Watershed Council wrote to the Forest Service to ask them to adopt the “No Action” alternative. They wrote that the aquatic resources within the area are of high importance and key elements of the Oregon Department of Fish and Wildlife’s Recovery Plan for the Lower Columbia region. The Council underscored how the Forest Service interdisciplinary team (“IDT”) documented how the project area is not in properly functioning condition. The Council pointed out that the Forest Service IDT acknowledged that there were many problems with past restoration work, and that most of the problems have not been corrected.

To try to overcome these hurdles, the Forest Service coupled unrelated restoration and road decommissioning work with a new project. Normally, the Forest Service engages in restoration and road decommissioning separately from new ground disturbing projects. However, because the existing condition itself – the baseline – is very likely to adversely affect endangered fish, the Forest Service decided to couple two unrelated projects into one to remedies the damage from past projects. The problem with this approach is that the benefits of the restoration will not accrue for many years yet at the same time the Forest Service is authorizing the operator to exacerbate the problem through the construction and operation of the Project.

To understand the technical assumptions contained in the EA, the Appellants engaged hydrology expert Jonathan J. Rhodes. Mr. Rhodes was asked to look at the assumptions and determine if a rational basis and supporting facts were provided to support the conclusions that were made. For the Forest Service to get to “yes” on the project, Mr. Rhodes determined that it relied on numerous unsupported assumptions in the EA and failed to look at critical aspects of the problem. In short, the benefits of the proposed restoration activities will not accrue immediately (as is assumed in the EA). As a result, the additional sedimentation and ecological degradation that will result from the construction and operation of a large network of bike routes on the high-alpine slopes of Mt. Hood will have direct, indirect and cumulatively significant effects on the resource.

For these reasons and as set forth in detail below, the Appellants respectfully request an appeal resolution meeting to discuss these issues in detail. Appellants believe the decision is fatally flawed and should be withdrawn. If the appeal is denied, the Appellants will seriously consider pursuing litigation over this matter in federal court. That being said, this appeal presents an opportunity for all concerned to forge a different path forward. RLK and Company has a long history of investing in Timberline Lodge and in the community, and it has made its plans for the next ten years known. Those plans include expanded parking facilities and additional development. In light of these plans, the Appellants believe a public conversation on the future of this area is long overdue. A whole systems look is needed, instead of a one-off piecemeal approach to new development. Appellants submit that what is needed is careful planning and thorough public involvement on a master plan for the future development of Timberline Lodge, and that plan must be coordinated with the future of Government Camp.

V. REQUEST FOR RELIEF

Appellants request administrative review of the decision of Forest Supervisor Chris Worth to approve the Project. Appellants further request that the Regional Forester withdraw and remand the DN, FONSI and EA back to Forest Supervisor Worth for correction of the errors noted herein and for preparation of an Environmental Impact Statement.

Appellants are interested in discussing this appeal with you. Pursuant to C.F.R. § 217.5(a), please promptly mail the appropriate decision document to us upon making your decision on this appeal.

VI. STATEMENT OF REASONS

The DN, FONSI and the EA violate NEPA, NFMA and other laws, rules and regulations as addressed below. The implementing regulations for NEPA state:

“NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken...[P]ublic scrutiny [is] essential to implementing NEPA.” 40 C.F.R. § 1500.1(b).

The NEPA regulations also provide:

“[F]ederal agencies shall to the fullest extent possible:

* * *

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public,...

* * *

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.” Id. at 1500.2.

Section 1506.6(a) of the NEPA regulations further requires that the agency “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.” The procedural requirements of NEPA must be strictly interpreted. *California v. Block*, 690 F.2d 753, 760 (9th Cir. 1982). NEPA requires consideration of the potential impact of an action before the action takes place. *Tenakee Springs v. Clough*, 915 F.2d 1308, 1313 (9th Cir. 1990). The NEPA document should identify methods used, reference scientific sources relied upon, discuss responsible opposing views and disclose incomplete or unavailable information. See 40 C.F.R. §§ 1502.22 and 1502.24.

In this regard, the specific ways in which the Forest Supervisor’s DN, FONSI, and EA failed to disclose information and respond to substantive public comments include:

> the failure to disclose and ensure that the project complies with the Aquatic Conservation Strategy objectives and protections for Riparian Reserves as required by the Mt. Hood National Forest Plan and the Northwest Forest Plan including, but not limited to, the direction in the Northwest Forest Plan Record of Decision at p. B-10 which states that “Management activities that do not maintain the existing condition or lead to improved

conditions in the long term do not ‘meet’ the intent of the Aquatic Conservation Strategy and thus, should not be implemented”;

> the failure to disclose and consider the timing and effectiveness of the proposed mitigation on over half of the project area to address revegetation and restoration that was supposed to have been completed in conjunction with the construction of the Jeff Flood Lift and the failure to ensure compliance with standard WR-3 in the Northwest Forest Plan which applies to the Riparian Reserves in the project and states "[d]o not use mitigation or planned restoration as a substitute for preventing habitat degradation";

> the failure to properly assess the Project’s sediment impacts or provide a rational explanation of how the Project’s sediment impacts were estimated or provide any information on the accuracy of those estimates;

> the failure to reliably assess the Project’s impacts on stream-route connectivity and resulting effects on peak flows and stream network extension and to disclose the Project’s permanent degradation of Riparian Reserves and their functions;

> the failure to disclose the Project’s cumulative effects due to the EA’s failure to adequately disclose the existing condition of the many watershed attributes affected by the Project, including, but not limited to, the exclusion of an assessment of the Project’s impacts on Coho and spring Chinook salmon and coastal cutthroat trout from the analysis;

> the failure to address the direct, indirect and cumulative effects of reasonably foreseeable future actions within the Special Use Permit area as proposed in the Master Development Plan accepted by Gary Larsen, Mt. Hood National Forest Supervisor, and incorporated in the Special Use Permit for the Timberline Ski Area;

> the failure to involve the public in the development and consideration of the Master Development Plan submitted by RLK and Company for the Timberline Ski Area to the Forest Service and the related failure of the Forest Service to comply with its obligations under the NEPA, the NFMA and the Appeals Reform Act by failing to involve the public and prepare an analysis for the Master Development Plan for the Timberline Ski Area, which is a major federal action significantly affecting the quality of the environment; and

> the combination of two unrelated and independent projects – one being the restoration of past damage to the mountain environment stemming from previously approved construction projects and the other being new construction – into one project for purposes of analysis in violation of the NEPA, the NFMA and their implementing regulations;

> the failure to adequately address likely changes to stream temperature and water quantity resulting from climate variability, and the arbitrary decision to exclude from the analysis readily available and up-to-date analytical tools that would have allowed the Forest Service to take the requisite “hard look” at these environmental impacts;

> the failure to adequately disclose, analyze or address the significant direct, indirect and cumulative effects of the construction, maintenance and operation of bike routes on big game, particular elk that use the high alpine meadows during the summer months;

> the failure to incorporate and rely upon the best available science as required by the NFMA and its implementing regulations, in particular with respect to the prediction of sediment loading, impacts to Riparian Reserves, impacts to rare and endangered species of fish, wildlife and invertebrates;

> and, in light of the foregoing, the failure to objectively disclose and discuss the significance factors and conclude that an Environmental Impact Statement was not required for the Project.

These violations are discussed in turn in more detail below and in the supporting materials submitted with this appeal.

1. The EA Fails to Ensure Compliance with the Aquatic Conservation Strategy, protections for Riparian Reserves and other applicable requirements of the National Environmental Policy Act, the National Forest Management Act, the Northwest Forest Plan and their implementing regulations.

As outlined in the declaration of Jonathan J. Rhodes, Appellants respectfully request that the Forest Service incorporate accurate, verified information into a new NEPA analysis and use the information to take a fresh look at its obligation to disclose the direct, indirect and cumulative effects of the Project on the environment as well as its assumptions and conclusions regarding compliance with applicable Aquatic Conservation Strategy Riparian Reserve standards and guidelines and other applicable requirements of NEPA, the Northwest Forest Plan, the NFMA and their implementing regulations.

The EA and DN present erroneous conclusions to the public regarding impacts on Riparian Reserves and compliance with Aquatic Conservation Strategy Objectives and protections in place for aquatic life. Mr. Rhodes found significant gaps, flaws and errors in the documentation prepared by the Forest Service and he has detailed those errors in a technical declaration that is attached hereto. Appellants also include the relevant supporting scientific literature cited to and relied upon by Mr. Rhodes.

By the Forest Service's own admission and by the best available science discussed in the submission prepared by Jonathan J. Rhodes, the Project does not appear to be in compliance with the following Forest Plan standards: WR-3 which applies to the Riparian Reserves - Do not use mitigation or planned restoration as a substitute for preventing habitat degradation; FW-087 - Existing aquatic habitat complexity *shall be maintained or increased* (LMRP Section 4-59); FW-088 - Pool habitat *shall be maintained at natural levels or enhanced* (LMRP Section 4-59); FW-089- Volume of pools during low flows *shall be maintained or increased* (LMRP Section 4-59); FW-102 - Streambank stability of the riparian management area shall-be maintained in its natural condition LMRP Section 4-59); FW-104 - Special aquatic habitat (e.g. alcoves, secondary and overflow channels, ponds, and wetlands), and associated subsurface aquatic habitat (hyporheic zone) *shall-be maintained in natural condition or enhanced in both quantity and quality* LMRP Section 4-59). This list is not intended to be exhaustive. Previous comments, Mr. Rhodes declaration, and this appeal outline other requirements of the ACSO, RR, LRMP and federal regulations that are in place *to maintain and restore viable fish populations*.

2. The EA Fails to Disclose and Address the Cumulative Impacts of the Existing Condition and Proposed New Activities within the Special Use Permit Area on Threatened, Endangered and Sensitive Fish Found Downstream of the Project Site.

As outlined in the declaration of Jonathan J. Rhodes, Appellants request that the impacts of this project on native fish found downstream of the Project area resulting from the increased sediment loading and extension of the drainage network be assessed in an environmental analysis. According to the Zigzag District Ranger, sedimentation is already occurring in the project area (see Draft EA Cover letter to public from Zigzag District Ranger, March 3, 2011). Seven of the 10 roads planned for stormproofing or decommissioning are existing ski-area roads. The existing high-sedimentation levels would not be occurring had the permittee implemented project design criteria and Best Management Practices (“BMPs”) on their past and ongoing ski-area ground-disturbing activities, as mandated in the previous NEPA document that permitted the road construction/operation action.

The sedimentation resulting from the permittee’s failure to implement past sedimentation prevention measures appears to constitute ongoing “take” and thus must be analyzed in additive to the environmental baseline used for assessing the proposed Project effects and does not offset the sedimentation resulting from the Project activities.

The sedimentation caused by existing ski area service roads was analyzed in the previous NEPA document authorizing construction of the service roads initially. The sedimentation resulting from the Project constitutes a direct, indirect and cumulative effect above and beyond the current sedimentation resulting from past and current ski area construction and operations. The ongoing “take” that is resulting from excessive sedimentation is the result of RLK and Company’s failure to implement past project design criteria. BMPs cannot lawfully be linked to a new federal action to re-address past actions that must be independently implemented. Civil actions are available to citizen groups under Section 11(g) of the ESA to ensure the agency and/or the private company does not fail to comply with applicable Special Use Permit terms or takes further action leading to the take of endangered species.

The late conception of a restoration project to deal with past effects also led to a disregard for the effects to ski area operations and skier safety resulting from closure of lift-service roads, safety and wildland fire suppression capabilities, response time, and effectiveness resulting from closure of roads on the Forest on various users. Similarly, the blended EA does not consider alternatives to the intensive restoration and road closure activities. The effects of blading, scarification, and contouring the roads was not compared to other equally, if not more, effective restoration alternatives like planting and natural colonization of plants and vegetation.

3. The EA Fails to Disclose the Limitations of its Modeling.

As outlined in the declaration of Jonathan J. Rhodes, there is simply no way for an expert, let alone the public, to verify the reliability or accuracy of the models that the Forest Service has employed to determine the sediment loading resulting from past, present and reasonably foreseeable future activities. The agency has not ensured the scientific integrity of its decision to employ the model it used to predict sediment loading resulting from the implementation of this project, nor does it appear that the agency has used the work of its own scientific researchers let alone the best available science to reach its conclusions.

4. The EA Fails to Accurately Describe and Analyze the Environmental Baseline and Improperly Packages Restoration Work Required as Part of a Previous Project.

The EA's description and assessment of the baseline is flawed. The EA assumes that the "baseline condition" for assessment of environmental consequences of the construction and operation of the bike routes is the condition of the landscape after its existing degraded condition is restored. However, the existing condition of the landscape is its current degraded condition – the land has not yet been restored and it will not be in a restored, functioning state at the same time as new construction occurs.

In an email from Hydrologist Todd Parker to Forest Service staffer Andrew Burrows dated August 5, 2010, Mr. Parker documents RLK and Company's lack of compliance with the promises it made in the Jeff Flood EIS and its failed revegetation efforts. Attached to his email are documents associated with implementation of the Timberline (Jeff Flood) Express FEIS. The email states that:

"These documents were developed as required by the design criteria in the FEIS. Attached are the storm Water pollution control plan, Revegetation plan, Rhizomnium nudum Monitoring Plan, Wetland Monitoring plan, and the 2007 Monitoring Report...After a quick read it appears that we have issues with:

Not completing required monitoring activities and associated monitoring reports for revegetation, Rhizomnium nudum, and wetlands (as I read the reports these activities should have been monitored in 2008 and 2009).

Not planting huckleberry in 2009 (250 plants in ski runs)

Not insuring that revegetation was successful on disturbed areas (Construction Sites and Disturbed soils) as required in the revegetation plan and Storm Water pollution Control plan.

In addition it appears that we need to address drainage issues at the bottom of the lift where the area is being drained directly into one of the forks of Still Creek."

The email record and correspondence and the EA itself further confirms how much work RLK and Company must undertake to bring its operation into compliance and to live up to the promises it has made to the public to be a good steward of the land. For its part, the Forest Service must consider the condition of the landscape with the damage associated with construction of the Jeff Flood Express lift and previous lifts. The restoration work must be decoupled from the new construction. The only way that the Forest Service can assure the public that the resource will be respected and protected is if the restoration work is independently pursued and successfully completed before more damage is done.

Road decommissioning and restoration activities are not interrelated and interdependent to the bike park activities. As defined under ESA, "Interrelated actions" are those that are part of a larger action and depend on the larger action for their justification. "Interdependent actions"

are those that have no independent utility apart from the action under consideration (50 CFR § 402.02). The restoration and road decommissioning activities require a separate analysis independent of the proposed bike park actions because they have independent utility and justification apart from the bike park proposed actions that triggered the initial NEPA analysis. Neither of these two actions depends on the other for justification, and both have independent utility apart from each other.

5. The EA Fails to Disclose Cumulative Impacts of Reasonably Foreseeable Future Development.

NEPA requires that an agency provide a detailed analysis of the environmental impacts of the proposed action. 42 U.S.C. § 4332(C)(i). As part of this analysis, the agency must include an adequate discussion of cumulative environmental impacts. 40 C.F.R. § 1508.7 provides:

“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...Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

NEPA requires that where “several actions have a cumulative...environmental effect, this consequence must be considered in an EIS.” *City of Tenakee Springs*, 915 F.2d at 1312.

In *Klamath-Siskiyou v. Bureau of Land*, 387 F.3d 989, 995-997 (9th Cir. 2004), the Ninth Circuit confirmed the congressional intent of NEPA that useful information and analysis be provided to the public and the decisionmaker prior to the issuance of a decision and that “conclusory” statements and a list of environmental concerns is not an adequate cumulative effects analysis. *See City of Davis v. Coleman*, 521 F.2d 661, 673-676 (9th Cir. 1975), (an EIS for a road must analyze the impacts of industrial development that the road is designed to accommodate, even though the development is not to be carried out by the agency). *Also see LaFlamme v. F.E.R.C.*, 852 F.2d 389, 401-402 (9th Cir. 1988)(concerning a hydropower project).

To “consider” cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the Forest Service’s decisions, can be assured that the Forest Service provided the hard look that it is required to provide. Such a mandate is also consistent with the Forest Service’s duties under NFMA. General statements about “possible” effects and “some risk” do not constitute a “hard look” absent a justification regarding why more definitive information cannot be provided. *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379-80 (9th Cir. 1998).

“Cumulative Watershed Effects” as it must be understood in terms of this project refer to the additive consequences of all environmental influences as they affect critical terrestrial, aquatic and riparian resources. “All influences” include past, present and future, off-site and on-site, natural and human-induced, direct and indirect, public and private effects and include all variety of management-induced influences.

Cumulative effects that are not adequately addressed in the EA and Decision Notice include 1) the area in which there are related facilities and resources and 2) other past, present and reasonably foreseeable actions that have or are expected to have impacts in the area.

A. Related facilities and resources.

Rather than assess all the nearby directly connected parts to this whole system, the EA, Decision Notice and Responses limit what is analyzed to the construction and operation of the bike routes. This narrow approach to defining the scope of cumulative effects is contrary to the above rules and case law.

B. Past actions.

The EA, Decision Notice and Responses fail to assess “past” actions, arguing that the law only requires an assessment of current conditions. However, 36 C.F.R. § 220.4(f) requires that “the agency must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects.” While not all past actions need be assessed, relevant and useful past actions should be assessed. Critical past actions that must be assessed include the construction and development of the Jeff Flood Express Lift and the failure of road and construction site restoration activities to be implemented after the construction of those lift facilities.

C. Reasonably foreseeable actions.

There are a number of foreseeable cumulative effects the EA and Decision Notice fail to consider. In 2008 R.L.K. and Company retained S.E. Group’s Bill Granger to outline its plan for the “continued development of the Timberline Ski Area within its Special Use Permit (SUP) boundary over the next ten years.” Timberline Conceptual Master Plan (“Master Plan”), January 2009 at p. 1.¹ The Master Plan was subsequently updated to add the proposed construction of the mountain bike park, and the Master Plan was accepted by Forest Supervisor Gary Larsen and incorporated into RLK and Company’s Special Use Permit. Specifically, Gary Larsen stated: “I recognize this document as an update to your Master Development Plan (MDP), and it now becomes a part of your permit as stated in clause I., G of your Special Use Permit.” Letter from Gary Larsen to Jeff Kohnstamm dated February 5, 2010.

The 2009 Master Plan sets forth the reasonably foreseeable future development as including: “new base area ski facilities, new winter recreation opportunities, and new parking facilities at the Timberline complex in such a way as to meet both the current, and certainly the forecasted future demand for visitation.” 2009 Master Plan at 2. The Master Plan specifically states that the:

- “new ski area portal would contain the following project components:
- Construction of a 15,000 square foot day lodge.

¹ Bill Granger also works under the name “Re-Align Environmental” and lists RLK and Company as one of his clients. He lists his work on the Master Plan as one of the projects he has performed for RLK and Company. See <http://www.re-alignenv.com/2012/05/timberline-timberline-lodge-oregon/>

- Construction of a new snow tubing and snow play area for day use visitors.
- Construction of new parking facilities for employees and core skiers and snow play enthusiasts.”

The visiting public, the Forest Service and RLK and Company all know that parking is a problem at Timberline Lodge. The 2009 Master Plan has this to say:

“Due to this unique parking situation and available parking for visitors, Timberline’s actual operating capacity CCC is approximately 2,200 (USDA 2005b). As such, the competing uses of these parking lots effectively limit the total number of guests that can park at Timberline. If this present condition persists, Timberline will fail to meet the forecasted trend in visitation and compromise its ability to serve as a gateway experience to Mt. Hood. (p. 7)”

The 2009 Master Plan further emphasizes the problem with this statement:

“Particularly in low snow years when Mt. Hood Ski Bowl is closed, there are approximately 33 days in the high season when Timberline gets “parked out.” When this occurs, Timberline has no alternative but to turn away guests and redirect traffic back onto an already crowded Highway 26. This CMP proposes to address this situation by providing an alternative portal for skiers, snowboarders, and snow play enthusiasts to enjoy winter recreational activities at Timberline.”

The parking limitations also affect summer visitors and the construction of the Project will actually draw more visitors to the mountain and likely result in more days when parking capacity is not able to meet the demand. On its website, RLK and Company have this to say about the parking problem:

“One of the most pressing issues for Timberline is an awkward and substandard arrival via the access road, and a lack of adequate parking. Consequently, Timberline is not able to fully accommodate even current levels of visitation. Quite simply, parking demand exceeds supply. While systematic terrain analysis (i.e. slope gradients and conceptual egress studies) show that there are opportunities for improving this situation and developing additional parking lots within Timberline’s SUP area, a number of regulatory constraints indicate that the full compliment of necessary parking at the site may not be consistent with ODOT or USFS management direction.”

RLK and Company also has presented options for expanding parking facilities in Government Camp as well as access via a Gondola-type lift. The proposed construction and operation of bike routes will only exacerbate the parking problem, and no solution is provided. RLK and Company has proposed to construct additional parking facilities, among other improvements in its 2009 Master Plan. The Forest Service has accepted the 2009 Master Plan and an amendment to it and incorporated it into RLK and Company’s Special Use Permit. Yet, despite knowing full well that parking is a problem, and that additional parking lots are planned in the near future, the Forest Service completely ignores this factor and does not assess the direct, indirect and cumulative effects of constructing additional parking within the Special Use Permit.

NEPA requires a federal agency to analyze the cumulative impacts of a proposed project in conjunction with any other related actions. 40 C.F.R. § 1508.27. The NEPA regulation for cumulative impacts requires the agency to assess 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.” 40 C.F.R. § 1508.7.

The Forest Service’s regulations for NEPA compliance define “[r]easonably foreseeable future actions” as “[t]hose Federal or non-Federal activities not yet undertaken, for which there are existing decisions, funding, or identified proposals.” 36 C.F.R. § 220.3.

To determine the scope of cumulative impacts analyzed, EPA guidance states that NEPA documents should consider “the likelihood that the project will occur—final approval is the best indicator but long range planning of government agencies and private organizations and trends information should also be used.” EPA, *Consideration of Cumulative Impacts in EPA Review of NEPA Documents*, Office of Federal Activities, 11 (May 1999), available at <http://www.epa.gov/compliance/resources/policies/nepa/cumulative.pdf>. The guidance states that “reasonably foreseeable future actions need to be considered even if they are not specific proposals.” *Id.* at 13. When considering “private actions, the analysis should use regional and local planning documents.” *Id.* A project “need not be finalized before [it is] reasonably foreseeable.” *Northern Plains Resource Council, Inv. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

While the 2009 Master Plan is cast as “conceptual,” the available regional and local planning documents plainly show that parking is a problem at Timberline Lodge in both the winter and summer months. The 2009 Master Plan is an existing document and Forest Supervisor Gary Larsen made the decision to accept it and incorporate it into RLK and Company’s Special Use Permit. The construction of additional parking is “reasonably foreseeable” if not simply inescapable. RLK and Company admits that it cannot even meet its current capacity. RLK and Company have overbuilt the mountain’s facilities first, and it is inevitable it will seek to expand parking within the Special Use Permit area.

6. The Forest Service Failed to Prepare an Environmental Analysis Prior to Accepting the 2009 Master Development Plan.

NEPA requires federal agencies to prepare an Environmental Impact Statement (EIS) for “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). Major federal action include “new or revised agency rules, regulations, *plans*, policies or procedures, and legislative proposals.” 40 C.F.R. § 1508.18(a) (emphasis added). If the action may significantly affect the human environment, an agency may prepare an Environmental Assessment (EA) to decide “whether to prepare an [EIS] or a finding of no significant impact.” *Id.* at 1508.9(a)(1).

In the past, the Mt. Hood National Forest conducted a NEPA analysis of Ski Area Master Development Plans. *See Friend of Mt. Hood v. U.S. Forest Serv.*, 2000 US Dist. LEXIS 18309 (D. Or. Dec. 15, 2000). The MDP is a required component of the Special Use Permit, and the Forest Service stated in its acceptance letter that “this document [i]s an update to your [MDP], and it now becomes a part of your permit as stated in clause 1., G of your Special Use Permit.”

See Letter from Gary Larsen, Forest Supervisor, to Jeff Kohnstamm, RLK, February 5, 2010. The Forest Service, therefore, not only accepted to MDP, but it also, in the process, amended the Special Use Permit for the Timberline Ski Area.

Because the acceptance of the MDP is a final agency action, *Bennet v. Spear*, 520 U.S. 154 (1997); *Sackett v. Env't'l Protection Agency*, 132 S.Ct. 1367 (2012), and because the acceptance of the MDP is a “plan” and falls within the major federal action, 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.18(a), the Forest Service was required to prepare an Environmental Impact Statement, or, at bare minimum, an Environmental Assessment to determine whether the MDP would have a significant impact on the environment. Here, instead, the Forest Service shut the public out of the process and accepted the MDP without providing for any public review or comment and without conducting any analysis of environment effects. The Forest Service must therefore review the environmental impacts of its acceptance of the MDP by conducting an EIS prior to approving site-specific activities that implement the MDP.

7. Failure to Disclose Contractor’s Financial Conflict of Interest.

The Forest Service EA, FONSI and Decision Notice and Response fail to respond to Appellants concern that there is a conflict of interest between the private contractor retained by the Forest Service to assist with the preparation of this EA and the public interest in having fair, unbiased decision. The email traffic between Mr. Granger and Forest Service staff, Mr. Granger and Timberline line lodge and publicly available information establish that he is employed by RLK and Company on its master planning and past lift construction and by the Forest via direct payments to prepare the Environmental Analysis for the Project.

Bill Granger has previously worked for RLK and Company on the Jeff Flood Express Lift and his website presence shows him working in the development of the 2009 Master Plan. Mr. Granger does not appear to be an independent unbiased consultant, and his current relationship with RLK and Company is not disclosed. If Mr. Granger is currently employed by RLK and Company, then he has an interest in ensuring that RLK and Company’s projects are smoothly approved. In fact, this is exactly what Mr. Granger promises his clients on his website.

The email correspondence shows that Mr. Granger has played a significant role in the development and drafting of the Environmental Assessment for this Project. His conflicts of interest, however, were not adequately disclosed to the public in the EA or resolved by the Forest Service. In so doing, the Forest Service has failed to maintain the scientific integrity of its decision making process and its obligations to reach unbiased decisions affecting matters of public interest.

8. Failure to Ensure Compliance with the Clean Water Act.

The Clean Water Act, 33 U.S.C. § 1251 et seq., was enacted “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). The Clean Water Act fosters the creation of water quality standards, which are then to be developed by the states. 33 U.S.C. § 1313(c). The standards created by the states are subject to EPA review and approval. 33 U.S.C. § 1313(a) and (c).

States are responsible for developing water quality standards to protect the desired conditions of each waterway within the state's regulatory jurisdiction. 33 U.S.C. § 1313(c). A water quality standard includes three elements: 1) one or more designated uses, such as fish propagation; 2) numeric and narrative criteria specifying the water quality condition necessary to protect the designated uses; and 3) an anti-degradation policy that ensures that uses are protected and that high quality waters will be maintained and protected. 33 U.S.C. § 1313(c)(2), 1313(d)(4)(B); 40 C.F.R. §§ 131.6, 131.10-12.

Waterbodies that do not meet water quality standards are deemed "water quality-limited" and placed on the CWA's § 303(d) list. States must develop total maximum daily loads (TMDLs) for all § 303(d)-listed waterbodies in order to bring them back into compliance with applicable water quality standards. In Oregon, § 303(d) - listed waterways are subject to the state's antidegradation policy which prevents new or increased pollution and further degradation of water quality. OAR 340-041-0004(1), (7).

Section 313 requires all federal agencies to comply with water quality standards, including a state's antidegradation policy. 33 U.S.C. § 1323(a). Federal agencies must ensure that any authorized activity on federal lands complies with all applicable water quality standards. *See Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1153 (9th Cir. 1998); *National Wildlife Federation v. U.S. Army Corps of Engineers*, 384 F.3d 1163, 1167 (9th Cir. 2004).

The EA admits that RLK and Company is exceeding state water quality standards for total dissolved solids in the headwater streams as a result of its salting activities. Appellants request that the Forest Service require RLK and Company to come into compliance with the Clean Water Act before it is permitted to engage in construction activities or consider an alternative that meets or exceeds state water quality standards.

9. The EA Fails to Disclose the Impacts of Foreseeable Changes in Temperature.

Forest Service Chief Gail Kimbell recently stated: "History will judge the leaders of our age by how well we respond to climate change." The Forest Service's guidance entitled: *Climate Change Considerations in Project Level NEPA Analysis* dated January 13, 2009, states that land managers can and should consider the effects of climate change in two particular ways when it comes to specific projects:

- The effect of a proposed project on climate change (GHG emissions and carbon cycling). Examples include: short-term GHG emissions and alteration to the carbon cycle caused by hazardous fuels reduction projects, GHG emissions from oil and gas field development, and avoiding large GHG emissions pulses and effects to the carbon cycle by thinning overstocked stands to increase forest resilience and decrease the potential for large scale wildfire.

- The effect of climate change on a proposed project. Examples include: effects of expected shifts in rainfall and temperature patterns on the seed stock selection for reforestation after timber harvest and effects of decreased snow fall on a ski area expansion proposal.... (See Ex. 5, p. 1)

This project proposes significant increases in ground disturbance and extension of the drainage network in an environment that is particularly susceptible to the impacts of a warming climate and changing precipitation patterns. There is reliable data and analytical tools that address the effects of expected shifts in rainfall and temperature patterns in this region, and these show that the future climate in and around the project is likely to be significantly altered.

However, the Final EA, Decision Notice, FONSI and associated documents provide inadequate and inaccurate responses to available scientific information on the influence of foreseeable climatic changes in temperature.

The Forest Service's climate change video states that the ten warmest years in recorded history have all occurred since 1990. The video transcript goes on to state:

“Warmer winters also affect our water supplies. The snow packs are thinner and they melt earlier in spring, so the water runs out from the forest earlier in summer.

Extended droughts make trees more vulnerable to fire and insects and reduce the amount of water available for fish, wildlife, communities and agriculture.

The impacts of rising temperatures on aquatic systems are a major concern. Many species, such as the Bull Trout, are highly susceptible to temperature increases that could result from climate change.

These impacts threaten the capacity of our forests to provide all kinds of ecosystem services that people have come to expect, including clean air and water, habitat for fish and wildlife, and opportunities for hunting, fishing, skiing, and other kinds of outdoor recreation.” (See Ex. 6, p. 1)

There are ample climate change data and assessment tools from the recent two decades and reliable and well-accepted predictions from the Forest Service's own researchers on the likely impacts of climatic changes on rainfall, stream flows and stream temperatures. The agency's failure to address this data in its analysis of the direct, indirect and cumulative effects of this project is arbitrary and capricious.

The EA erroneously concludes that there is inadequate information to assess the impacts of changing climate conditions. The Oregon Climate Change Research Institute (2010) has determined that statewide air temperatures are likely to increase by as much as one degree Fahrenheit per decade, while precipitation levels are likely to remain largely unchanged on an annual basis, but may decrease during the summer months. These changes are likely to have significant adverse effects on spring snowpack, spring snowmelt and late summer stream flows. These effects are likely to be most pronounced in headwater streams where subsurface flow paths are relatively short. Excerpts from the Oregon Climate Assessment Report (2010) are attached as Ex. 9, Parts 1-3.

The recent data and the available scientific information on the likely near-term future condition is part and parcel of disclosing the direct, indirect and cumulative impacts of the

proposed Project. There is no justification for the failure to take a hard look at this important issue in the EA and the Decision Notice and to defer consideration to some unknown time in the future. The question under NEPA is not whether the Forest Service or some other agency may address management issues in the future. NEPA requires that the issue be addressed up front so that environmental consequences can be assessed.

The EA's dismissal of this issue in general is belied by the presence of actual hard scientific data and reliable forecasts that would allow the Forest Service to assess the potential direct, indirect and cumulative impacts of this project on the environment.

Appellants respectfully request the agency to work with its own scientists to set forth a meaningful disclosure and analysis of the likely impacts of this project in this context in the present and immediate future. In this regard, Appellants have attached additional reports and documents on this subject, including "Review of Hydrologic Models for Forest Management and Climate Change Applications in British Columbia and Alberta" (attached), Wenger's "Macroscale hydrologic modeling of ecologically relevant flow metrics" (attached), "Overview of Forest Service Activity on Climate Change" (attached), "Climate's Cooking Along in Northwest U.S. Streams" (attached), "Climate change effects on stream and river temperatures across the northwest U.S. from 1980-2009 and implications for salmonid fishes" (attached) and "Climate change impacts on streamflow extremes and summertime stream temperature and their possible consequences for freshwater salmon habitat in Washington State" (attached). The decision in *NRDC v. Kempthorne*, 506 F.Supp 2d 322 (E.D. CA 2007) sets forth the kind of analysis that is required by federal law.

10. The EA's Disclosure and Analysis of the Project's Effects on Elk Is Inadequate.

In their comments on the PA, Appellants asked the Forest Service to thoroughly disclose the Project's impacts on elk that use these high-alpine meadows in the summer months when the bike park would be in operation. In general, the EA admits that trails cause "displacement and avoidance" among wildlife. EA at 136. In this regard, the Appellants asked the Forest Service to disclose the percentage of summer range (B11) that would be lost to the project. Appellants also asked the agency to provide support for its hypothesis that nighttime use by Elk will occur.

However, in response, the EA did not determine what impact the displacement from the project area would have on local and regional deer and elk populations. The EA did not address the effect of Bike Proposal and other cumulative actions on local elk herds or populations or populations in the Forest as a whole.

Instead, the EA merely confirms the cause for concern. It states that openings or early seral habitat, like those at the ski area, "are far more valuable for elk than cover," and it admits that openings on the Mt. Hood National Forest "are becoming scarce." EA at 131. Half of the 160 acre project area is early seral habitat. EA at 131. The EA states that "[t]he effect of mountain bike trails designed for high levels capacity of users [sic] would in effect be much like high traffic roads. Research has shown that high open-road densities lead to harassment of elk herds" and harassed elk, move. EA at 142. "Due to the major increase in human use along the proposed trail system during the summer, deer and elk would most likely be displaced from the project area [...] the proposed action would substantially increase human presence on a daily basis that would most likely reduce deer and elk use if not eliminate it entirely." EA at 142.

While the EA speculates that nocturnal use of the area might occur and that elk might move closer to the area at night (EA at 143), the EA does not provide an analysis of the impact on local elk herds or a discussion of how the local herd's ability to sustain themselves through the season will be influenced by this type of back and forth.

11. The Disclosure of Impacts on Old Growth Forest Dependent Species, Management Indicator Species, and Rare and Sensitive Species is Inadequate and In Violation of the Forest Service's Obligations Under Federal Law.

The botany report documents old growth forest within the project area. However, it does not appear that surveys have been completed for old growth-related species. The botany report (Discussion page 54) determined that much of the proposed project area (roughly $\frac{3}{4}$ of it) qualifies as old-growth mountain hemlock (*Tsuga mertensiana*) forest. The report states that: "large diameter mountain hemlock trees, of which there are many in the proposed project area, range from 180 to 320+ years in age. Equivalent-effort surveys for S&M fungi are required for habitat-disturbing projects in old-growth forest." The botany report documents old growth forest within the project area but surveys for old growth-related species were not conducted in violation of Northwest Forest Plan.

The Preliminary Assessment stated that American Martens have a high tolerance for human disturbance, but it did not provide anything other than anecdotal evidence to support this claim. The public comments stated that there is "no evidence exists to indicate that human disturbance does not impact their life cycles." The EA acknowledges that there is prime American marten habitat at the bottom of the project area and states that project area comprises up to 2% of the American marten habitat on the Mt. Hood National Forest. EA at 133.

As to the Pileated Woodpecker, a designated Management Indicator Species, the EA states that the project "impacts 160 acres of habitat in a way that has minimal effect on pileated woodpecker habitat." EA at 132. The project area is described as "marginal" habitat. The EA states that the birds may "choose not to nest in high traffic areas" but the EA does not address the Appellants' request to provide evidence on how the proposed Project might influence existing birds in the area.

For both the American Marten and the Pileated Woodpecker, the EA does not address how the large influx of people will affect existing populations of these two species in the area. The EA focuses mostly on the presence and maintenance of habitat, not the effects of the use of that habitat by large numbers of people on bikes on the species or their prey. In so doing, the Forest Service has not employed the best available science nor has the agency complied with its obligations to ensure viable populations of species distributed across the landscape as required by the National Forest Management Act or its implementing regulations.

12. Significance Factors Necessitate Completion of an EIS for this Project.

The proposed project is likely to have significant environmental impacts as outlined in the CEQ's criteria for significance. 40 C.F.R. § 1508.27. Substantive and well-documented controversy exists regarding the impacts of the Project on water and terrestrial forest values. Significance is evaluated for both "context" and "intensity." The context of the Project is that the Sandy Basin is an important fishery and the headwaters streams will negatively be affected by this project. The Forest Service, the Sandy Basin Watershed Council and others have been focusing restoration efforts downstream on Still Creek, and this action will further degrade the headwaters. The intensity of the Project refers to the severity of impact and involves the following factors:

A. Beneficial and adverse impacts.

The Project will have permanent impacts on Riparian Reserves, and there is no scientific foundation provided for the estimates of how much sediment the Project will deliver into the headwater streams and downstream fish habitat. The impacts on trout, salmon and aquatic life could be negative for at least a decade, if not 20 or 30 years more. The Project will also affect MIS habitat for American marten and Pileated woodpeckers.

B. Effects on public health or safety.

There will be ongoing effects on recreation users, particularly fisherman, of the Sandy Basin as water quality is diminished. Currently, RLK and Company does not appear to be in compliance with State Water Quality standards with respect to its operations.

C. Unique characteristics of the geographic area.

As described in the EA and background documents, Mt. Hood is recognized as an ecologically significant area and the land affected by this Project contains the headwaters and provides cold and clean water for the Sandy River. The Timberline Lodge is a unique cultural and historic resource enjoyed by hundreds of thousands of visitors annually from near and far.

D. The degree of controversy over environmental effects.

The report of Hydrologist Jonathan J. Rhodes outlines how available information from the Forest Service's own research scientists on drainage network extension, sediment loading and restoration activities run directly counter to the unsupported assumptions presented by the Forest Service. The EA's presentation of the impacts on fish and fish habitat is controversial. The EA ignores the best available science, fails to disclose the basis for its own methodology and fails to incorporate the best available scientific information. The Forest Service did not disclose the basis for the methodology its chose to employ.

E. The degree to which possible affects on the human environment are highly uncertain or involve unique or unknown risks.

As it stands now, the EA lacks a detailed and complete analysis of the Project's impacts on water quality. RLK and Company also has extensive plans for additional development within

the Project area and the Special Use Permit area. The impacts of the Project are highly uncertain and involve unknown risks. The significance criteria for uncertain, unique or unknown risks is designed specifically to address situations such as this where a more thorough analysis in the form of an EIS would serve a useful purpose by providing the decisionmaker with additional, more detailed information relevant to a consideration of environmental impacts.

F. The degree to which the action may establish a precedent for future actions with significant effects.

The EA, FONSI and Decision Notice allows for the installation of a new recreational facility, which in turn will increase the need for on-mountain parking facilities. The parking situation at Timberline Lodge is already untenable, as there is not enough available parking available to meet current demands both in the winter and summer months. The parking lots frequently get “parked-out” and this proposal will only exacerbate that problem.

G. Whether the action is cumulatively significant.

The Sandy Basin Watershed is already functioning at risk. The Forest Service likewise admits that the project area is currently not in functioning condition. The Project will only worsen the situation and further degrade the streams and rivers in the Sandy Basin Watershed which are already experiencing significant elevated levels of sedimentation.

H. The degree to which the action may affect significant scientific, cultural or historic resources.

The implementation will negatively affect the historic Timberline Lodge and its environs. The Project will permanently degrade 2-acres of high-alpine Riparian Reserves. The Project is to be constructed in the only known rare high-alpine caddisfly population for the Scott’s Apatanian Caddisfly (SAC). The EA fails to thoroughly assess the impacts of the proposed project on the viability of SAC, which is a designated Sensitive species. As the EA acknowledges the SAC is quite rare with very narrowly distributed habitats. What is more, the project area includes the majority of SAC’s known habitat range in Oregon. The EA acknowledges that the project will affect individuals and habitats of this rare caddisfly, but baselessly asserts that these impacts will not contribute towards a loss of viability. This latter conclusion is not sound. The EA does not support its conclusion with a thorough assessment of how the project will not negatively affect the species viability of the SAC given that the project is predicted to affect a majority of the populations and habitats in the SAC’s known range. Because the majority of the known range is within the project area and both populations and habitats will be negatively affected, it is highly likely that these impacts will contribute to a loss of viability.

I. The degree to which the action may adversely affect any proposed, endangered, sensitive or threatened plant or animal species.

The implementation of the Project will negatively affect steelhead, coho, Chinook and coastal cutthroat trout, as well as a variety of Management Indicator Species, including, but not limited to, the American marten and the Pileated woodpecker. As discussed above, the Project area contains the only known location for the Scott’s Apatanian Caddisfly.

J. Whether the action threatens a violation of federal, state or local law or requirements imposed for the protection of the environment.

The Project appears to be in violation of numerous substantive requirements of the National Forest Management Act, the Northwest Forest Plan and the Mt. Hood National Forest Plan. The current operation of RLK and Company appears to be in violation of State Water Quality Standards for total dissolved solids as a result of the salting program.

III. CONCLUSION.

For these reasons, on behalf of Appellants, I respectfully request that the Forest Service rescind the EA, Decision Notice and FONSI and take a hard look at these issues. The Appellants look forward to an opportunity to meet with you and your staff to discuss these issues further and reiterate their request that the Forest Service engage RLK and Company and the public in a comprehensive master planning effort for Timberline Lodge and the surrounding landscape.

Respectfully submitted this 11th day of January,

A handwritten signature in black ink that reads "Ralph Bloemers". The signature is written in a cursive, slightly slanted style.

Ralph Bloemers
Crag Law Center
Counsel to Friends of Mt. Hood, Mazamas, Bark, Federation of
Western Outdoor Clubs, Native Fish Society, Northwest Environmental
Defense Center and the Oregon Chapter of the Sierra Club