

**Timberline Ski Area Mountain Bike Trails and Skills Park Environmental Assessment (EA)  
Appeal Statements and Responses**

Zig Zag Ranger District  
Mt. Hood National Forest  
February 2013

**Appellants**

Lori Ann Burd (LB)  
Friends of Mt. Hood, BARK, Mazamas, Federation of Western  
Outdoor Clubs, Northwest Environmental Defense Center and  
Oregon Chapter of the Sierra Club (FMH)

**Appeal Number**

13-06-00-0009-215  
  
13-06-00-0010-215

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***Cumulative Effects***

**Appellant Statement #1:** Appellant states that the Forest failed to support its conclusion that the project's impacts will not be cumulatively significant in the Decision Notice (DN) and Finding of No Significant Impact (FONSI) and failed to analyze the cumulative impacts to fish, water, wildlife, plants, trees, soil and other recreationists from this project in light of past, present and future activities and projects in the surrounding area, including the Red Hill, Horseshoe, Pollalie Cooper, and Lava projects around the peak of Mt. Hood and other projects on private lands. LB at 3 and 4.

**Response:** I find that the responsible official appropriately analyzed and included cumulative impacts in the analysis. I find that he was correct in not including the Red Hill, Horseshoe, Pollalie Cooper and Lava projects in this analysis for the reasons described below.

The Code of Federal Regulation (CFR) at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the direct, indirect, and cumulative impacts of the proposed action and any alternatives in terms of context and intensity. The regulation at 40 CFR 1508.7 defines a cumulative impact as the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." In addition, the regulation at 36 CFR 220.3 describes a reasonably foreseeable future action as activities not yet undertaken, yet having existing decisions, funding or identified proposals.

I have reviewed the Forest's schedule of proposed actions (SOPA). The Horseshoe, Lava, and the Pollalie Cooper projects do not have firm proposed actions at this time. They are listed under the Forest's web page and SOPA as "developing proposals" and are therefore not reasonably foreseeable actions at this time, as defined by regulation.

The Red Hill project and the project area for the Timberline Ski Area Mountain Bike Trails and Skills Park (hereafter referenced as the Timberline Project) are located on two different sides of Mount Hood. This project is located on the south side of Mount Hood. Streams in this project area flow south into Still Creek, which flows into Zig Zag Creek, which flows into the Sandy River which empties into the Columbia River. In contrast, the Red Hill project is located on the north side of Mount Hood and the streams in its project area flow north into the Hood River system which flows northeast into the Columbia River. There are more than 40 river miles of the Columbia River and one dam (Bonneville) between the confluence of the Hood River and the Columbia River and the Sandy River and the Columbia River

downstream. Therefore, there is no connection in time or space between that project and this project for fish or water. Impacts to trees and soils were analyzed at the appropriate scale, as there are no activities that could overlap in time and space that would straddle both sides of Mount Hood to contribute cumulative effects.

The cumulative effects analysis areas for wildlife species that would have measurable impacts from project activities are defined in the EA at 146 and the Wildlife Report and Biological Evaluation at 52. I find the EA at 146-150 appropriately analyzed cumulative impacts to wildlife for which the project would have measurable impacts and includes other projects with similar impacts that have the potential to overlap the proposed action in space and time. Species with large home ranges were analyzed at both the project and Forest scale. For all other species considered, the project was evaluated to have no impacts or impacts small enough in magnitude to not be additive to cumulative effects. EA at 137-146.

**Appellant Statement #2:** Appellant states that the Forest failed to consider the cumulative impacts to fish, water, wildlife, plants, trees, soil and other recreationists from this project in light of recent fire activity in the high elevation areas surrounding the peak of Mt. Hood, including the Gnarl Ridge and Dollar Fires. LB at 5.

**Response:** I find the responsible official was correct in determining that cumulative impacts were adequately analyzed with the exclusion of the Gnarl Ridge and Dollar Fires.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. The regulation at 40 CFR 1508.7 defines a cumulative impact as the “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

The two fires and the Timberline Project area are located on two different sides of Mount Hood. The Timberline Project is located on the south side of Mount Hood. Streams in this project area flow south into Still Creek, which flows into Zig Zag Creek, which flows into the Sandy River which empties into the Columbia River. In contrast, the two fires occurred on the north side of Mount Hood and the streams in its project area flow north into the Hood River system which then flows northeast into the Columbia River. There are more than 40 river miles of the Columbia River and one dam between the confluence of the Hood River and the Columbia River and the Sandy River and the Columbia River downstream. Because of the presence of the dam, it would be nearly impossible to discern any connection in time or space between the two fires and the Timberline Project with regards to impacts to fish or water.

With regards to wildlife, plants, trees, soils and recreationists, the location of the two fires is on the north side of Mt Hood. These fires, which occurred in 2008 (Gnarl) and 2011 (Dollar) do not have any identifiable impacts that would overlap in time or space with the cumulative effects analysis areas for wildlife, soils, plants, trees, or recreationists as explained in the response to Appellant Statement #1.

**Appellant Statement #3:** Appellants state that the EA and DN do not adequately assess the cumulative impacts from related facilities and resources, past actions including the construction and development of the Jeff Flood Express Lift and the failure to complete restoration activities associated with that lift, and reasonably foreseeable future actions outlined in the Timberline Conceptual Master Plan of 2009

including construction of a new base area ski portal (with a 15,000 square foot day lodge, snow tubing/play area and parking) and parking at Timberline Lodge. FMH at 12, 13, and 14.

**Response:** I find that the responsible official complied with the obligations to consider cumulative effects. EA at 49, 73, 75, 115-120, 146-150, 169-170, 194, 201-202, 221; DN at 5 and 8. Further I find that the appellant's point regarding the Jeff Flood Lift is considered as a past action that was completed in 2005 and is now part of the existing condition, as per Council on Environmental Quality (CEQ) guidance on considering cumulative effects.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. The regulation at 40 CFR 1508.7 defines a cumulative impact as the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

The discussion regarding the Timberline Conceptual Master Plan of 2009 having reasonably foreseeable future actions are not relevant as the potential activities described by appellant are currently not proposed. In order for the Forest Service to consider these projects as reasonably foreseeable they must be submitted proposals. 36 CFR 220.3. The EA at 4 states that "The proposed mountain bike project is not dependent on and does not trigger any of the other potential projects in the MDP. For these reasons, other potential projects in the MDP are not being evaluated at this time."

**Appellant Statement #4:** Appellants state that parking is a major issue at Timberline Lodge and that the proposed project will further exacerbate the parking problem with no solution provided. FMH at 13. Appellants further state that the mountain bike EA ignored the fact that additional parking is planned and is reasonably foreseeable and that the EA did not assess the direct, indirect, and cumulative effects of constructing additional parking within the special use permit area. FMH at 13 and 14.

**Response:** I find that the responsible official did consider the issue of parking. EA at 13, 33, 34 and EA Appendix A at 53, 55. Further, the responsible official did consider future parking in the DN at 5.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. The regulation at 40 CFR 1508.7 defines a cumulative impact as the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

As documented in response to Appellant Statements #3, #42, and #43, the responsible official does not need to consider projects listed in the MDP that are not yet proposed. The regulation at 36 CFR 220.3 supports the point that project(s) in an MDP are not subject to cumulative effects analysis, unless one of the projects within has been actually proposed and accepted by the Forest Service.

The parking congestion noted by appellant is addressed in the EA at 13, which states that "Timberline's most limited parking is during the ski season in the winter when this proposal would not be operating, but parking is also limited during the summer months. The proposal may further contribute to parking issues near Timberline, particularly during busy periods when the parking reaches capacity. RLK would

manage parking during busy periods, similar to the winter operation, in order to monitor parking densities and user groups, and take action to minimize the effect of bike park users on other recreationists wishing to park at Timberline. Also see PDC Mon-2, Rec-2-5, and the Recreation and Socio-Economics sections in Chapter 3.” Further, the EA at 204-205 states that “Non-skiing guests tend to stay in the area for a shorter duration than skiers, and thus, the parking spaces taken by these guests witness a greater rate of turnover than those spots taken by skiers. In addition, more parking space is available due to the absence of snow in the summer time. The net effect of this parking situation is that the parking lots may actually accommodate a greater total number of people per day in the summer.”

The DN at 5 also addressed parking. In his decision, the responsible official stated that “I also considered the overall scope of the Timberline Master Development Plan (MDP). The MDP includes a potential parking area and lodge in the vicinity of the Molly’s Express bottom terminal. I have evaluated this potential project in relation to the bike park proposal and I have found that the bike park and potential parking lot each have independent utility (i.e., they are not connected actions). The parking lot concept is still being evaluated for feasibility and has not been proposed by RLK as an actual project (i.e., it is not reasonably foreseeable), and as a result, sufficient information does not exist regarding the scope and scale of the parking lot to assess whether its environmental effects would overlap in space and time with the effects of the bike park. Consistent with my review of the MDP, the EA has not identified any cumulative effects associated with the MDP.”

Thus, I find that the responsible official did not ignore parking and that the analysis appropriately addressed cumulative effects.

### ***Climate Change***

**Appellant Statement #5:** Appellant states that the Forest failed to take a hard look at this project in the context of a changing climate and ignored all directives issued on climate change. LB at 5-7.

**Response:** I find the EA did address the potential impacts of climate change on the resources within the project area.

The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and any alternatives. The Forest Service Handbook (FSH) at FSH 1909.15, 12.3 allows the analysis to be qualitative or quantitative. Forest Service guidance on considering climate change (January 13, 2009) was followed during project planning. The guidance states that “1. Climate change effects include the effects of agency action on global climate change and the effects of climate change on a proposed project; 2. The Agency may propose projects to increase the adaptive capacity of ecosystems it manages, mitigate climate change effects on those ecosystems, or to sequester carbon; 3. It is not currently feasible to quantify the indirect effects of individual or multiple projects on global climate change and therefore determining significant effects of those projects or project alternatives on global climate change cannot be made at any scale; 4. Some project proposals may present choices based on quantifiable differences in carbon storage and GHG emissions between alternatives.” Uncertainty in climate change effects is expected because it is not possible to meaningfully link individual project actions to quantitative effects on climatic patterns. FS guidance at 6.

The project would not affect climate change because there would be no increase in greenhouse gases or alteration on carbon sequestration due to project implementation. The proposed action is not anticipated to have any impact on overstory vegetation and associated canopy closure. EA at 64. As a

result, the project would not affect current levels of carbon sequestration from deforestation or tree removal.

There would be no direct effects from climate change on the proposed project because the activities proposed are summertime activities which do not rely on a snow pack to occur. The EA did disclose that the predicted changes in climate could create a shorter ski season and a longer mountain biking season, thus increasing trail use and associated impacts. EA at 172.

How a warming climate might affect peak flows is analyzed in the EA. "The 2006 large peak streamflow event, estimated as a 25-year recurrence interval flood event in the Upper Sandy River Basin, was entirely rain-generated. This type of event is consistent with predictions associated with climate change. A recent review of the effects of climate change on salmon (ISAB, 2007) identified the following probable consequences of global warming along the Pacific coast of North America: (1) warmer temperatures will result in more precipitation falling as rain rather than snow, (2) snowpack will diminish and streamflow timing will be altered, (3) peak river flows will likely increase, and (4) water temperatures will continue to rise." EA at 63-64.

Potential effects on plant species due to climate change are described in the EA at 170-173. While uncertain, climates are generally predicted to include warmer temperatures and wetter winters, resulting in more rain and less snow with small changes in summer precipitation. The analysis goes on to disclose the potential for the treeline to expand upward and a concomitant increase in subalpine fir because they can tolerate lower soil moisture. EA at 170. The potential effects of climate change on soil moisture, tree stress, tree survival, increased photosynthetic efficiency, increased growth rates, insect expansions, and length of growing seasons are discussed in the EA at 171. The analysis goes on to describe the changes to specific plant species which could be affected within the analysis area, including whitebark pine, lupine species, phlox, and invasive plants. EA at 172. Climate change could also result in the expansion of fungi species, including two rare *Ramaria* species. EA at 172.

Potential changes in owl habitat as a result of climate change are currently speculative and could not be meaningfully analyzed. EA Appendix A at 34. The effects of climate change on wildlife species is difficult to predict for any specific location. There is currently no regulation, policy or law that requires the Forest Service to consider the effects of climate change on wildlife species in project evaluations, however consideration of climate change effects related to wildlife on the Mt. Hood National Forest special status species list was given to California wolverine in the Wildlife Report and Biological Evaluation at 34.

As recognized by the 2009 guidance paper, it is not feasible to quantify the indirect effect of this project on climate change. Therefore, based on the information in the EA, the Forest followed agency guidance by documenting the potential impact of the project on climate change and the potential impact of climate change on the project.

**Appellant Statement #6:** Appellant states that the EA failed to adequately consider what climate change will mean for fish, wildlife, and other recreationists. LB at 7.

**Response:** I find the responsible official correctly determined that climate change was adequately considered. Climate change was considered in the EA at 63, 104, 170-173, and Appendix A at 37. See response to Appellant Statement #5.

The EA at 170 states that the nearly all future climate scenarios for the Pacific Northwest predicted by climate change models include warmer temperatures and wetter winters with only small changes in summer precipitation. Winter streamflows would increase due to an increase in winter precipitation in the form of rain. Summer streamflows would decrease due to less snowpack and the snow melting earlier in the spring. The EA at 63-64 further states that stream temperatures are expected to increase due to climate change.

I find that the Responsible Official adequately identified the probable consequences of global warming in the area as it relates to how a changing climate may affect stream flows, stream temperatures (EA at 63, 64, and 170-173) and canopy cover and ground cover and as it relates to soil moisture (EA at 170-173). The proposed project has no influence on any of these parameters (i.e. it will not alter or exacerbate the expected changes on these parameters related to climate change) because it will not 1) influence stream-side shade (EA at 72-73), 2) there is no extension of the drainage network (EA at 64), and 3) will not alter ground water flow paths. EA at 73.

**Appellant Statement #7:** Appellant states that the Forest failed “to adequately address likely changes to stream temperature and water quantity resulting from climate variability” and made 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.” FMH at 7, 16, and 17. Appellant also states that the Forest arbitrarily and capriciously failed to address climate change data in its analysis of the direct, indirect, and cumulative effects of the project and erroneously concluded that there is inadequate information to assess the impacts of changing climate conditions. FMH at 17 and 18.

**Response:** I find the responsible official was not arbitrary and capricious in finding that climate change was sufficiently considered during analysis.

The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and any alternatives. The Forest Service Handbook at FSH 1909.15, 12.3 allows the analysis to be qualitative or quantitative. Forest Service guidance on considering climate change (January 13, 2009) was followed during project planning. The guidance states that “1. Climate change effects include the effects of agency action on global climate change and the effects of climate change on a proposed project; 2. The Agency may propose projects to increase the adaptive capacity of ecosystems it manages, mitigate climate change effects on those ecosystems, or to sequester carbon; 3. It is not currently feasible to quantify the indirect effects of individual or multiple projects on global climate change and therefore determining significant effects of those projects or project alternatives on global climate change cannot be made at any scale; 4. Some project proposals may present choices based on quantifiable differences in carbon storage and GHG emissions between alternatives.”

The responsible official adequately identified the probable consequences of global warming in the area based on what is currently anticipated. A broad discussion of climate change is found in EA at 170-173. More specific discussion regarding the factors that influence stream temperatures are found as follows: shade (EA at 72-73), groundwater inputs (EA at 73), channel morphology (EA at 65), and stream flows (EA at 63). The project would not influence any of these parameters, as discussed in the EA. As such, I find that the responsible official adequately considered climate change.

## **Wildlife**

**Appellant Statement #8:** Appellant states that Forest failed to take a hard look at impacts to wildlife species that rely on limited high elevation habitats, especially in light of climate change (hotter summers that push wildlife species higher) and cumulative impacts from projects planned around the peak of Mt. Hood. LB at 7, 10 and 11.

**Response:** I find that the responsible official appropriately considered potential impacts of the project to special status wildlife species that rely on limited high elevation habitats and that he considered the additive effects of the project that have the possibility of contributing to cumulative effects.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. The regulation at 40 CFR 1508.7 defines a cumulative impact as the “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”

The EA at 123-128 describes habitat requirements of sensitive and survey and manage species that occur at high elevations and for which habitat is present within the project area. Those species include: Johnson’s hairstreak butterfly, black-backed woodpecker, fringed myotis, California wolverine, Cascades axetail slug, and Crater Lake tightcoil. The Malone’s jumping slug was not suspected to occur at the elevation of the project based on available distribution information, but several specimens were found in the project area during surveys for Crater Lake tightcoil. Wildlife Report and Biological Evaluation at 37-38. The EA Appendix A at 30 also notes that the Malone’s jumping slug is no longer on the survey and manage list, as per the 2011 settlement agreement. The Wildlife Report and Biological Evaluation at 30-31 include the Oregon slender salamander as a sensitive species that may occur at high elevations and for which habitat is present in the project area.

Potential impacts of the proposed project to these sensitive and survey and manage species were disclosed in the EA and summarized in a table in the Wildlife Report and Biological Evaluation at 30-31. For species that would not be affected by the project or for which effects are immeasurable, there would be no effects that would have the potential to contribute to cumulative effects. EA at 136-140.

The American marten is a Forest management indicator species (MIS) identified in the EA as a species associated with higher elevation habitat: “[o]n the Forest, martens are closely associated with higher elevation stands....Based on snow tracking, remote cameras, and observations Martens are typically associated with stands from 3,000 feet to tree line or about 7,500 feet (Alan Dyck, Wildlife Biologist, personal observation).” EA at 133-134. The EA appropriately discloses effects and the potential for the project to add to cumulative effects to American marten. EA at 144-145 and 149-150. The EA concluded that “Because this project impacts less than 1.5-2% of suitable habitat across the Forest, the overall direct, indirect and cumulative effects would result in a small negative trend of habitat (increase in disturbance). The loss of habitat (increase in disturbance) would be insignificant at the scale of the Forest. The Timberline Mountain Bike Trails Project is consistent with the Forest Plan, and thus continued viability of American marten is expected on the Mt. Hood National Forest.” EA at 145.

The EA discloses migratory bird species and habitat within the project area that may be affected by the project. EA at 135. Potential impacts to these birds were considered to be minimal with implementation

of project design criteria and would not measurably add to cumulative effects to migratory bird species. EA at 145-146.

The effect of climate change on wildlife species in a project area is difficult to predict because there is no scientific data to support certainty of specific characteristics of climate change for any specific location. There is currently no regulation, policy or law that requires the Forest Service to consider the effects of climate change on wildlife species in project evaluations; however consideration of climate change effects related to wildlife on the Mt. Hood National Forest special status species list was given to California wolverine, as documented in the Wildlife Report and Biological Evaluation at 34.

**Appellant Statement #9:** Appellant states that the Forest failed to consider that this project would substantially increase human use during the summer months, which would increase disturbance to wildlife during the hot summer months in the context of impacts to connectivity habitat for wildlife. LB at 8-11.

**Response:** I find the responsible official disclosed all relevant impacts to wildlife due to increased summer use.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. The EA discloses the impacts of increased human use in the project area as a result of the proposed project to wildlife species. EA at 136-137. Furthermore, the EA discloses impacts to deer and elk which represent wide-ranging species that are known to forage in the project area during summer months. The analysis cites scientific studies that indicate habitat avoidance responses by elk to human recreation activities including observations of elk shifting their distribution away from roads during the daytime and closer to roads during the night. EA at 142-143. Further discussion of scientific studies about wildlife responses to human disturbance is found in the Wildlife Report and Biological Evaluation at 50. Project Design Criteria Wild-3 is intended to reduce disturbance to elk and deer during peak foraging times by limiting mountain bike park operations to one hour after sunrise to one hour before sunset during the summer. EA at 40.

The EA at 143 states that for deer and elk, "There are 69,226 acres of early seral habitat on the Mt. Hood National Forest (GIS query, Jaimie Bradbury, 2/28/2011). Because this project impacts less than 0.1% of forage habitat across the Forest, the overall direct, indirect and cumulative effects would result in a small negative trend of habitat (increase in disturbance). The loss of habitat (increase in disturbance) would be insignificant at the scale of the Forest. The Timberline Mountain Bike Trails Project is consistent with the Forest Plan, and thus continued viability of Deer and Elk is expected on the Mt. Hood National Forest."

Potential impacts and expected responses in habitat use by pileated woodpeckers and American marten due increased human use during the summer were also analyzed and disclosed as appropriate for Forest Management Indicator Species. EA at 143-144. As stated in response to Appellant Statement #8, impacts are not expected to be measurable and the viability of these species would not be affected.

**Appellant Statement #10:** Appellant states that the Forest failed to consider the direct, indirect, and cumulative impacts of this project on many species reliant on the area including impacts to black bears and their food source (high elevation berries). LB at 11.

**Response:** I find the responsible official appropriately considered impacts of this project on species for which the Forest Service is obligated to evaluate which also represent other species with similar habitat requirements.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. Impacts of the project specifically to black bears and high elevation berries were not raised as an issue during the scoping or comment period for this project. EA at 11-14, EA Appendix A. Black bears are not on the Mt Hood National Forest list of special status species, therefore there is no obligation for the Forest to consider effects specifically to black bears or their food source, particularly in light that no issues were raised regarding this species during scoping or the comment period. If issues are not raised during the scoping or comment period, the agency does not have a chance to respond to any concerns in a timely manner. 40 CFR 1501.7; 36 CFR 215.2.

The EA disclosed general effects of mountain bikes to wildlife which would apply to generalist species such as the black bear. EA at 136 and 137. In addition, impacts to California wolverine which is representative of wide-ranging carnivores were analyzed and disclosed. EA at 140. Furthermore, the EA evaluated and disclosed impacts of anticipated increased recreation to deer and elk which are Forest management indicator species representing other species with similar habitat requirements, such as shrubs for forage. EA at 131, 142-143, Wildlife Report and Biological Evaluation at 17-18.

Project design criteria to minimize impacts to existing vegetation and nighttime disturbance would benefit wildlife species that forage in the project area. EA at 37-40, 145. Thus, I find that the responsible official adequately considered impacts to wildlife species.

**Appellant Statement #11:** Appellant states that the Forest failed to consider the potential for impacts of the project to the Sierra Nevada red fox, which was recently confirmed near Lost Lake. LB at 11.

**Response:** I find the responsible official appropriately considered impacts of this project on species for which the Forest Service is obligated to evaluate, which also represent other species with similar habitat requirements.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. Impacts of the project specifically to Sierra Nevada red fox were not raised as an issue during the scoping or comment period for this project. EA at 11-14; EA Appendix A. If issues are not raised during the scoping or comment period, the agency does not have a chance to respond to any concerns in a timely manner. 40 CFR 1501.7; 36 CFR 215.2. Sierra Nevada red fox are not on the Mt Hood National Forest list of special status species, therefore there is no obligation for the Forest to consider effects specifically to Sierra Nevada red fox.

General effects of mountain bikes to wildlife disclosed by the EA would apply to the Sierra Nevada red fox. EA at 136 and 137. In addition, project impacts disclosed for California wolverine, a forest dwelling carnivore, would be similar to those expected for Sierra Nevada red fox. EA at 40. Finally, foxes in general are known to be active foragers at night and Project Design Criteria Wild-3 would limit bike park operations to daytime use only and minimize disturbance to foxes. EA at 40.

**Appellant Statement #12:** Appellant states that the Forest failed to demonstrate how it is using its authority to conserve species under Section 7(a)(1) of the Endangered Species Act (ESA) and that the Forest's response to comment on this subject was "nonsensical". LB at 11 and 12.

**Response:** I find the responsible official was correct in determining that the EA had documented how the proposed action meets the requirements of Section 7(a)(1) of the Endangered Species Act (ESA).

The ESA at Section 7(a)(1) directs the agency to "utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act."

The project conserves listed species by incorporating project design features that are designed to address site-specific environmental concerns. EA at 31. For fisheries, the project may affect, but is not likely to adversely affect Lower Columbia River (LCR) steelhead trout and no effect on other listed fish species. To address concerns related to possible sedimentation issues that may impact fish species and thus the agency's ability to conserve the species, project design criteria for soils and watershed resources were incorporated. EA at 34-37; EA at 40-43. For wildlife, the only species listed as threatened on the Mt. Hood National Forest is the Northern spotted owl. There are no known spotted owls that nest in the area and as such, this species would not be affected by the project and therefore, it would be conserved. EA at 137. No federally listed botanical species are found in the project area, and as such, the one threatened species suspected to be found on the Forest would be conserved. EA at 157.

**Appellant Statement #13:** Appellants state that the EA failed 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. FMH at 7 and 18.

**Response:** I find the responsible official correctly determined that the EA appropriately discloses the effects of the proposed action to big game as Forest MIS that use the project area and alpine meadows during summer months.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. The EA discloses expected effects of trail construction and mountain bike use to wildlife in general and deer and elk specifically. EA at 136-137. The EA provided further disclosure of the effects of construction, maintenance and operation of bike routes on deer and elk that use the project area. EA at 142-243.

More detailed discussion of the effects of the proposed action to deer and elk was found in the Wildlife Report and Biological Evaluation at 49-54. Effects of the proposed action are stated as follows: "The proposed action includes heavy human use within summer range for deer and elk. Elk and to some degree deer would shift use away from the project area and would reduce the amount of time they could forage in the area. Some shift to nocturnal use of the project area might occur to forage when bikers are not using the area. No proposal to use the area at night as been planned and so the deer and elk would utilize this area during non-operation times. A Project Design Criteria (WILD-3) was incorporated to reduce impacts to deer and elk by restricting trail use during peak big game forage times at sunrise and sunset. The bike trails travel through the main stand of timber that would be used as hiding cover so animals would have to travel further to access the forage. The stream protection buffers

would maintain their forest structure and continue to provide cover to some degree.” Wildlife Report and Biological Evaluation at 52; EA at 143.

The effects analysis appropriately considered the impacts of the project to habitat for deer and elk as Forest MIS relative to availability of foraging habitat provided by the project area in early successional habitat that “mimic the open meadows and wetlands and have similar forage and are utilized by elk in the summer and fall.” EA at 142. Cumulative effects of the project to deer and elk are disclosed in the EA at 147-148.

Finally, the EA appropriately disclosed impacts to deer and elk foraging habitat at the forest-wide scale: “There are 69,226 acres of early seral habitat on the Mt. Hood National Forest (GIS query, Jaimie Bradbury, 2/28/2011). Because this project impacts less than 0.1% of forage habitat across the Forest, the overall direct, indirect and cumulative effects would result in a small negative trend of habitat (increase in disturbance). The loss of habitat (increase in disturbance) would be insignificant at the scale of the Forest. The Timberline Mountain Bike Trails Project is consistent with the Forest Plan, and thus continued viability of Deer and Elk is expected on the Mt. Hood National Forest.” EA at 143.

**Appellant Statement #14:** Appellants state that the Forest did not respond to their request to disclose the percentage of summer range (B11) that would be lost to the project, did not provide support for the EAs hypothesis that nighttime use by elk would occur, did not determine what impact the displacement from the project area would have on local and regional populations of deer and elk, and did not address the effect of the project and other cumulative effects on local elk herds or on populations across the Forest. FMH at 18 and 19.

**Response:** I find the responsible official correctly determined that all relevant impacts to elk were sufficiently disclosed in the EA.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. I find that the response to the comments states that there is no summer range (B11) affected by the project was sufficient. EA Appendix A at 31. I find the comment requesting support of the hypothesis that elk would use the project area for nighttime foraging was responded to appropriately. EA Appendix A at 33. In addition, the EA provides the following support for the hypothesis: “Some shift to nocturnal use of the project area might occur to forage when bikers are not using the area. This hypothesis is based on both personal observations and is supported by this statement by Rowland, M. et al. (2005) “Shifts in distribution of elk away from roads may occur across a range of temporal and spatial scales. For example, elk at Starkey were generally farther from open roads during daytime, but moved closer to roads during nighttime (Wisdom 1998, Ager et al. 2003).” Naylor L. et al. (2008) states, “Elk may return to areas associated with disturbance within a few hours or days after cessation of human activity (Stehn 1973, Wisdom et al. 2004a).” Night use of the bike park would not be allowed, so the deer and elk would utilize this area during non-operational times. PD WILD-3 (see Table 3 in Chapter 2) was incorporated to reduce impacts to deer and elk by restricting trail use during peak big game forage times at sunrise and sunset. The bike trails travel through the main stand of timber that would be used as hiding cover so animals would have to travel further to access the forage.” EA at 143.

The EA discusses effects of displacement relative to disturbance and avoidance of foraging habitat in the cumulative effects analysis for deer and elk. EA at 148. Furthermore, the EA discusses impacts of the project to elk in the context of habitat available forestwide and to the Forest elk population: “There are

69,226 acres of early seral habitat on the Mt. Hood National Forest (GIS query, Jaimie Bradbury, 2/28/2011). Because this project impacts less than 0.1% of forage habitat across the Forest, the overall direct, indirect and cumulative effects would result in a small negative trend of habitat (increase in disturbance). The loss of habitat (increase in disturbance) would be insignificant at the scale of the Forest. The Timberline Mountain Bike Trails Project is consistent with the Forest Plan, and thus continued viability of Deer and Elk is expected on the Mt. Hood National Forest.” EA at 143.

The EA also addressed impacts of the proposed project and the potential for cumulative effects to occur to elk. EA at 147-148. A more detailed analysis of the impacts of the proposed project and cumulative effects to elk that use the project area and the forest elk population can be found in the project Wildlife Report and Biological Evaluation Wildlife Report and Biological Evaluation at 50-51.

Finally the EA states that “The current trend for deer and elk is stable (see /Forest-wide analysis for Management Indicator Species). This project would not contribute to a negative trend in viability on the Forest for deer or elk.” EA at 149.

**Appellant Statement #15:** Appellants state that the disclosure of impacts on old growth forest dependent species, management indicator species, and rare and sensitive species is inadequate, does not use the best available science, and violates the Forest’s obligations under the National Forest Management Act (NFMA) for species viability. FMH at 19. Specifically, appellants state that botanical surveys were not completed for old growth related species in violation of the Northwest Forest Plan; the EA did not provide anything but anecdotal evidence to support the claim that American martens have a high tolerance for human disturbance; the EA did not address the appellant’s request to provide evidence on how the project might influence existing pileated woodpeckers in the area; and did not address how the large influx of people will affect existing populations of marten and pileated woodpecker in the area. FMH at 19.

**Response:** I find the responsible official appropriately considered and disclosed impacts of the project to old growth forest dependent species, management indicator species, and rare and sensitive species with consideration of best available science.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. Forest Service guidance (June 20, 2007) provides direction on the use of best available science in project planning. The EA provided appropriate consideration of Forest MIS species consistent with the Mt. Hood National Forest Land and Resource Management Plan. EA at 131-150; Wildlife Report and Biological Evaluation at 18.

For species associated with old-growth forest habitat, the Forest Plan MIS is the spotted owl and elk and deer. EA at 131-150; Wildlife Report and Biological Evaluation at 18. The EA states “[t]here is no spotted owl suitable habitat within the project boundary. Under the Proposed Action, there would be no effects on owl habitat or owls. The effects determination for the Proposed Action is No Effect to the Northern spotted owl or its habitat from this project.” Because the project actions would have no impacts to suitable spotted owl habitat, there would be no impacts to spotted owl population at the Forest level, or other species that require old growth habitat similar to the spotted owl. EA at 135.

Elk and deer are management indicator species associated with early forest succession. Wildlife Report and Biological Evaluation at 18. The EA discloses effects to early forest successional stages in the project relative to habitat available and the deer and elk populations at the forest scale. EA at 143. See

also response to Appellant Statements #13 and #14 for more information as to how the analysis considered impacts to deer and elk.

The pileated woodpecker was chosen as an MIS because of its need for large snags, large amounts of down woody material for foraging, and large defective trees for nesting, roosting and foraging. They are listed as an indicator of mature and over-mature habitat with specific requirements for snags. EA at 132; Wildlife Report and Biological Evaluation at 29. The EA provided analysis and disclosure of project impacts to snag and down wood habitat. EA at 141 and 146-147; Wildlife Report and Biological Evaluation at 39-46. The EA also disclosed impacts to pileated woodpeckers as a result of increased human use of the project area. EA at 149.

American marten represent species associated with mature or over-mature habitat. EA at 132-133. The EA discloses impacts of the project to American marten including effects expected from an increased amount of human use of the area. EA at 144-145 and 149-150. The EA discloses impacts to rare and sensitive wildlife species. EA 137-140 Further consideration of best available science for these species is evident in the project Wildlife Report and Biological Evaluation at 30-39 and 56-59.

I also find that the EA specifically addressed survey and manage botanical species. The EA at 151 states that “Field surveys were also completed for vascular plants, bryophytes, lichens, and fungi on the ROD 2001 Survey & Manage list, as modified by the 2011 Settlement Agreement. Surveys for Survey & Manage species are required for habitat disturbing activities in old-growth forest. The majority (roughly ¾) of the proposed project area is old-growth (over 180 years old) mountain hemlock (*Tsuga mertensiana*) forest based on tree ring and stand structure data collected in 2010.” The EA at 157 and 158 documents the results of surveys and states that no special status or survey and manage species were found.

### ***Fisheries, Soils, and Hydrology***

**Appellant Statement #16:** Appellants state that the Forest failed to disclose and ensure that the project complied with the Aquatic Conservation Strategy (ACS) objectives and protections for Riparian Reserves as required by the Mt. Hood National Forest Plan and the Northwest Forest Plan including the direction in the Northwest Forest Plan Record of Decision (ROD) 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.” FMH at 6 and 8.

**Response:** I find the responsible official was correct in his determination that the proposed action meets ACS objectives and protects riparian reserves.

The Northwest Forest Plan (NWFP) Record of Decision (ROD) at B-10 directs agencies to “manage the riparian-dependent resources to maintain the existing condition or implement actions to restore conditions.”

The EA disclosed the objectives of the ACS (EA at 90-94) and documented that the project met the intent of the ACS, which is to maintain and restore ecosystem health at the watershed and landscape scales and to restore currently degraded habitats. According to the NWFP ROD, this approach seeks to prevent further degradation and restore habitat over broad landscapes as opposed to individual projects or small watersheds. NWFP ROD at B-10.

The project meets the intent of the ACS because the project will reduce the amount of sediment delivered to stream channels (EA at 5) as a result of restoration activities on old RLK service roads. With respect to the trails, the trail design (EA at 48) and project design criteria or PDCs (EA at 31-43) will result in non-measurable amounts of sediment reaching the stream channels because any bare areas [trails] would be along long, linear trails that would be dispersed throughout the SUP area; rock and/or organic mulch applied as effective ground cover would be hauled in as trail segment are completed in order to reduce erosion risk; and trail locations have been laid out close to slope contours as opposed to up and down the slope, which is expected to minimize the erosion potential for all trail systems. Overall, an observable reduction in human caused erosion would result when these projects are implemented. EA at 48.

PDCs which would prevent sediment from entering the channels that carry ephemeral flow during construction and during use are: Soil-1, Soil-2, Soil-4, Soil 7, Soil 8, Soil 11, Soil 12, and Soil 13, WS-1, WS-7, WS-8, WS-9, WS-10 – 18. WS-1 addresses the crossing sites and indicates that the crossings will either have a bridge or fords designed to specification that would prevent sediment from entering the ephemeral streams. In addition, use of the trails would occur only during the dry season. Soil-11 addresses weather changes. Therefore, the project will be restoring degraded habitat in the project area.

**Appellant Statement #17:** Appellants state that the EA and DN present erroneous conclusions regarding impacts on riparian reserves and compliance with ACS objectives and protections in place for aquatic life. FMH at 8.

**Response:** I find the responsible official was correct in determining that the proposed action is in compliance with ACS objectives and that impacts to riparian reserves were correctly disclosed. I find that the EA and DN present logical conclusions regarding the riparian reserves and compliance with ACS objectives and put in place adequate protections measures for aquatic life, which include best management practices and project design criteria.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. The Northwest Forest Plan (NWFP) ROD at B-10 directs agencies to “manage the riparian-dependent resources to maintain the existing condition or implement actions to restore conditions.”

The EA at 90-94 goes into detail as how the project was designed to meet the ACS objectives and protect aquatic organisms. Project design criteria have been developed to maintain and restore the species composition and structural diversity of plant communities in riparian areas and wetlands. The project is designed to avoid natural water courses and sensitive riparian areas, including wetlands. An objective of the project is to restore or improve water quality by reducing existing chronic sediment sources (user roads and lift terminal areas).

The discussion on the impacts to the riparian reserves is located in the EA at 90. The use of project design criteria will ensure compliance with ACS objectives and protect riparian reserves. EA at 40-43; DN at 21-24. See also response to Appellant Statement #16.

**Appellant Statement #18:** Appellants state that the project does not appear to be in compliance with Forest Plan standards WR-3, FW-087, FW-088, FW-089, FW-102, or FW-104. FMH at 8.

**Response:** I find the responsible official appropriately determined that the project was in compliance with Forest Plan standards.

The NWFP ROD at C-37 directs the agency to not use mitigation or planned restoration as a substitute for preventing habitat degradation (WR-3). To further understand WR-3, the NWFP ROD at B-32 states that “In-stream restoration, including in-channel structures, will not be used to mitigate for management actions that degrade existing habitat, as a substitute for habitat protection, or to justify risky land management activities and practices.” In the case of the Timberline project, the restoration activities planned are not proposed in order to offset any potential impacts to habitat. They are proposed to correct an existing issue with regards to sediment, and as such, fully meet the intent of the watershed restoration portion of the ACS, which states that “The most important components of a watershed restoration program are control and prevention of road-related runoff and sediment production...” NWFP ROD at B-30. Further, the EA at 84 discloses that reducing the non-system road mileage by 0.5 miles in the West Fork Salmon Key Watershed is also consistent with the ACS. The project’s full consistency with the ACS is documented in the EA at 90-94.

The Mt. Hood National Forest Land and Resource Management Plan at Four-59 and Four-60 directs the agency to apply the following standards and guidelines which provide specific direction for actions within different types of riparian areas. These include:

FW-087: Existing aquatic habitat complexity shall be maintained or increased.

FW-088: Pool habitat shall be maintained at natural levels or enhanced.

FW-089: Volume of pools during low water flows shall be maintained or increased.

FW-102: Stream bank and/or shoreline stability of the riparian management area shall be maintained in its natural condition.

FW-104: Special aquatic habitat and associated subsurface aquatic habitat shall be maintained in natural condition or enhanced in both quantity and quality.

The fisheries biological evaluation found in the project record describes the neutral impact of this project on aquatic habitat, including stream channel morphology and in-channel large wood. Fisheries Report, Project File at 56-60. PDCs were developed and incorporated into the EA that would maintain existing aquatic habitat complexity, pool habitat levels and volumes downstream and maintain stream bank stability in the project area. EA at 34-37 and 40-43. As such, the project fully complies with the standards and guidelines in the Forest Plan, as amended.

**Appellant Statement #19:** Appellants state that the Forest failed “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.” FMH at 7.

**Response:** I find the responsible official considered the stream-route connectivity issue in the EA. I find that the Responsible Official has sufficiently discussed whether peak flows will be affected by the project. EA at 65, 66, 72, 75, 79, 88. I find that the Responsible Official has sufficiently discussed the potential impacts to Riparian Reserves.

The regulation at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. The NWFP at B-10 directs agencies to “manage the riparian-dependent resources to maintain the existing condition or implement actions to restore conditions.”

The 2 acres of riparian reserves that will be affected by this project are not contiguous. The acreage is spread out over the project area at the various trail crossings. Most of those crossings are in ephemeral channels which do not provide habitat for the Scott's apatanian caddisfly due to the lack of water. The EA at 115 states that there may be effects to the Scott's apatanian caddisfly and that project elements and design criteria are in place that would greatly minimize, if not eliminate, those effects to habitat or individuals in each of the four sub-watersheds.

Restoration activities associated with this project will restore approximately 1.5 acres of riparian reserves as mentioned in the EA at 86. Further discussion on restoration activities are discussed in the EA at 27-29.

The EA at 62 identified three items for comparison of potential effects to flow regime, including channel network expansion. Channel network expansion would be reduced under the proposed action. Modeled changes to 2 year peak flow and low flows are within modeling error, and local soil and groundwater condition information support the conclusion of no effect to the flow regime from the trail and skill park development. In addition, the project is expected to have an overall beneficial effect of restoring natural flowpaths [flow regimes] as a result of the planned watershed restoration. EA at 67.

**Appellant Statement #20:** Appellants state that the Forest failed "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." FMH at 7.

**Response:** I find the responsible official disclosed the projects impacts on coho, spring Chinook salmon and coastal cutthroat trout.

The regulations at 36 CFR 220.7(b)(3)(iii) directs the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. The regulations at 40 CFR 1508.7 defines a cumulative impact as the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time."

The impacts of the project on fish are discussed in the EA at 112-113. Sediment, stream drainage network increases, and disturbance of riparian reserves would be the most likely avenue of potential effects. Project elements and design criteria are in place that would greatly minimize, if not eliminate, effects to habitat or individuals in each of the three sub-watersheds. EA at 34-37 and 40-43. The project's impacts are expected to occur on a fraction of 1% of cutthroat trout suitable habitat across the forest. EA at 112 and 113. For steelhead trout and designated critical habitat, the project is expected to have limited impacts due to the lack of suitable habitat found within the project analysis area. EA at 112; Fisheries Report, Project File at 75. There are no impacts expected to Coho and Spring Chinook salmon or their respective designated critical habitats from this project. Coho and Spring Chinook salmon are found approximately 5 and 7 miles respectively below the analysis area. EA at 112 and 113; Fisheries Report, Project File at 75 and 76. Cumulative effects to all aquatic species are specifically addressed in the EA at 115-120.

**Appellant Statement #21:** Appellants state that the Forest failed 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.” FMH at 8.

**Response:** I find the responsible official relied upon the best available science as required by NFMA and its implementing regulations.

The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and any alternatives. Forest Service guidance (June 20, 2007) provides direction on the use of best available science in project planning.

The EA documented use of the best available science when evaluating concerns about sediment loading as it pertains to modeling potential impacts. The references related to the models are found in the hydrology report and white paper, project file, discussion of models and references list.

The EA documented the use of the best available science when addressing concerns about potential impacts to riparian reserves. The riparian reserve standards and guidelines address minimizing disruption of natural hydrologic flow paths, including diversion of streamflow and interception of surface and subsurface flow, closing/obliterating and stabilizing roads based on the ongoing and potential effects to ACS objectives and considering short-term and long-term transportation needs, and minimizing sediment delivery to streams from roads. EA at 86 and 87.

With regards to sediment and riparian reserves, the EA documents that the proposed action is designed to minimize disruption of natural hydrologic flow paths and sediment delivery. EA at 87. The EA documents that there will be a reduction in the drainage network (EA at 64-65), and documents that the groundwater flow paths will not be affected by the project. EA at 73. The project involves decommissioning two miles of existing native surface road that are contributing sediment to downstream areas. EA at 27-28. Finally, the project includes Project Design Criteria that prevent the trails from contributing sediment to the stream channels that carry ephemeral flow. EA at 31-43. The EA documents that the project has the objective of restoring or improving water quality by reducing existing chronic sediment sources (user roads and lift terminal areas). According to the EA, “there may be short-term impacts to water quality (increased sedimentation) when the project is implemented. All of the stream crossings associated with the new mountain bike trail network, user road decommissioning and user road surfacing and drainage improvement are on intermittent or ephemeral streams. The only area with activities planned near a perennial stream is the bottom of the Jeff Flood ski lift and project design criteria were developed to minimize these impacts and keep them to an acceptable level.” EA at 92.

The fisheries biologist used best available science in the discussion of the aquatics existing condition in the EA at 97-111, as evidenced by the numerous citations regarding fish counts and survey results. Impacts to rare and endangered species of fish and invertebrates were discussed in the EA at 112-120.

The EA appropriately analyzed impacts to rare and endangered species of wildlife, relying upon best available science and implementing regulations as required by NFMA. Literature citations were provided to adequately support effects conclusions to rare and endangered wildlife, including invertebrate species. EA at 136-140; Wildlife Report and Biological Evaluation at 30-31 and 56-59.

**Appellant Statement #22:** Appellants state that the Forest failed “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.” FMH at 7.

**Response:** I find that the responsible official properly assessed the project’s sediment impacts that have the potential to occur through: 1) use of the two models and specialist evaluation of the results of the two models; and, 2) inclusion of site-specific project design criteria (PDCs) that were developed to either capture sediment prior to it reaching a stream channel or prevent erosion on the trails from occurring. See Project File, Hydrology Section, Discussion of models; EA at 68-72, EA at 31-43, and EA at 48.

The regulation at 36 CFR 220.7(b)(3)(iii) direct the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. Explanation of the two models (WEPP and WARSEM) used in generating possible inputs of sediment into streams as a result of the proposed project and the assumptions and limitations of the two models are found in the Project File as referenced above. A review of the limitations and assumptions of the models makes it clear that the values generated are not actual numbers, but are intended to provide some means of comparing potential impacts of a proposed activity.” In addition, the file notes that “WEPP has been shown to produce results useful for decision support, but as with all models, users are urged to test the models with locally available empirical data (Renschler, 2002).”

This is supported by the disclosure in the EA, which states that “for this analysis the estimated sediment delivery in tons per year delivered to the stream system was used for comparison when possible. This was done in an attempt to normalize values so that values from different sources could be compared.” EA at 75.

Presentation of the sediment model results in the hydrology section (EA at 67-72) display the very small potential for the bike trails to contribute sediment to the streams (1%) even under the very broad assumptions that exist in the models. EA at 69. The EA also documents the expected net reduction in potential sediment inputs into the streams as a result of the restoration portion of the project.

Presentation of the sediment model in the hydrology section of the EA was intended to only provide a means of comparing existing conditions with the proposed project (trails and road restoration) in which both existing and proposed actions utilize the same assumptions. The goal of presenting the results of the sediment model was to demonstrate that under very simplified conditions there would be a reduction in potential sediment delivered to the streams under the proposed action. The numbers presented are not to be taken as actual values, but comparative values only. Project File, Hydrology Section, Discussion of Models.

In addition, professional judgment and experience of the hydrologist and other members of the interdisciplinary team, along with locally available data on site conditions of soil, topography, rainfall, vegetation, and channel flow were used to refine the proposed location of the trail system (EA at 15-19) and develop targeted PDCs. The PDCs addressed potential places where sediment could enter into streams and employ measures to trap sediment prior to reaching the stream channels or prevent soil erosion from actually occurring. EA at 31-43. The initial proposed action was modified multiple times in order to reduce potential impacts from the proposed project. EA at 16-19. Extensive PDCs were developed, along with required monitoring to ensure that impacts to water quality will not occur. EA at 31-43.

Further support for limited soil erosion and thus limited potential for inputs of sediment into the stream are as follows: Rock and/or organic mulch applied as effective ground cover would be hauled in as trail segments are completed as needed in order to reduce the erosion risk. Further, the way in which the trail locations have been laid out close to slope contours as opposed to up and down the slope is expected to minimize the erosion potential for all trail systems. EA at 40-43. The skills park location is particularly rocky and excessively well drained. Little, if any surface erosion is expected from this area, and if any does occur, it would be deposited directly downhill of the park boundary or incorporated into the drainage swale and downstream sediment basin. EA at 48.

**Appellant Statement #23:** Appellants state that the sedimentation that occurred from the failure of RLK to implement project design criteria during past and current ski area construction and operations resulted in an ongoing 'take' of aquatic species and that this past sedimentation was not properly analyzed as the baseline from which to add sediment from the proposed project. FMH at 9 and 10.

**Response:** I find the responsible official properly considered past sedimentation as baseline from which to evaluate potential new inputs of sediment from the proposed project. Comparison of baseline conditions is referred to as current conditions in the text and in the tables and figures. EA at 68-72.

The regulation at 36 CFR 220.7(b)(3)(iii) direct the agency to discuss the impacts of the proposed action and any alternatives in terms of context and intensity. The regulation at 36 CFR 220.7(b)(2)(ii) states that the no action alternative is used to contrast the impacts from implementation of the proposed action with the current condition and expected future conditions. As such, the no action alternative represents the current conditions.

See response to Appellant Statement #22 for discussion of the model results and use of models to compare potential impacts of the project.

**Appellant Statement #24:** Appellants state that the agency has not ensured the scientific integrity of its decision to employ the model it used to predict sediment loading resulting from past, present and reasonably foreseeable future activities. FMH at 9. Appellants also state that it does not appear that the agency used the work of its own scientific researchers or the best available science to reach its conclusions. FMH at 9.

**Response:** I find that the responsible official utilized the best available science when evaluating concerns about sediment loading as it pertains to modeling potential impacts. I also find he ensured the scientific integrity of his decision to employ the model by including information in the Project File on the assumptions and limitations of the models.

The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and any alternatives. Forest Service guidance (June 20, 2007) provides direction on the use of best available science in project planning.

The references related to the models, and the assumptions and limitations of the models are found in the Project File, Hydrology Section, Discussion of Models. In addition, as noted in the response to comments, the analysis methodology was reviewed by staff at the Watershed Process Research Team that is part of the Aquatic and Terrestrial Unit of the Rocky Mountain Research Station in Boise, Idaho,

who found the approach used to be well reasoned and supported by data. EA Appendix A at 20, 23, 24, and 25. See also response to Appellant Statement #22 for more details.

**Appellant Statement #25:** Appellants state that 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” and state that the company should be required 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.” FMH at 16.

**Response:** I find the responsible official was correct in determining the project meets Clean Water Act standards and that current conditions were reflected accurately.

The regulation at 36 CFR 220.7(b)(3)(iv) directs the agency to discuss the impacts of the proposed action and any alternatives. Section 401 of the Clean Water Act includes provisions that ensure compliance with the Clean Water Act and state water quality laws with respect to activities that are federally permitted.

The analysis examines key hydrologic processes of concern and when appropriate the existing condition is factored into the models (such as administrative use roads in the sediment yield analysis). Dissolved solids are not a factor of concern in the mountain bike park analysis, as no salt would be applied in the project area that would have the potential to contribute to cumulative effects. The proposed action includes restoration projects that address past and ongoing problems with re-vegetation and sediment issues in the SUP area. EA Appendix A at 22.

With regards to salting, according to the Timberline Express DEIS of 2005 “as part of a certification process for salt application on the Palmer Snowfield, which is drained by Still Creek and the Upper Salmon River, ODEQ provided Timberline with several special water quality conditions to be fulfilled (Golder, 2003). These conditions include: The instream water quality at monitoring stations on Upper Salmon River and Still Creek shall not exceed the weekly mean of either 117 mg/L Total Dissolved Solids (TDS) or 175 umhos/cm specific conductance. The water quality samples taken shall not exceed the secondary drinking water criterion of 250 mg/L or the freshwater criterion of 230 mg/L chloride for chronic toxicity and 860 mg/L chloride for acute toxicity.” The DEIS further states that “According to the Timberline Ski Area Annual Report Water Year 2002 (Golder, 2003), the chloride concentrations are elevated above background in the stream stations within the Palmer drainage area during the salt application period, however, the concentrations return to background levels over the winter months at the end of the salt application period.” DEIS at 3-42. The Fisheries BE for this project also addressed salting of the Palmer Snowfield. The BE at 49 and 50 shows that monitoring for the past three years has found that total dissolved solids have not been exceeded. Because total dissolved solids are within limits and this project would not contribute dissolved solids, no cumulative effect could occur.

### ***Mitigation***

**Appellant Statement #26:** Appellants state that the Forest failed 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 failed 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.” FMH at 7.

**Response:** I find the responsible official did disclose and consider the timing and effectiveness of the proposed mitigation measures/project design features.

The Interdisciplinary Team (IDT) identified several sites associated with chairlift bottom terminals and an existing mixed-use trail (the Glade Trail) that were in need of restoration and developed corrective measures for these areas. EA at 5-6. The responsible official included the restoration projects in this EA based on comments received from the public during scoping, as well as concerns raised by the interdisciplinary team conducting the environmental analysis. EA at 27. Appellant's statement regarding their assertion that the proposed mitigation is to be completed "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" is not correct. I have examined the EIS for the Timberline Express project (FEIS Figure 5) and find that the restoration of old service roads and the majority of the surface water management and revegetation proposed with this project (EA at 28) were not a part of the Timberline Express project and as such, could not have been connected to that project. The access road decommissioning occurs under the Pucci and Stormin' Norman lifts, not the Timberline Express lift, which is now known as the Jeff Flood Still Creek Express lift. In addition, RLK has stated that they have completed the revegetation required from that project multiple times, and are continuing to work with the Forest towards successful revegetation. EA Appendix A at 44.

The EA documents both the timing and effectiveness of implementation of the watershed restoration activities and the project design criteria. EA at 30-43; EA at 49; EA at 73-79; EA Appendix A at 14, 18, 20; Project Record, Hydrology, WARSEM BMP Effectiveness; Project Record, Final EA, Monitoring Plan. The EA also documents compliance with standard WR-3 in the Northwest Forest Plan. The standards and guidelines in the NWFP at C-31 were meant to regulate activities in riparian reserves that retard or prevent attainment of the ACS objectives. The NWFP at C-37 directs the agency to not use mitigation or planned restoration as a substitute for preventing habitat degradation (WR-3). See response to Appellant Statement #18 regarding compliance with WR-3.

The bike park and trail portion of the project was designed to minimize soil input to streams through the Project Design Criteria and would meet ACS standards because the impacts would not be measurable at the watershed scale. EA at 31-43.

**Appellant Statement #27:** Appellants state that the restoration project to deal with past sedimentation issues has 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 various users. FMH at 9. Appellants state that these restoration projects must be "decoupled" from the new construction so that the restoration work is "independently pursued and successfully completed before more damage is done." FMH at 10. Appellants further state that these projects are not interrelated or interdependent actions under NEPA and require separate analysis. FMH at 11.

**Response:** I find the responsible official considered the comment submitted by the appellant regarding effects of road closures in EA Appendix A at 56. The restoration projects in the proposed action were developed by the Forest Service and RLK, and RLK has indicated that these roads are no longer necessary to their operation. These roads are not part of the Forest Service system roads and as such are not used for wildland fire suppression. The closure of the road is not relevant to winter operation as they would

be buried under several feet of snow. See response to Appellant Statement #26 for more details as to the restoration projects.

The regulation at 40 CFR 1508.25 directs the agency on how to define the scope of the analysis. Three types of action are considered when determining the scope of analysis. Included at 40 CFR 1508.25(a)(3) are: "Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement." As guided by the regulation, the responsible official appropriately included the restoration activities as a similar action that can be evaluated in this EA.

The responsible official included the restoration projects in this EA based on comments received from the public during scoping, as well as concerns raised by the interdisciplinary team conducting the environmental analysis. EA at 27. The restoration actions are scheduled to occur either slightly before, or concurrently with the proposed trail action, thus showing that the two projects are interrelated both geographically and have common timing and as such, can be considered similar actions according to regulation. EA at 49.

**Appellant Statement #28:** Appellants state that the EA does not consider alternatives to the intensive road restoration and closure activities and does not compare the effects of blading, scarification, and contouring to other restoration alternatives like planting and natural colonization that may be more effective. FMH at 9.

**Response:** I find the responsible official utilized the appropriate measures to restore selected access road segments in the project area given the existing conditions of those road segments.

The regulation at 40 CFR 1501.2(d) states that the agency is directed to "[s]tudy, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act."

Segments proposed for restoration activities are above the natural topographic contours, lacking top soil and native plants, and are compacted. The proposed restoration activities would address all of these conditions. EA at 27, 28, and 30.

The preliminary EA that was circulated for comment under the regulation at 36 CFR 215 included the proposed restoration activities. No alternatives to the proposed restoration activities were suggested by appellant during the notice and comment period, and as such, none were considered. I have reviewed appellant's comments on the preliminary EA and found that they focused on the inclusion of the proposed restoration activities in the preliminary EA and exclusion of the proposed activities during scoping. According to the regulation at 40 CFR 1501.7, scoping is intended to help the agency determine the scope of the issues to be addressed. The responsible official included the restoration projects in this EA based on comments received from the public during scoping, as well as concerns raised by the interdisciplinary team conducting the environmental analysis. EA at 27. Thus, the responsible official included restoration activities as a result of scoping and did not consider any alternatives to the restoration activities because none were suggested during the comment period. EA Appendix A at 4.

## **NEPA/NFMA Violation**

**Appellant Statement #29:** Appellants state that 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” is in violation of the NEPA, the NFMA and their implementing regulations. FMH at 7.

**Response:** I find the responsible official complied with NEPA, NFMA and implementing regulations through identification in the purpose and need and proposed action, the need to consider restoration actions within the project area.

The regulations at 40 CFR 1508.25 direct the scope of the analysis. Three types of action are considered when determining the scope of analysis. The regulation at 40 CFR 1508.25(a)(3) state that “Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.”

The Responsible Official proposed an approximately 17 mile trail network and a separate skills park that would encompass approximately 0.2 acres in response to a proposal submitted by RLK. The trail system would be designed to accommodate all skill levels with an emphasis on beginner and intermediate levels. All of the proposed trails would be in within the Ski Area SUP boundary except for the lowest portions of Trails 1, 4 and 7. These trail portions would be authorized through a SUP as an ancillary facility to the Ski Area Permit. EA at 3, 5, and 6.

In addition to the mountain bike park, the similar action of restoration to approximately two miles of native surface roads in the project area is proposed. EA at 6. Opportunities to restore watersheds during site-specific project planning is a strategy the Forest implemented several years ago and this analysis provided such an opportunity to consider specific restoration needs within the project area. EA at 6. The responsible official included the restoration projects in this EA based on comments received from the public during scoping, as well as concerns raised by the interdisciplinary team conducting the environmental analysis. EA at 27.

There are approximately two miles of native surface service roads in this area that are contributing sediment to downstream areas in both Still Creek and West Fork Salmon River drainages which are within the SUP boundary and within the proposed project area. EA at 20, 27, and 28.

The restoration component of the proposal is consistent with ongoing efforts to restore specific observations of road and trail erosion within the SUP and project area and is consistent with the Mt. Hood Forest Plan. EA at 47, 48, and 49. See also responses to Appellant Statements #26, 27 and 28 for more information on the restoration activities and how they relate to this project.

## ***EIS Needed***

**Appellant Statement #30:** Appellants state that the Forest failed “to objectively disclose and discuss the significance factors in their conclusion that an Environmental Impact Statement was not required for the Project.” FMH at 8, 20, 21, and 22.

**Response:** I find the responsible official determined that there were no significant effects that would require preparation of an environmental impact statement (EIS).

The regulation at 36 CFR 220.7(b)(3)(i) states that the EA shall briefly provide sufficient evidence and analysis, including the environmental impacts of the proposed action and alternative(s), to determine whether to prepare either an EIS or a FONSI. The regulation at 40 CFR 1508.13 defines a FONSI as a document briefly presenting the reasons why an action, not excluded, will not have a significant effect on the human environment and for which an EIS therefore will not be otherwise prepared. A FONSI was prepared in conjunction with the Decision Notice and in that FONSI, the responsible official fully disclosed and discussed the 10 significance factors as defined by the regulation at 40 CFR 1508.27.

**Appellant Statement #31:** Appellants state that the project has significance in both context and intensity and that substantive and well-documented controversy exists regarding the impacts of the project on water and terrestrial forest values. FMH at 20.

**Response:** I find the responsible official has addressed the question of impacts of the project on water values (also see Appellant Response #33).

The regulation at 40 CFR 1508.27(b) defines “significantly” in terms of context and intensity in order to determine whether or not there is a level of significance that would warrant analysis under an environmental impact statement (EIS). These factors include “[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial.” 40 CFR 1508.27(b)(4).

A proposed agency action is “highly controversial,” and may require preparation of environmental impact statement (EIS) under National Environmental Policy Act (NEPA), when there is substantial dispute about size, nature, or effect of major federal action, rather than existence of opposition to use. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.; 40 C.F.R. § 1508.27(b)(4). *Anderson v. Evans*, C.A.9 (Wash.)2002, 314 F.3d 1006, opinion amended on denial of rehearing 350 F.3d 815, amended and superseded on denial of rehearing 371 F.3d 475.

For the Timberline project, the responsible official determined that with regard to this intensity factor, “The effects on the quality of the human environment are not likely to be highly controversial. There is no known scientific controversy over the impacts of the project. The types of activities proposed (mountain biking and restoration) currently take place at Timberline, and have taken place in similar areas. The resulting effects are well-known and understood.” DN/FONSI at 7.

**Appellant Statement #32:** Appellants state that the significance factor of the degree to which the project would have beneficial and adverse impacts is violated because the project will have permanent impacts on riparian reserves, there is no scientific foundation for the estimates of long-term sediment delivery to headwater streams and downstream fish habitat, and that the project would affect MIS habitat for the American marten and pileated habitat. FMH at 20.

**Response:** I find the responsible official was correct in determining that the proposed action would have no significant beneficial or adverse impacts to resources within the analysis area.

The regulation at 40 CFR 1508.27(b) defines “significantly” in terms of context and intensity in order to determine whether or not there is a level of significance that would warrant analysis under an environmental impact statement (EIS). When evaluating intensity, the agency is directed to consider both beneficial and adverse impacts. Effects may be significant even when the agency determines the overall affect will be beneficial. 40 CFR 1508.27(b)(1).

Consideration regarding impacts to riparian reserves is addressed in response to Appellant Statements #16, 19, 21, and 22. With regards to the context and intensity of effects to riparian reserves, the EA states that “There are 296.6 acres of riparian reserves within the analysis area and the proposed mountain bike trails would impact 2.01 acres of riparian reserves or 0.7% of the riparian reserves in this area. The planned restoration activities would completely restore 1.54 acres (2/3 of the restoration polygons and all of the administrative roads decommissioned) within the riparian reserves.” Thus, the activities in riparian reserves are of such limited context and intensity, that no significant effect would occur. In addition, the PDCs addressed potential places where sediment could enter into streams and employ measures to trap sediment prior to reaching the stream channels or prevent soil erosion from actually occurring. EA at 31-43. Implementation of the PDC’s will also protect riparian reserves. See response to Appellant Statement #22 for further discussion on the sediment model. See response to Appellant Statements #20 and #21 for further discussion on fish and their habitat.

The EA appropriately evaluated impacts to MIS habitat for American marten and pileated woodpecker. EA at 143-145 and 149-150. The intensity and context of impacts of the proposed action to American marten, a Forest Management Indicator Species, was evaluated appropriately in EA. “Because this project impacts less than 1.5-2% of suitable habitat across the Forest, the overall direct, indirect and cumulative effects would result in a small negative trend of habitat (increase in disturbance). The loss of habitat (increase in disturbance) would be insignificant at the scale of the Forest. The Timberline Mountain Bike Trails Project is consistent with the Forest Plan, and thus continued viability of American marten is expected on the Mt. Hood National Forest.” EA at 145.

The EA continues by stating that “The current trend for American marten is stable (see Forest-wide analysis for Management Indicator Species). The project would not alter any habitat for the species. The project may cause some disturbance to the species but not at a level that would cause a reduction in population level. This project would not contribute to a negative trend in viability on the Forest for American marten.” EA at 150. Again, the context and intensity of the potential effect to American marten (less than 2% of suitable habitat) was not found to be significant.

The intensity and context of impacts of the proposed action to pileated woodpeckers, a Forest Management Indicator Species, was also evaluated appropriately in EA. The EA states that “Because this project impacts less than 0.001% of suitable habitat across the Forest, the overall direct, indirect and cumulative effects would result in a small negative trend of habitat (increase in disturbance). The loss of habitat (increase in disturbance) would be insignificant at the scale of the Forest. The Timberline Mountain Bike Trails Project is consistent with the Forest Plan, and thus continued viability of pileated woodpecker is expected on the Mt. Hood National Forest.” EA at 144.

The EA continues by stating that “The current trend for pileated woodpecker is increasing (see Forest-wide analysis for Management Indicator Species).” Further, the EA states that “This project would not

contribute to a negative trend in viability on the Forest for pileated woodpecker.” EA at 144, Wildlife Report and Biological Evaluation at 31. Put into context and intensity, this project impacts less than one tenth of one percent of suitable habitat and as such, was found to be not significant.

**Appellant Statement #33:** Appellants state that the significance factor of the effects on public health or safety is violated because there will be ongoing effects on recreation users (particularly fisherman) because water quality will be diminished as a result of this project. FMH at 20. Appellant further states that RLK and Company does not appear to be in compliance with State water quality standards, also in violation of this factor. FMH at 20 and 22.

**Response:** I find the responsible official documented that water quality will not be diminished as a result of this project. DN at 3. With the concurrent implementation of the restoration project, there would be a net decrease in sediment deliver to streams overall. EA at 62-94. Specifically, the EA at 87-89 addressed water quality in terms of drinking water source protection. Because there are no impacts to the wells in the water source area, public health and safety would not be affected. The overall impact to fisheries was also found to not be significant. See responses to Appellant Statements #20 and #21 for further discussion on fish and their habitat.

The regulation at 40 CFR 1508.27(b) defines “significantly” in terms of context and intensity in order to determine whether or not there is a level of significance that would warrant analysis under an environmental impact statement (EIS). When evaluating intensity, the agency is directed to consider the degree to which the proposed action affects public health and safety. 40 CFR 1508.27(b)(2).

The EA also included an evaluation of effects to streams and documented that the project is in compliance with the Clean Water Act and therefore applicable state regulations because the project will not affect stream temperature. This project will not be affecting streamside shade. EA at 72. This project will not be affecting channel morphology. EA at 65. This project will not be affecting shallow ground water. EA at 73. No standard exists for sedimentation in the Clean Water Act, however this project will have a net decrease in sediment deposition. EA at 67-72. For a discussion of the results of the sediment models found in EA at 67-72, see response to Appellant Response #22.

**Appellant Statement #34:** Appellants state that the significance factor of unique characteristics of the geographic area is violated because Mt. Hood is ecologically significant and the Timberline Lodge is a unique cultural and historic resource enjoyed by hundreds and thousands of visitors each year. FMH at 20.

**Response:** I find that the responsible official considered the unique cultural and historical significance of Timberline in regards to its unique characteristics in the Sense of Place discussion in the EA at 195-202.

The regulation at 40 CFR 1508.27(b) defines “significantly” in terms of context and intensity in order to determine whether or not there is a level of significance that would warrant analysis under an environmental impact statement (EIS). When evaluating intensity, the agency is directed to consider unique characteristics of the geographic area, including proximity to historic structures. 40 CFR 1508.27(b)(3). See response to Appellant Statement #39 for more details regarding Timberline Lodge.

**Appellant Statement #35:** Appellants state that the significance factor of the degree of controversy over environmental effects is violated because their hydrologist outlines how the available information from the Forest’s own research scientists on drainage network extension, sediment loading and

restoration activities “run directly counter to the unsupported assumptions presented by the Forest.” FMH at 20. Appellants further state that the EAs discussion on impacts on fish and fish habitat is controversial, the EA ignores and fails to incorporate the best available science, and the EA fails to disclose the basis for its own methodology. FMH at 20.

**Response:** I find the responsible official determined correctly that there is no scientific controversy regarding the impacts to fish and fish habitat due to sediment from restoration activities. The use of models to estimate sediment delivery from project activities is standard practice and not experimental or controversial.

The regulation at 40 CFR 1508.27(b) defines “significantly” in terms of context and intensity in order to determine whether or not there is a level of significance that would warrant analysis under an environmental impact statement (EIS). The regulation at 40 CFR 1508.27(b)(4) describes one of the significance factors as “[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial.” A proposed agency action is “highly controversial,” as may require preparation of environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), when there is substantial dispute about size, nature, or effect of major federal action, rather than existence of opposition to use. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.; 40 C.F.R. § 1508.27(b)(4). *Anderson v. Evans*, C.A.9 (Wash.)2002, 314 F.3d 1006, opinion amended on denial of rehearing 350 F.3d 815, amended and superseded on denial of rehearing 371 F.3d 475. Forest Service guidance (June 20, 2007) provides direction on the use of best available science in project planning.

The use of best available science for fisheries is discussed in Appellant Statement #21. The impacts of sediment on fish and fish habitat are well known due to the scientific studies that have occurred in the past. The potential impacts of sediment delivery from this project on fish are discussed in the EA at 112-120, and hydrologic extension is also discussed. See also response to Appellant Statements #19, #22, and #39.

**Appellant Statement #36:** Appellants state that the significance factor of the degree to which possible effects on the human environment are highly uncertain or involve unique or unknown risks is violated because the EA lacks a detailed and complete analysis of impacts to water quality. FMH at 20.

**Response:** I find the responsible official correctly determined that this project is not highly uncertain or involve unique or unknown risks.

The regulation at 40 CFR 1508.27(b) defines “significantly” in terms of context and intensity in order to determine whether or not there is a level of significance that would warrant analysis under an environmental impact statement (EIS). The regulation at 40 CFR 1508.27(b)(5) includes the significance factor of “[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.”

Activities approved in this decision are similar to those that have been implemented at Timberline (Timberline to Town Trail); nearby in Sandy (Sandy Ridge mountain bike trail system on BLM lands); and at other ski resorts in the Pacific Northwest (e.g., Willamette pass, OR, and Stevens Pass, WA); and in other regions (e.g., Whistler, B.C. and Winter Park, CO) over the last decade. None are unique or involve unknown risks. DM at 7.

Furthermore, I find that the responsible official's decision was based on a detailed and complete analysis of impacts to water quality. Section 3.2 of the EA thoroughly evaluates effects on Hydrology, Geology and Water Resources. EA at 50-94. See also response to Appellant Statements #22 and #33.

**Appellant Statement #37:** Appellants state that the significance factor of the degree to which the action may establish a precedent for future actions with significant effects is violated because the EA, DN and FONSI allow for the installation of a new facility that will increase the need for parking, which is a future action that was not analyzed. FMH at 21.

**Response:** I find the responsible official did consider the issue of parking, EA at 13, 33, & 34 and EA Appendix A at 53 & 55. Further, the responsible official did consider future parking in the DN at 5, however, both the Forest Service and RLK have identified ways in which they can mitigate any potential problems. Further, future parking lots are mentioned in the MDP, but they do not represent proposals therefore do not represent or establish a precedent for future actions.

The regulation at 40 CFR 1508.27(b) defines "significantly" in terms of context and intensity in order to determine whether or not there is a level of significance that would warrant analysis under an environmental impact statement (EIS) and includes "[t]he degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration." 40 CFR 1508.27(b)(6).

The regulation at 36 CFR 220.3 defines reasonably foreseeable future actions as those Federal or non-Federal activities not yet undertaken, for which there are existing decisions, funding, or identified proposals. Identified proposals for Forest Service actions are described in 36 CFR 220.4(a)(1) which states that an identified proposal is one in which "The Forest Service has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated (see 40 CFR 1508.23)."

The parking congestion that was mentioned by appellants is addressed in the EA at 13, which states that "Timberline's most limited parking is during the ski season in the winter when this proposal would not be operating, but parking is also limited during the summer months. The proposal may further contribute to parking issues near Timberline, particularly during busy periods when the parking reaches capacity. RLK would manage parking during busy periods, similar to the winter operation, in order to monitor parking densities and user groups, and take action to minimize the effect of bike park users on other recreationists wishing to park at Timberline. Also see PDC Mon-2, Rec-5, and the Recreation and Socio-Economics sections in Chapter 3." The EA at 204-205 states "Non-skiing guests tend to stay in the area for a shorter duration than skiers, and thus, the parking spaces taken by these guests witness a greater rate of turnover than those spots taken by skiers. In addition, more parking space is available due to the absence of snow in the summer time. The net effect of this parking situation is that the parking lots may actually accommodate a greater total number of people per day in the summer."

As stated in response to Appellant Statements #3, 42, and 43, the responsible official was not required to consider projects listed in the MDP that have not yet been proposed. The regulations at 36 CFR 220.3 support the point that project(s) in a MDP are not subject to cumulative effects unless one of the projects within has been actually proposed.

**Appellant Statement #38:** Appellants state that the significance factor of whether the action is cumulatively significant is violated because the Sandy Basin Watershed is already functioning at risk and the project will worsen the situation and further degrade the watershed. FMH at 21.

**Response:** I find the responsible official correctly determined that the action is not cumulatively significant. DN at 8.

The regulation at 40 CFR 1508.27(b) defines “significantly” in terms of context and intensity in order to determine whether or not there is a level of significance that would warrant analysis under an environmental impact statement (EIS) and includes “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.” 40 CFR 1507.28(b)(7).

This project will not further degrade the Sandy Basin Watershed. The restoration activities associated with the project results in a net reduction in the amount of sediment, turbidity, and road density present within the headwaters of the West Fork Salmon and Still Creek subwatersheds. According to the EA at 75, “this is a 13% reduction in sediment (comparing the net reduction to the total sediment from roads, highway sanding, and USFS trails) for the cumulative effects analysis area so implementation of the project is not anticipated to have any adverse impacts on the aquatic system.”

**Appellant Statement #39:** Appellants state that the significance factor of the degree to which the action may affect significant scientific, cultural or historic resources is violated because the implementation of the project will negatively affect the “historic Timberline Lodge and its environs.” FMH at 21. Appellants also state that the project will permanently degrade 2 acres of riparian reserves, will impact the only known population of Scott’s Apatanian Caddisfly and that impacts to that species were not disclosed in the EA. FMH at 21.

**Response:** I find the responsible official correctly determined that the action will not cause loss or destruction of any significant scientific, aquatic, cultural, or historical resources. DN at 8. I also find the responsible official considered all direct, indirect and cumulative effects this project may have on Timberline Lodge under a Sense of Place in section 3.9. EA at 195.

The regulation at 40 CFR 1508.27(b) defines “significantly” in terms of context and intensity in order to determine whether or not there is a level of significance that would warrant analysis under an environmental impact statement (EIS) and includes “[t]he degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.” 40 CFR 1508.27(b)(8).

The section of the EA titled “Timberline as a Dynamic Work of Art Rooted in History” details in length the potential effects to Timberline Lodge and its Sense of Place. EA at 200. As stated in the EA, “Additionally, as with the summer skiers and snowboarders, the mountain bike activity would be focused in the day lodge, and only a small percentage of bikers are likely to visit the historic lodge. Both informants stated that provision of adequate and appropriately located storage would address concerns about potential gear-related damage to the main lodge, and stated that they did not anticipate that damages linked to bringing bike gear into the main Lodge would be a problem as the resort operators have successfully dealt with this same issue with skiers and snowboarders.” EA at 200.

Additionally, the EA at 12 states that “From its inception, Timberline Lodge was designed to be a developed, year round recreational resort for the public to enjoy. Staging activities for the bike park would utilize the Day Lodge, similar to the way snowsport activities are based out of the Day Lodge, which would help keep bike traffic away from Timberline Lodge. See PDC Her-6, Her-9, and Recreation, Heritage, Sense of Place, and Visuals sections in Chapter 3.”

The DN/FONSI further elaborates on how this project fits in with the overall concept behind Timberline. The responsible official based his decision in part on the answers to the questions “would the implementation of this proposal have an adverse effect to historic and/or cultural resources within the Timberline SUP area, and would the implementation of this proposal be compatible with all the visitors’ sense of place? Would the proposal be compatible with the vision and purpose for Timberline, as prescribed in the Mt. Hood Forest Plan, and as described by Franklin Delano Roosevelt at his dedication speech for Timberline Lodge?” DN/FONSI at 2. The responsible official further states that “I believe that mountain biking at Timberline represents yet another new opportunity for play in every season of the year. As the Responsible Official for this project, my concern is ensuring that no specific use of the Timberline environs (mountain biking) diminishes and/or inhibits any other use (such as visiting the Lodge, skiing, or hiking) on the mountain.” DN/FONSI at 4. After reviewing the sense of place report, the responsible official found that “Upon reviewing the report, Roosevelt’s speech, and the uniquely wonderful history of Portlanders’ love of Mt. Hood, I feel that the implementation of a mountain bike park is complementary with the various types of four-season use of the presently occurring within the permit area, as well as safeguards the keenly important historic, artistic, and cultural assets represented by Timberline Lodge.” DN/FONSI at 4.

The 2 acres of riparian reserves that will be affected by this project are not contiguous. The acreage is spread out over the project area at the various trail crossings. Most of those crossings are in ephemeral channels which do not provide habitat for the Scott’s apatanian caddisfly due to the lack of water. The EA at 115 states that there may be effects to the Scott’s apatanian caddisfly and that project elements and design criteria are in place that would greatly minimize, if not eliminate, those effects to habitat or individuals in each of the four sub-watersheds.

Restoration activities associated with this project will restore approximately 1.5 acres of riparian reserves as mentioned in the EA at 86. Further discussion on restoration activities are discussed in the EA at 27-29.

**Appellant Statement #40:** Appellants state that the significance factor of the degree to which the action may adversely affect any proposed, endangered, sensitive, or threatened plant or animal species is violated because the project will negatively impact steelhead, coho, Chinook, coastal cutthroat trout, as well as the American marten and pileated woodpecker and Scott’s Apatanian Caddisfly. FMH at 21.

**Response:** I find the responsible official determined there would be no significant effects to endangered or threatened species or habitat. DN at 8.

The regulation at 40 CFR 1508.27(b) defines “significantly” in terms of context and intensity in order to determine whether or not there is a level of significance that would warrant analysis under an environmental impact statement (EIS) and includes “[t]he degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.” 40 CFR 1508.27(b)(9).

See response to Appellant Statement #32 for information regarding wildlife species. The responsible official noted in the EA at 112, that sediment, stream drainage network increases, and disturbance of riparian reserves would be the most likely avenue of potential effects. The project was determined to have a “May Affect, Not Likely to Adversely Affect” lower Columbia River (LCR) Steelhead trout and designated critical habitat and would have “No Effect” to LCR coho salmon, LCR Chinook salmon and associated designated critical habitat. NOAA Fisheries concurred with this determination in their June 13, 2011 concurrence letter and stated that they concluded that “all effects of the action, as proposed, are insignificant or discountable.” Project File, Fisheries, Concurrence Letter.

The EA at 112 further states that project would impact a fraction of 1% of suitable habitat across the Forest for MIS cutthroat trout. The overall direct, indirect and cumulative effects would result in a small negative trend of habitat for cutthroat trout. The loss of habitat would be insignificant at the scale of the Forest.

The effects on Scott’s apatanian caddisfly are addressed in the EA at 115. Project elements and design criteria are in place that would greatly minimize, if not eliminate, effects to habitat or individuals in each of the four sub-watersheds. The proposed actions “May Impact Individuals or Habitat” of Scott’s apatanian caddisfly, but would not lead to a trend towards Federal listing.

**Appellant Statement #41:** Appellants state that the significance factor of whether the action threatens a violation of federal, state or local law or requirements imposed for the protection of the environment is violated because the project appears to be in violation of NFMA, the Northwest Forest Plan, and the Mt. Hood National Forest Land and Resource Management Plan (LRMP). FMH at 22.

**Response:** I find the responsible official complied with the obligations under the NFMA, the Northwest Forest Plan, the Mt. Hood National Forest LRMP, and other relevant Federal and State laws and regulations.

The regulation at 40 CFR 1508.27(b) defines “significantly” in terms of context and intensity in order to determine whether or not there is a level of significance that would warrant analysis under an environmental impact statement (EIS) and includes “[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” 40 CFR 1507.28(b)(10).

As documented in the DN, the project was prepared consistent with the requirements of NEPA, NFMA, the Mt. Hood National Forest LRMP as amended by the Northwest Forest Plan and its standards and guidelines, and other relevant Federal and State laws and regulations. DN at 8-9.

The EA notes at many places throughout the document that the project will be consistent with applicable laws and regulations. The proposed action would be consistent with the LRMP. EA at 49. RLK submitted an application to DEQ for certification pursuant to Section 401 of the Federal Clean Water Act in conjunction with the issuance of the Forest Service Special Use Permit for the Timberline Ski Area. EA at 60. The project complies with the Clean Water Act, LRMP, and Northwest Forest Plan by protecting water quality and incorporating BMPs. EA at 79-81. The project is consistent with the LRMP with regard to threatened and endangered species as shown by tables of effects determinations. EA at 98, 137-140, 164-169. The project complies with Section 106 of the National Historic Preservation Act. EA at 178.

The project does not threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment, so there is not a determination of significance that would warrant analysis under an EIS. DN at 8-9.

### ***Master Development Plan***

**Appellant Statement #42:** Appellants state that the Forest failed 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.” FMH at 7.

**Response:** I find that the responsible official considered the MDP in the DN at 5. I find that the MDP merely discloses Timberline Ski Area’s goals and objectives, the existing conditions, and Timberline Ski Area’s desired future conditions.

The regulation at 36 CFR 220.3 describes reasonably foreseeable future actions as those Federal or non-Federal activities not yet undertaken, for which there are existing decisions, funding, or identified proposals. The regulation at 36 CFR 220.4(a) states that proposed actions subject to NEPA requirements occur when “[t]he Forest Service has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated (see 40 CFR 1508.23)”. According to agency policy, “If the Agency does not know where or when an activity will occur or if it will occur at all then the effects of that action cannot be meaningfully evaluated.” FSH 1909.15, 3.

In the letter accepting the MDP, the Forest Supervisor clearly stated that “Please note that Forest Service acceptance of the MDP does not convey our approval of any of the projects within the document. Prior to authorization, the appropriate environmental analysis required by the National Environmental Policy Act will need to be completed for each project.”

**Appellant Statement #43:** Appellants state that the Forest failed 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 that the Forest failed “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.” FMH at 7, 14 and 15.

**Response:** I find the responsible official complied with the obligations under the NFMA, the Northwest Forest Plan, the Mt. Hood National Forest LRMP, and other relevant Federal and State laws and regulations. As documented in the DN, the project was prepared consistent with the requirements of NEPA, NFMA, the Mt. Hood National Forest LRMP as amended by the Northwest Forest Plan and its standards and guidelines, and other relevant Federal and State laws and regulations. DN at 8-9.

The regulation at 40 CFR 1508.23 states that a “proposal” exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. The regulation at 40 CFR 1508.27 defines “significantly” in terms applicable to determining a level of significance that would warrant analysis under an environmental impact statement (EIS), including

“[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.”

The MDP only discloses Timberline Ski Area’s goals and objectives, the existing conditions, and desired future conditions. In the letter accepting the MDP, the Forest Supervisor clearly stated that “Please note that Forest Service acceptance of the MDP does not convey our approval of any of the projects within the document. Prior to authorization, the appropriate environmental analysis required by the National Environmental Policy Act will need to be completed for each project.” The Forest Service accepted the MDP as a guiding document for future development at the Timberline Ski Area that would help the Forest Service understand RLK and Company’s vision for the Ski Area. Similar Ski Area MDPs have not been required to complete NEPA analysis. *Ark Initiative v. U.S. Forest Service*, 2010 WL 3323661 (D. Colo. Aug 18, 2010).

The MDP does not contain any binding decisions or commitments that would have an immediate impact on the physical environment and so is not an agency action that requires public involvement or the preparation of an environmental analysis.

### ***Conflict of Interest***

**Appellant Statement #44:** Appellants state that the EA, FONSI, DN and response to comments fail to respond to their concerns for a fair and unbiased decision because they state that there is a conflict of interest with the private contractor hired by the Forest to assist with the preparation of the EA, as he was also hired by RLK and company to work on the Jeff Flood Express Lift and the 2009 Master Development Plan. Appellants argue that the individual has played a ‘significant role in the development and drafting’ of the EA and that his conflicts were not adequately disclosed. Because of this, appellants assert that the Forest has failed to maintain the scientific integrity of its decision making process and its obligations to reach an unbiased decision. FMH at 15.

**Response:** I find the responsible official independently reviewed the EA, approved of its scope and content, and found the EA adequately disclosed the qualifications of the preparers of the document.

The regulation at 40 CFR 1506.5 outlines the agencies responsibilities in the preparation of environmental documents. The regulation at 40 CFR 1506.5(a) states that if an applicant submits environmental information the agency is required to independently evaluate the information submitted and is responsible for its accuracy. In addition, when a document is prepared by contract, the regulation at 40 CFR 1506.5(c) states the agency will independently evaluate the statement prior to its approval and take responsibility for its scope and contents.

The EA at 259 disclosed those contractors involved in the preparation of the EA, their experience and their contribution to the EA. In addition, the project record at MDP, Background Materials and Other Misc. contains a Conflict Disclosure Statement from Bill Granger, owner of Re-Align Environmental, which was signed and dated on August 15, 2011. That document states that Mr. Granger has no financial or conflicting interest in the outcome of the Timberline Mountain Bike Park and holds no financial or legal interest in RLK or other companies involved in the development of the project. All analysis documents were reviewed and accepted by the Forest Service as an accurate and unbiased representation of the project’s impacts to the human environment.