



File Code: 1950
Date: October 13, 2016

Dear Interested Citizen:

Set forth below is an initial draft of my analysis and tentative findings with respect to certain items of new information related to the Timberline Ski Area Mountain Bike Trails and Skills Park project and, more particularly, whether such information gives rise to a need for the Mt. Hood National Forest to supplement the Environmental Assessment (EA) it prepared for the project. Because of reasons outlined at the end of this letter, the Forest has decided to make it available for public review before issuing a final version and making a final determination on whether to supplement the EA. In that light, all of the analysis and findings set forth below are tentative in nature at this time, based on staff input to date and my preliminary evaluation of the new information at issue, but the Forest has determined that, even though it is not required, it would nevertheless be appropriate and helpful to hear from any interested members of the public who may have comments to share on the matters addressed in this letter before reaching any final findings. We request that any comments specific to the information contained in this letter be submitted to us by **October 31, 2016**. Information on how and where to submit comments is also provided at the end of this letter.

Background

In November 2012, the Mt. Hood National Forest completed a Decision Notice and Finding of No Significant Impact (DN/FONSI) for the Timberline Ski Area Mountain Bike Trails and Skills Park. As part of the decision-making process leading to issuance of the DN/FONSI, the Forest prepared an Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA). The DN/FONSI authorizes two broad categories of activities: restoration work and installation of the bike trails and skills park.

On August 4, 2016, the National Marine Fisheries Service issued a biological opinion (WCR-2016-4259) concluding that the project is not likely to jeopardize the continued existence of Lower Columbia River (LCR) steelhead (*Oncorhynchus mykiss*) or result in the destruction or adverse modification of designated critical habitat. The biological opinion followed a similar, initial biological opinion for the project that the National Marine Fisheries Service prepared in August 2014.

We recently conducted another year of surveys for the Western bumble bee (*Bombus occidentalis*) at various sites across the Forest; the bee is considered a “sensitive” species under Forest Service Manual 2670. The results of the information gathered this (2016) field season are documented in a summary report by Chuti Fiedler. Additionally, I have reviewed the memorandum (enclosed) dated October 12, 2016, regarding Chuti’s review of the report completed by Dyck and Willhite in 2013 titled, “Western Bumble Bee (*Bombus occidentalis*) at Timberline Ski Area.”



In light of the new information reflected in the August 2016 biological opinion that was not in the original biological opinion, as well as the information gathered from the recently completed season of bee surveys, I requested staff input and expertise regarding whether this new information is within the scope and range of the effects considered in the original EA and DN/FONSI and, more specifically, whether it presents a significantly different understanding of environmental effects from those described and projected to occur in the EA (Forest Service Handbook 1909.15, Chapter 10, Section 18.1). This letter documents my tentative finding and underlying rationale as to whether the above-referenced new information warrants or requires that the Forest prepare supplemental NEPA analysis for the project in light of applicable agency direction and regulatory guidance.

Before turning to my analysis and findings in this letter, I would note that I have previously issued similar memoranda pursuant to the guidance in the Forest Service Handbook to lay out and explain findings in the context of other new information that has arisen since adoption of the project decision, dated December 19, 2013 and September 18, 2014.

Project Description as adopted in the Decision Notice

The project adopted in the DN includes a 17-mile mountain bike trail network and a separate skills park that would encompass about 0.2 acres. This lift-assisted, downhill-only mountain bike trail system and skills park would be within the southern portion of the Timberline Ski Area permit boundary. The bike trails and skills park would be managed and maintained by RLK under the terms and conditions of an operating plan as part of its special use permit.

The project also includes watershed restoration activities that were designed principally to bring about a substantial reduction of ongoing sedimentation from existing sources in the Still Creek and West Fork Salmon drainages, which the EA projects will receive some relatively small amount of additional sedimentation as a result of construction and operation of the bike trails the project authorizes. These restoration activities would decommission and/or stabilize approximately 2.1 miles of native surface roads and restore seven sites for a total of approximately six acres of restoration within or adjacent to the project area. A more detailed description of the project can be found in the EA on pages 19-29. To date, with the exception of geo-grid installation at the bottom of the Jeff Flood Express chairlift, all of the watershed restoration activities included in Table 2 on page 26 of the EA were completed during the summers of 2013, 2014, and 2015.

Consultation History with National Marine Fisheries Service (NMFS)

On June 13, 2011, NMFS issued a Letter of Concurrence (LOC) indicating that it concurred with the Forest Service's determination that the effects of this project would not be likely to adversely affect species listed as threatened or endangered under the Endangered Species Act (ESA) or designated critical habitat. However, after re-examining its position upon receiving a Notice of Intent to Sue for Violations of Section 7 of the ESA, NMFS concluded that it would be more appropriate to instead issue a biological opinion, which it ultimately did (WCR-2014-700), and in which it concluded that the project is not likely to jeopardize the continued existence of LCR steelhead or result in the destruction or adverse modification of the species' designated critical habitat.

Upon receiving NMFS's biological opinion in 2014, which post-dated the issuance of the EA, I asked my staff to consider whether the information contained in the biological opinion, or the fact that NMFS opted to issue the opinion after originally issuing an LOC, fell outside the scope and range of the effects considered in the EA and DN/FONSI to a degree or in a manner that required or warranted the preparation of supplemental NEPA analysis for the project. My memorandum dated September 18, 2014, documents the results of that in-depth consideration, and concluded that a correction, supplement, or revision of the EA was not necessary on those grounds.

In September 2015, it was brought to my attention that certain work completed as part of the restoration activities included within and prescribed by this project had been carried out in a manner inconsistent with the 2014 biological opinion. More specifically, term and condition 1.a.i. of that opinion, which requires flagging areas of proposed riparian disturbance prior to construction, was not followed. My staff's meticulous review of this oversight concluded that approximately 1.58 acres of riparian area disturbance occurred, thereby exceeding by 0.04 acres the 1.54 acres of riparian disturbance authorized in the terms and conditions of the 2014 biological opinion. Therefore, on December 18, 2015, I sent a request to NMFS that we re-initiate consultation for this project. A review of the subsequent NMFS biological opinion issued on August 4, 2016, follows directly below.

Review of 2016 Biological Opinion by NMFS

As previously stated, the 2016 biological opinion (WCR-2016-4259) also concluded that the project is not likely to jeopardize the continued existence of Lower Columbia River (LCR) steelhead or result in the destruction or adverse modification of their designated critical habitat. Included in the biological opinion is an incidental take statement and nondiscretionary terms and conditions that must be followed to meet ESA requirements. Similar to the 2014 biological opinion, the terms and conditions include a variety of mitigation and reporting requirements.

In reviewing the information contained in the 2016 biological opinion, I find that almost all¹ of the terms and conditions are the same as or actually more protective than those contained in the 2014 biological opinion. Therefore, I conclude that the vast majority of the analysis and rationales in my previous memorandum of September 18, 2014, also effectively apply to the terms and conditions outlined in the 2016 biological opinion. I also find, as I did in that earlier memorandum, that the duty to prepare supplemental NEPA analysis has not been triggered. I base this finding on several factors, including the following:

¹ The only exception of note to this comparative finding is that the former take surrogate and term and condition to not exceed 1.54 acres of riparian disturbance as a result of watershed restoration activities from the original biological opinion is no longer included as a take surrogate or term and condition in the 2016 biological opinion. This is because most of the restoration activities have already been implemented and, therefore, the effects are included as part of the environmental baseline in the 2016 biological opinion (p. 30). In addition, as noted in the text of this letter, during such implementation, due to the required flagging not occurring as prescribed in the original biological opinion, an additional four one-hundredths of an acre of riparian disturbance occurred within Riparian Reserves, which this letter also takes into account.

- Both the Fisheries Biological Assessment (April 6, 2011; pp. 13 & 59) and the EA (p. 86) state that disturbance to Riparian Reserves would be approximately 2.1 acres for trail construction. Because the 2016 biological opinion included a take surrogate and term and condition designed to ensure trail construction does not exceed 2.01 acres, I find that the disturbance to the riparian area is clearly within the expected range of effects analyzed and disclosed in the EA. Further, I find that reducing the riparian area of disturbance by 0.09 acres from 2.1 acres to 2.01 acres would not require further environmental analysis.
- The only change regarding take surrogates and terms and conditions between the 2014 biological opinion and the 2016 biological opinion are found in the turbidity monitoring requirements, which are outlined on page 25 of the 2014 biological opinion and on pages 47-48 of the 2016 biological opinion. Because the turbidity monitoring requirements in the 2016 biological opinion reduced the number of incidents (from five incidents to three incidents) as well as the threshold NTU amount (from 100 NTUs to 60 NTUs), I find that this reduction is even more protective of LCR steelhead and does not require additional NEPA analysis. Additionally, the turbidity monitoring requirement is similar to what was included as project design criterion WS-16 that is found on pages 42-43 of the EA. The 2016 biological opinion adds specificity to project design criterion WS-16, and should serve to further reduce sediment being transported as a result of the project.
- I have reviewed the Finding of No Significant Impact criterion #9 on page 8 of the DN/FONSI and find that the degree to which the action may affect ESA species or its designated critical habitat remains virtually unchanged under NEPA. Notwithstanding NMFS's determination to prepare a biological opinion in light of a reassessment of its agency practices in similar scenarios, I find the effects to LCR steelhead remain non-significant within the context of NEPA (see 40 CFR 1508.27, which provides guidance on the meaning of "significance" in an agency's compliance with NEPA procedures).
- The only other difference between the 2014 and 2016 biological opinions relating to the project's environmental effects stems from the fact that the contractor who was carrying out restoration work for the special-use permittee failed to comply with a term and condition in the 2014 biological opinion that required pre-construction flagging prior to certain riparian disturbance, which, as described above, resulted in there being 0.04 acres of disturbance within Riparian Reserves beyond that which was authorized in the opinion. This slight degree of additional effects within a Riparian Reserve beyond that which was projected and authorized is considered and accounted for as part of the environmental baseline in the 2016 biological opinion. In addition, my staff has previously analyzed the effects arising from this non-compliance as documented in an email to NMFS's staff on March 4, 2016, and, on the basis of that analysis, determined that such effects could best be considered de minimis within the context of this project, and I incorporate the analysis contained in that email into the rationales in support of my tentative finding in this letter.

It is my tentative judgment that the new information and findings reflected in the 2016 biological opinion are within the scope and range of effects considered in the Forest's original analysis in the EA, and do not give rise to a significantly different understanding of the project or its environmental effects from that contained in the EA within the meaning of NEPA or any applicable regulations or agency guidance. It is therefore my tentative decision that a correction, supplement, or revision of the EA is not necessary or required.

Background Information for the Western Bumble Bee

The Western bumble bee was added to the Regional Forester's Sensitive Species List in 2011. Because the bee was added to the sensitive species list after the date that this project was initiated, the decision was made to continue to use the 2008 Regional Forester's Sensitive Species List per the guidance outlined in a Regional Forester letter dated December 9, 2011.

In the summer of 2013, a Xerces Society survey crew located Western bumble bees at the Timberline Ski Area and Lodge, as well as within the mountain bike trails analysis area. Since the survey crew located the species in the Timberline area, I asked my staff to provide an analysis of the new survey data, which was included in a report titled, "Western Bumble Bee (*Bombus occidentalis*) at Timberline Ski Area" (Dyck & Willhite, 2013). I reviewed this information and concluded in a memorandum dated December 19, 2013 that the EA was consistent with the Forest Service's policy as stated within Forest Service Manual 2670 for sensitive species. Furthermore, the survey information did not require under NEPA the correction, supplementation, or revision of the EA.

Following 2013, the Forest received funding from the Interagency Special Status and Sensitive Species Program in 2015 and 2016 to survey for Western bumble bee locations across the Forest. Conclusions from our 2015 and 2016 field work are documented in two reports: 1) "Summary Report for Western Bumble Bee Surveys, Mt. Hood National Forest" by Alan Dyck dated December 2015; and 2) "Interim Summary Report Findings for the Western Bumble Bee (*Bombus occidentalis*) by Chuti Fiedler dated September 2016. In total, for the three years that surveys were conducted, approximately 74 sites were surveyed across the Forest ranging in elevation from 1,280 feet to 5,980 feet.

Review of New Survey Information for the Western Bumble Bee

I have reviewed both of the survey reports from 2015 and 2016. Additionally, I have reviewed the memorandum by Chuti Fiedler regarding her analysis of the 2016 survey information with regard to the Timberline Ski Area Mountain Bike Trails project. I am encouraged that each year of survey work has resulted in identifying new locations of the Western bumble bee, in a broadening range of locations and elevations on the Forest, including numerous locations remote from the Timberline area. This further supports the rationale that the Timberline Ski Area Mountain Bike project would not likely cause a trend towards Federal listing of the bee.

Given the negligible effects on bees that the project is expected to have, as I documented in December 2013, and the expanding awareness we are gaining of bee sites on the Forest given the three years of surveys, it is my tentative determination that a correction, supplement, or revision

to the EA and wildlife report is not necessary or required under NEPA. Further, I find that the project is consistent with the agency's policy as stated in Forest Service Manual 2670 for sensitive species; and I find that the agency appropriately followed the Regional Forester's direction per the December 9, 2011 letter regarding consideration of sensitive species in NEPA analyses.

Availability for Public Review and Comment

Although I have tentatively found that no supplemental NEPA analysis is required or warranted for the project in light of the new information described in this letter, and the fact that neither NEPA nor any Forest Service guidance requires any public involvement in reaching such findings, I have decided to make this letter available for public review and comment before finalizing it. The reasons I am taking this step are as follows:

- There continues to be public interest in the project, in large measure due to its location and proximity to Timberline Lodge, which not only many Oregonians, but people from around the world, visit every year. Because of this interest, various groups and individuals have offered comments and recommended that the Forest supplement the Project EA following its issuance of previous memoranda evaluating other items of new information. Therefore, I would like to allow for this public review so that I can take into account of any such input prior to rendering final findings as to the information addressed in this letter.
- The chronology of the decision-making process for the project, and the fact that a second biological opinion was prepared for it, resulted in consultation not being completed until after the Forest Service's EA, and the public review opportunity on it, were completed. Although this set of circumstances by itself would not warrant public review of this normally internal agency letter, I would like to exercise my discretion to further consider public input.
- Even though the Forest found no evidence of bad faith, there has been a failure to comply with a nondiscretionary term and condition for the project in its implementation that led to a slight increase of environmental effects beyond those which were authorized or projected.

Those interested in submitting comments must do so by **October 31, 2016**. The Forest is rearranging staff assignments to accommodate its consideration of these comments, particularly given that providing an opportunity for their submission is not required, and so the public should not expect that comments received after this date can or will be considered.

Comments will be accepted via mail, fax and email at the following addresses: Mt. Hood National Forest, 16400 Champion Way, Sandy, OR 97055; or 503-668-1423 (fax); or comments-pacificnorthwest-mthood-zigzag@fs.fed.us in a format such as an e-mail message, plain text (.txt), rich text format (.rtf), or Word (.doc or .docx). Please use the subject line "Timberline Mountain Bike New Information." You may also hand-deliver your comments to the above address during normal business hours from 8:00 am to 4:30 pm Monday through Friday, excluding federal holidays. Comments received in response to this solicitation, including names

and addresses of those who comment, will be part of the public record and may be released in response to requests made under the Freedom of Information Act.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Northrop", written in a cursive style.

LISA A. NORTHROP
Forest Supervisor

Enclosure: 1) Memorandum to Bill Westbrook from Chuti Fiedler dated October 12, 2016