



United States Department of the Interior

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CASCADIA WILDLANDS, *ET AL.*

IBLA 2013-80

Decided June 24, 2014

Appeal from a decision of the South River (Oregon) Field Office, Roseburg District, Bureau of Land Management, denying a protest of a timber sale. ORR05-TS12-08.

Affirmed.

1. Administrative Practice--Administrative Procedure: Administrative Review--Appeals: Jurisdiction--Board of Land Appeals--Delegation of Authority--Endangered Species Act of 1973: Generally--Endangered Species Act of 1973: Section 7: Consultation--Fish and Wildlife Service--National Environmental Policy Act of 1969: Generally--Office of Hearings and Appeals--Rules of Practice: Appeals: Jurisdiction

The Board of Land Appeals has no authority to review the substantive merits of a Biological Opinion issued by the Fish and Wildlife Service under section 7 of the Endangered Species Act. The Board's authority is confined to determining whether BLM reasonably relied on that document to fulfill its statutory obligations.

2. National Environmental Policy Act of 1969: Generally

Under NEPA and Departmental regulations implementing NEPA, an Environmental Assessment analyzing the environmental impacts of a proposed timber sale properly includes a brief discussion of the need for the proposal. This Board properly defers to BLM's discretionary authority and expertise in evaluating the need for the action proposed and the objectives to be accomplished by implementing it.

3. National Environmental Policy Act of 1969: Generally

An Environmental Assessment properly includes a no action alternative to provide an analytical benchmark to compare existing resource conditions and the potential impacts of the proposed action. There is no requirement to consider alternatives proposing actions for purposes that are fundamentally inconsistent with the action BLM has determined is needed in a given circumstance.

APPEARANCES: Francis Eatherington, Eugene, Oregon, for Cascadia Wildlands; Doug Heiken, Eugene, Oregon, for Oregon Wild; Steven Lydick, Field Manager, South River Field Office, Bureau of Land Management, Roseburg, Oregon.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Cascadia Wildlands and Oregon Wild (collectively referred to as Cascadia) have appealed from a December 19, 2012, decision (Decision) of the Field Manager, South River (Oregon) Field Office, Roseburg District, Bureau of Land Management (BLM), denying its protest of an August 13, 2012, Decision Document (DD) and Finding of No Significant Impact (FONSI) that approved the White Castle Variable Retention Harvest (VRH) Timber Sale on 187 acres of public land in southwestern Oregon. The DD and FONSI were based on the April 3, 2012, Roseburg District Secretarial Demonstration Pilot Project Environmental Assessment, DOI-BLM-OR-R050-2011-0006-EA (EA). By Order dated May 13, 2013, this Board denied Cascadia's petition for stay.¹

For the reasons explained below, we find Cascadia's arguments are without merit. BLM's decision will be affirmed.

Decision Framework

In this appeal, Cascadia pursues two main lines of argument advanced in its protest: BLM's decision to approve the Pilot Project violates unspecified provisions of

¹ BLM has since awarded the White Castle VRH Timber Sale contract to the highest bidder, allowing timber harvesting and related activities to proceed. See BLM Letter dated May 2, 2013. Ordinarily, an appeal must be dismissed as moot where, as a result of events occurring after the appeal is filed, there is no effective relief the Board can give an appellant. See *In Re Jamison Cove Fire Salvage Timber Sale*, 114 IBLA 51, 53 (1990). The Board confirmed that no harvest activities have been undertaken to date. We therefore dispose of this appeal on its merits.

the Endangered Species Act of 1973 (ESA), 16 U.S.C. §§ 1531 - 1544,² because the sale will degrade critical habitat of the Northern Spotted Owl (NSO), *Strix occidentalis caurina*, a threatened species under the ESA;³ and the decision violates the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321 - 4370h, because BLM failed to demonstrate the purpose and need for the timber harvest, the range of alternatives was inadequate, BLM never meaningfully considered the no action alternative, and it failed to fully consider significant new information related to the NSO.⁴

² All citations are to the 2006 edition of the United States Code.

³ In 1990, the Fish and Wildlife Service (FWS), U.S. Department of the Interior, listed the NSO as a threatened species under the ESA after determining timber harvesting and catastrophic events, such as fire, volcanic eruption, and wind storms, contributed to significant loss and adverse modification of suitable NSO habitat. 55 Fed. Reg. 26114 (June 26, 1990). See 16 U.S.C. § 1532(20) (defining “threatened species” as those which are “likely to become an endangered species within the foreseeable future throughout all or a significant portion of [their] range”).

⁴ The organization also questions BLM’s reliance on outdated standards of the Roseburg RMP with respect to providing for more snags. Cascadia believes that the RMP should have been updated to reflect more current information on the role of snags in providing habitat. Statement of Reasons (SOR) at 15 (citing Cascadia’s initial SOR at 18-22, which the Board rejected because its page length did not comply with the provisions of 43 C.F.R. § 4.412(a)). In the initial SOR at 22, Cascadia argued “BLM must prepare a NEPA-compliant RMP amendment to adopt new standards to replace outdated standards.”

Cascadia’s argument implicates FLPMA’s requirement to “develop, maintain, and, when appropriate, revise land use plans.” 43 U.S.C. § 1712; see 43 C.F.R. § 1610.5-5. Even if it determined to update the RMP for the purpose of re-designating Matrix lands as Reserved lands in which logging and other ground-disturbing activities would be prohibited, BLM could lawfully continue to manage public lands according to existing land use plans during a land use plan’s amendment or revision.” *ONRC Action v. BLM*, 150 F.3d 1132, 1139 (9th Cir. 1998); *Colo. Env’tl. Coalition*, 161 IBLA 386, 396 (2004); *S. Utah Wilderness Alliance*, 163 IBLA 14, 27-28 (2004). BLM correctly rejected Cascadia assertions as outside the scope of the Pilot Project. In any event, the suggestion that BLM is not aware of current scientific thinking regarding certain RMP elements is belied by Cascadia’s citations to the EA. We consider this contention no further.

Background

In 1937, Congress passed the O&C Lands Act, 43 U.S.C. §§ 1181a - 1181j, designating the lands at issue in this case,⁵ among others, “for permanent forest production.” The Act provides that “the timber thereon shall be sold, cut, and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries.” 43 U.S.C. § 1181a. Decades of timber harvests on Federal lands in the Pacific Northwest ensued, during which Late Seccessional Old Growth (LSOG) forests were greatly reduced, leaving homogeneous timber plantations and only those mixed-age stands that resulted from natural disturbances.

The NSO is dependent on coniferous LSOG forests in the Pacific Northwest, which are characterized by dense canopy closure of mature and old-growth trees, abundant logs, standing snags, and live trees of varying size and age. In addition to declining LSOG, experts have more recently identified the barred owl as a growing threat to the NSO because the two species directly compete for habitat and food. *See* 77 Fed. Reg. 71876 (Dec. 4, 2012) (Designation of Revised Critical Habitat for the Northern Spotted Owl).

In 1994, the Secretaries of Interior and Agriculture jointly approved the “Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl,” known as the Northwest Forest Plan (NFP). The NFP is an integral part of the “Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl” (1994 ROD),⁶ which established an approach to forest management to restore and protect LSOG forest-dependent species, the NSO in particular. *See* 1994 ROD, Attachment A. Under the NFP, portions of forests are designated Reserve areas in

⁵ The sale units are situated within secs. 31, 32, and 33, T. 28 S., R. 2 W., secs. 23, 25, and 26, T. 28 S., R. 3 W., and sec. 4, T. 29 S., R. 2 W., Willamette Meridian, Douglas County, Oregon.

⁶ The 1994 ROD was based on the Final Supplemental Environmental Impact Statement on Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Spotted Owl. Most of the land use documents we refer to herein can be found online at <http://www.reo.gov> or at <http://www.blm.gov/or/plans/nwfpnepa/> (last visited on June 2, 2014).

which timber harvest activities are either prohibited or strictly limited to encourage the viability of threatened and at-risk species.

In 1995, BLM incorporated the NFP into the Roseburg District Record of Decision and Resource Management Plan (Roseburg RMP).⁷ Under the Roseburg RMP, O&C lands are designated Matrix. Matrix lands are subject to general forest management and adaptive management, and are allocated for the production of sustained timber yields.

In 2011, FWS revised its Recovery Plan for the NSO.⁸ The Recovery Plan addresses the dominant threats to the NSO, ultimately recommending conserving and restoring older, multi-layered forests across the species' range.

Among other recovery objectives, criteria, and actions to maintain and restore suitable NSO habitat, FWS recommended that Federal land managers consider implementing “active forest management and disturbance-based principles . . . with the goal of maintaining or restoring forest ecosystem structure, composition and processes so they are sustainable and resilient” on Matrix lands. Recovery Plan at III-13. Moreover, managers were urged to

promote spacial heterogeneity within patches and local and regional landscapes, restore lost species and structural diversity (including hardwoods) within the historical range of variability, and restore ecological processes to historical levels and intensities. This includes early-successional ecosystems [in moist forests]. Some of these management actions may degrade spotted owl habitat in local areas in

⁷ On Dec. 30, 2008, BLM updated the Roseburg RMP by incorporating the Western Oregon Plan Revisions (WOPR). *See generally* 76 Fed. Reg. 63720, 63745 (Oct. 13, 2011). The Federal district court vacated the WOPR and reinstated the original RMP. *See Order, Pac. Rivers Council v. Shepard*, No. 3:11-cv-00442-HU, 2012 WL 950032 (D. Or. Mar. 20, 2012). The Roseburg RMP is available at <http://www.blm.gov/or/plans/wopr/exrmp/roseburg/toc.html> (last visited June 18, 2014).

⁸ Section 4(f) of the ESA requires FWS to develop and implement recovery plans to promote the conservation of endangered and threatened species. 16 U.S.C. § 1533(f). A recovery plan sets forth “criteria which, when met, would result in a determination . . . that the species be removed from the list.” *Id.* § 1533(f)(1)(B)(ii). The Revised Recovery Plan is available at <https://www.fws.gov/arcata/es/birds/nso/documents/USFWS2011RevisedRecoveryPlanNorthernSpottedOwl> (last visited June 19, 2014).

the short-term but may be beneficial to spotted owls in the long-term if they reduce future losses of ecosystem structure

Id. at III-14 (internal citations omitted).

FWS noted NSO are sensitive to harvest/thinning activities that occur within their core areas in the short term and therefore land managers are to “generally avoid activities that would reduce nesting, roosting and foraging habitat within the 1.3-mile radius of known nest sites.” See Recovery Plan, III-11, -15. Nevertheless, FWS recognized

that land managers have a variety of forest management obligations and that spotted owls may not be the sole driver in these decisions. Here, active forest management may be necessary to maintain or improve ecological conditions. We support projects whose intent is to provide long-term benefits to forest resiliency and restore natural forest dynamic process[es], when this management is implemented in a landscape context and with carefully applied prescriptions to promote long-term forest health. Examples of active management projects include . . . the *restoration of high quality early seral habitat* It is recognized that these projects may have both short and/or long-term effects to spotted owls and that treatments will be designed to minimize impacts as much as possible in keeping with [the] project’s intent.

Id. at III-45 to III-46 (emphasis added).⁹

Finally, FWS explicitly recommended that any timber harvest should implement ecological forestry principles and that BLM should “[u]se pilot projects and applied management to test or demonstrate [those] techniques and principles. In the near term, to reduce conflict . . . , locate such pilot projects wherever possible in Matrix and Adaptive Management Areas.” *Id.* at III-19 (internal citation omitted).

Secretarial Demonstration Pilot Project for Variable Retention Timber Harvests

Several natural forest ecosystems experts considered how the public lands could be managed for timber production while simultaneously restoring “forest ecosystems to more functional and sustainable conditions,” among them Dr. Jerry F.

⁹ Recovery Action 6: “In moist forests managed for spotted owl habitat, land managers should implement silvicultural techniques in plantations, overstocked stands and modified younger stands to accelerate the development of structural complexity and biological diversity that will benefit spotted owl recovery.” Revised Recovery Plan at III-19.

Franklin and Dr. K. Norman Johnson. Administrative Record (AR) 41 (Franklin, Jerry F., & Johnson, K. Norman, APPLYING RESTORATION PRINCIPLES ON THE BLM O&C FORESTS IN SOUTHWEST OREGON 2 (Nov. 30, 2010)). Franklin and Johnson advocated replicating natural disturbance patterns in a controlled setting to create and maintain complex habitat structures and achieve landscape connectivity.¹⁰ Clearing a stand on moist forest Matrix lands by commercial harvesting would reduce overall stand densities to a more sustainable level, allow tree diameter to increase, shift stand composition toward greater diversity, including a greater proportion of fire- and drought-tolerant species, and create small canopy gaps to encourage understory vegetation development. By retaining large living trees, snags, and logs from a harvested stand, the post-harvest ecosystem would maintain late-successional species and structures, provide early-forest habitat for threatened, endangered, and sensitive terrestrial species, reduce stand densities and vulnerability to wildfire and insects, and protect riparian and aquatic ecosystems. AR 41 at 7-8. This forest restoration model is termed “variable retention regeneration harvesting.” *Id.* at 3.

BLM designed the Roseburg Pilot Project to test the ecological and economic merits of the Franklin and Norman forest restoration strategy on O&C lands. See AR 31 (BLM’s EA Scoping Letter dated June 16, 2011). As more thoroughly discussed in the NEPA section below, BLM proposed to harvest and treat up to 438 acres of LSOG forest lands within a contiguous block of BLM-administered lands using the VRH model.

After preparing the EA,¹¹ followed by a period of public comment, on August 13, 2012, the Field Manager, South River Field Office, Roseburg District, issued the DD (AR 7) and FONSI (AR 8) authorizing implementation of the Pilot Project. Cascadia filed a protest on August 29, 2012 (AR 5). By decision dated December 19, 2012, the Field Manager denied the protest (AR 1). This appeal followed.

Discussion

The EA described the purpose and need of the project as follows:

¹⁰ The program outlined in this pilot project proposal was based in part on analysis described in Franklin, Jerry F. & Johnson, K. Norman, RESTORATION OF FEDERAL FORESTS IN THE PACIFIC NORTHWEST: STRATEGIES AND MANAGEMENT IMPLICATIONS (Aug. 15, 2009), available at <http://www.blm.gov/or/districts/medford/plans/evans/files/FranklinJohnson.pdf> (last visited on June 2, 2014).

¹¹ We cite the digital copy of this document contained on a compact disk in the AR.

The first objective is to demonstrate a [VRH] model designed to create complex, early-successional habitat that will function for up to 30 years and: support birds that depend on flowering and fruiting plants . . . and provide forage and habitat for small mammals (wood rats, deer mice, brush hares, etc.) that may provide greater prey abundance for the northern spotted owl.

The second objective is to design the sale with participation of the U.S. Fish and Wildlife [Service] for the purpose of applying Recovery Actions from the Northern Spotted Owl Recovery Plan.

The third objective is to design and offer timber sales that will provide jobs and contribute timber for manufacturing.

EA at 2-3.

The EA noted that both the large, contiguous block of public lands and surrounding private lands in the 76,000-acre Myrtle Creek watershed lacked early seral (or early successional) stands. See EA at 1-3, 10. Of the estimated 27,000 acres of forest lands administered by BLM in that watershed, 3,850 acres, or 13 percent, constitute early-successional habitat (0-20 years old), with only 1 percent in the 0- to 10-year age range. See EA at 35 (Table 3-3 (10-Year Age-Class Distribution for BLM Managed Lands)). Harvest of 285 acres in 11 sale units at a rate ranging from 7 to 93 acres per unit would be interspersed throughout Matrix lands. *Id.*¹² The harvest would increase the 0- to 10-year age class to 2.4 percent of BLM-administered lands in the Myrtle Creek watershed. EA at 35; see Roseburg RMP at 153.

¹² Of the 76,000 acres comprising the Myrtle Creek 5th-field watershed, BLM administers 31,000 acres, of which 26,730 are considered forest lands. EA at 10. Stands in age-classes less than 50-years-old were eliminated as too young (9,000 acres), and stands aged 110- to 150-years old were considered old-growth and eliminated (13,300 acres). Stands considered “dry site” were eliminated (4,100 acres). *Id.* From the 4,600 acres that remained after applying those criteria, another 1,500 acres were eliminated because they presented major impediments to access, are within the home range of known reproducing NSO pairs, are less than 10" in mean diameter, or contain less than 20,000 board feet per acre. *Id.* Finally, another 800 acres were eliminated because they are either too isolated or too close to designated Riparian Reserves, leaving 349 acres suitable for timber harvest. *Id.* Field and stand examinations verified suitability. *Id.*

Approximately 64 percent of lands in the Myrtle Creek watershed are privately-owned and about half of those lands (32 percent of the entire watershed) are managed exclusively for commercial timber harvest. EA at 10. BLM assumed in its analysis that private timber lands would be harvested on a rotation of 40 to 65 years, each rotation creating early seral forest. However, these lands would not provide quality habitat to species dependent on early seral forests because they are “intensively managed for conifer growth employing practices such as heavy replanting or herbicide application, to the exclusion of competing vegetation that includes flowering plants, shrubs and hardwood trees.” EA at 76.

BLM analyzed the no action alternative under which no timber harvesting would occur (Alternative 1), and the proposed action (Alternative 2), considered as two sub-alternatives that incorporated project design features (PDFs) and best management practices (BMPs). *Id.* at 10-24.

The no action alternative, Alternative 1, provided the baseline against which BLM measured the likely effects of the proposed action. BLM observed that only 1 percent of BLM-administered acres in the Pilot Project area contained 10-year age class trees. As those trees age, the area would contain only dense canopy cover and relatively crowded stands to compete with smaller trees for sunlight, water, and nutrients. Understory vegetation would be repressed, providing dependent species with unsustainable habitat. EA at 38-40.¹³ Dead wood and other fuels would continue to accumulate, thereby increasing the likelihood of damage caused by fire, wind, ice, insects, and disease. *Id.* at 10, 38. Finally, the no action alternative would not provide a predictable and sustainable supply of timber as required by the O&C Lands Act and would not provide jobs for the local community. *Id.* at 40.

Under Alternative 2, BLM proposed to harvest a total of 349 acres of upland stands in the 11 sale units,¹⁴ containing a total of approximately 485 acres. VRH would occur on approximately 206 acres in the 9 units identified in Table 1 of the DD, a total of 1.2 miles of new roads would be constructed, and 7.6 miles of existing roads would be improved, renovated, and/or maintained.

¹³ Early-seral forest habitat is conducive to prey species for the NSO. EA at 63-64, 72-75.

¹⁴ Nine of those units are the subject of this appeal. The units are as follows: 28-2-32A (Unit 1); 28-2-32A [sic] (Unit 2); 28-2-32B (Unit 3); 28-2-32B [sic] (Unit 4); 28-2-32C (Unit 5); 28-2-32D (Unit 6); 28-2-31A (Unit 7); 28-2-25A (Unit 8); and 28-3-23A (Unit 9). DD at 2, Table 1, Unit Description. The remaining units and acreage were included in the Buck Rising VRH timber sale, also considered in this EA, and were the subject of the appeal in IBLA 2012-278.

Alternative 2A would conduct VRH on 206 acres of uplands only.¹⁵ Timber in upland areas would be felled away from Riparian Reserves, and in general no yarding or equipment would be allowed within such Reserves, though special authorization permitting yarding might be granted. *Id.* at 12. The units would retain a “minimum of 20 percent of the pre-harvest stand basal area” by retaining aggregates one-quarter acre or more in size, with the remainder in dispersed retention, *i.e.*, scattered individual trees or groups on less than one-quarter of an acre. *Id.* Aggregates would be distributed throughout the harvest units, and consist of patches of pre-harvest stands, structurally complex forest, older trees, trees with unusual characteristics (deformed boles, cavities, etc.), concentrations of large down wood and snags, special habitat, Riparian Reserves, and patches dominated by hardwood trees. *Id.*

¹⁵ In 28-2-32A (Units 1 and 2), 52 acres would be harvested, and 6 acres would be retention aggregates with green tree retention of 11 trees per acre (TPA) with a minimum of 14" diameter at breast height (DBH), on a total of 71 acres in the units. No Riparian Reserves would be treated.

In 28-2-32B (Units 3 and 4), 14 acres would be harvested and 2 acres would be retention aggregates with green tree retention of 8 TPA with a minimum DBH of 14", on a total of 45 acres in the units. Under Alternative 2A, 29 acres of Riparian Reserves would be treated.

In 28-2-32C (Unit 5), 7 acres would be harvested and 1.4 to 2 acres would be retention aggregates with green tree retention of 7 TPA with a minimum DBH of 20", on a total of 9 acres in the unit. Under Alternative 2B, 29 acres of Riparian Reserves would be treated.

In 28-2-32D (Unit 6), 15 acres would be harvested and 3 acres would be retention aggregates with green tree retention of 8 TPA with a minimum DBH of 20", on a total of 18 acres in the unit. No Riparian Reserves would be treated.

In 28-2-31A (Unit 7), 22 acres would be harvested and 4 acres would be retention aggregates with green tree retention of 18 TPA with a minimum DBH of 14", on a total of 26 acres in the unit. No Riparian Reserves would be treated.

In 28-2-25A (Unit 8), 93 acres would be harvested and 31 acres would be retention aggregates with green tree retention of 25 TPA with a minimum DBH of 20", on a total of 138 acres in the unit. No Riparian Reserves would be treated.

In 28-3-23A (Unit 9), 3 acres would be harvested and 5 acres would be retention aggregates with green tree retention of 26 TPA with a minimum DBH of 20", of 45 total acres in the unit. No Riparian Reserves would be treated. DD, Table 1 (AR Ex. 6-2).

Our summary adds the green tree and DBH data from Table 1 in the DD. There are slight discrepancies between the EA's Table 2-1 at 11 and Table 1 in the DD at 2 that, overall, do not appear to be of consequence to the quality of the environmental analysis.

Harvest would be subject to numerous seasonal restrictions mandated by BMPs or consultation with FWS pursuant to the ESA, including those designed to protect NSO nesting, roosting, and foraging habitat within one-quarter of a mile of known or estimated NSO sites or unsurveyed suitable habitat. *Id.* at 18-19.

Prescribed fire would be applied in all harvest units in the White Castle sale to reduce fuels and mimic natural disturbances. BLM provided for perimeter control lines. Units would be broadcast burned by hand ignition to better control the fire spread, and selective burns would be employed. *Id.* at 19-20.

The EA presented and analyzed reforestation and stand maintenance to achieve mixed species and a variable density of 150 to 200 TPA aged 10 to 20 years, the minimal goal set forth in the Roseburg RMP. Stand density would be monitored and controlled as necessary to promote an “extended period of early-seral condition.” See EA at 21, Table 2-3 (Recommended Species Composition Percentage for Planting).

Alternative 2B also considered VRH on approximately 349 upland acres, and in addition, 21 acres of Riparian Reserves would be treated in the manner described under Alternative 2A.¹⁶ The Riparian Reserves would be treated by variable density thinning to “accelerate or enhance achievement of Aquatic Conservation Strategy objectives and increase habitat diversity” for non-fish species.¹⁷ EA at 22. Thinning would be confined to areas beyond streamside no-treatment zones, with the objective of achieving a relative density of 25 to 30 TPA based on stand conditions, with an average stand canopy cover of 50 percent. *Id.* at 23. BLM planned to use canopy gaps and skips to encourage the development of structural and habitat components. Conifers were to be retained in numbers corresponding to historic percentages in

¹⁶ Riparian treatment under Alternative 2B would occur in Unit 28-3-17A (5 acres), Unit 28-3-17B (7 acres), and Unit 28-3-17C (9 acres). EA at 22.

¹⁷ The Aquatic Conservation Strategy (ACS) is part of the NFP and hence the Roseburg RMP. It is composed of components and objectives for managing “riparian-dependent resources” and seeks “to maintain the existing condition or implement actions to restore conditions” within designated Riparian Reserves on public lands. 1994 ROD at 9; *id.* at B-10 – B-32. The four components of the ACS are key watershed allocations, riparian reserve determinations, watershed analysis, and watershed restoration, which are expressed in more detail as nine objectives. On Mar. 22, 2004, the U.S. Department of Agriculture and DOI issued an ROD to Clarify Provisions Relating to the Aquatic Conservation Strategy. The 2004 ROD was subsequently set aside in *Pac. Coast Fed’n of Fishermen’s Ass’ns v. Nat’l Marine Fisheries Serv.*, 482 F. Supp. 2d 1248, 1251 (W.D. Wash. 2007).

stand composition, and hardwood trees greater than 10" DBH would be prioritized for retention as well. *Id.*

Like Alternative 2A, Alternative 2B would retain structures, organisms, and conditions from the pre-harvest forest stand for incorporation in the post-harvest ecosystem, with the goal of establishing complex early seral forest conditions through the regeneration of trees and other vegetation. Retention can include individual structures (dispersed retention) such as live trees (green trees), down logs and snags, and/or untreated areas (aggregated retention areas or aggregates). *See id.* at 34, 35. The creation of complex early-seral habitat would benefit the NSO and other wildlife species. *See id.* at 83-86, 87-88, 90-91, 92.

The EA next considered how implementing Alternative 2B would affect the current and future condition of resources present or potentially present in the watershed. BLM's analysis included approximately 74 miles of perennial streams and 268 miles of intermittent streams covering about 37,713 acres, of which 12,384 acres are managed by BLM. *Id.* at 103, 109. It also included, for purposes of ACS objectives, the entire Myrtle Creek watershed. EA, Appx. E (Consistency of the Proposed Action with Objectives of the Aquatic Conservation Strategy).

BLM fisheries and hydrology specialists surveyed streams adjacent to and downstream from designated harvest units and designated haul routes. *See* AR 20 (Hydrologist's field notes), 21 (Fisheries Biologist's field notes). The only fish-bearing stream in the Project area has a moderate-to-high gradient with a cobble and gravel streambed and very little fine sediment. EA at 105. Felling trees and hauling timber could disperse sediment into surrounding streams, where it would affect the visibility, foraging ability, and breathing capacity of fish.

The agency did not anticipate that these actions would have any direct or cumulative effects on any fish species inhabiting streams adjacent to or downstream from proposed harvest areas because the harvests would be outside the established riparian area buffer zones. *Id.* at 108-09; *see* AR 42 (Geyer, Nancy A., MYRTLE CREEK WATERSHED ANALYSIS AND WATER QUALITY RESTORATION PLAN, Umpqua Basin Watershed Council, June 2003) at 63-65 (maps illustrating riparian zone classification in the Myrtle Creek watershed).

Consistent with the watershed restoration component of the ACS, BLM stated that the Pilot Project would involve applying prescribed fire to small patches of Riparian Reserve areas. Fire, an important tool for maintaining biological diversity, would promote ecological diversity, create snags, and could increase aquatic productivity by stimulating increased deciduous shrub and plant growth. EA at 118-19. Water quality would not be affected and there would be no cumulative degradation of water quality in the analysis area. *Id.* at 119.

Though roads can increase peak flows by delivering water to the streams faster than roadless areas, the EA concluded that new and existing roads within the analysis area were not likely to increase peak stream flow changes because the road network affected less than 12 percent of the watershed area. *Id.* at 109, 119, 124; *see also* EA at 112 (“Statistically significant increases in peak flows have only been shown when roads occupy at least 12 percent of the watershed.” (citation omitted)).

BLM also analyzed whether the Pilot Project would help maintain and/or restore ecosystem health at the watershed and landscape scales, and considered actions that could be implemented so that habitat for fish and other riparian-dependent species would be protected. *Id.*, Appx. E at 3-7. BLM concluded that the timber harvest would maintain the Project site and surrounding sub-watershed. *Id.* at 7-10. Though the watershed’s aquatic habitat conditions were poor to fair, BLM determined the Pilot Project would foster attainment of ACS objective 1 at both the site and watershed scales, would restore water quality, sediment regime, plant species composition and structural diversity, and riparian habitat, pursuant to ACS objectives 4, 5, 8, and 9, and maintain all other objectives. BLM determined that the proposed action therefore was consistent with the ACS. *Id.* at 11.

BLM considered two other alternatives as reference analyses. Under Reference Analysis 1, commercial thinning and variable density thinning would be conducted only in units under the age of 80 years and only areas smaller than 117 acres in size would be harvested. EA at 24-25. Thinning would primarily remove trees from suppressed and intermediate canopy classes to maximize future timber volume and to encourage development of structural diversity. Thinning would offer minimal opportunity to create diverse, multi-storied stands because the overstory canopy would close quickly, thereby diminishing shrub vigor and survival. BLM stated that this reference analysis could not be selected because it would not create adequate seral-stage habitat. Moreover, the character and size of the logs would greatly limit manufacturing options. Revenues would not cover the costs of sale preparation, and revenues to county government would be negligible. *Id.*

Under Reference Analysis 2, a traditional regeneration harvest method would be used.¹⁸ That harvest type would result in reduced post-harvest tree retention because the Roseburg RMP does not require that any portion of existing habitat remain in lands designated Matrix. *See* 1994 ROD at C-42 (discussing standards for

¹⁸ The Roseburg RMP called for 1,190 acres of regeneration harvest annually on Matrix lands until 2005, when harvests would decline to 530 acres over the next 100 years. Roseburg RMP at 8 (Table R-1, Summary of Land Allocations and Management Actions/Direction).

traditional regeneration harvest¹⁹); Roseburg RMP at 34, 64. A higher post-harvest planting density would also be used, which would shorten the open canopy period. EA at 57. The objective of creating long-lasting, early-seral habitat therefore would not be achieved. Moreover, this alternative would not meet Recovery Plan recommendations, which do not include traditional regeneration harvest and rapid reestablishment of closed canopy conditions. *Id.* at 99.

BLM also acknowledged the barred owl was likely present in the Pilot Project area and that it is a direct threat to the NSO. *Id.* at 64-65 (citing Wiens, J. David, *et al.*, *Barred Owl Occupancy Surveys Within the Range of the Northern Spotted Owl*, JOURNAL OF WILDLIFE MANAGEMENT (2011)).

Lastly, BLM determined the proposed action incorporated relevant portions of the Recovery Plan:

Under the proposed action, harvest would be conducted following principles of ecological forestry as recommended throughout the recovery plan (USFWS 2011a pp. III-11 thru 14, 19, and 20). It would emulate natural disturbance processes through prescriptive actions (USFWS 2011a p. III-13), promoting spatial heterogeneity within patches on local landscapes, and restore lost species and structural diversity within the historical range of variability, including early successional ecosystems (USFWS 2011a pp. III-14 and 18). Additionally, it is consistent with the recommendation to use pilot projects to demonstrate techniques and principles of ecological forestry (USFWS 2011a p. III-19).

EA at 82.

BLM prepared a Biological Assessment (BA) pursuant to section 7(c)(1) of the ESA to analyze the potential effects of the VRH strategy on the NSO and its habitat. AR 15 (BA dated Apr. 27, 2012). BLM's on-the-ground analysis included lands within the home range (1.3-mile radius) of five known and two predicted NSO nest sites on 19,800 acres (76% Federal and 24% private), deemed the "action area." BA at 13, 27. Approximately 11,125 Federal acres in the action area are included in FWS' newly-

¹⁹ The Standards and Guidelines of the NFP require retention of structural components (*e.g.*, down wood, snags, and green trees) in sale units. Retention levels vary by area, but typically include leaving 120 to 240 linear feet of down logs greater than or equal to 20" in diameter per acre, and retaining 15 percent of the area associated with each harvest unit to provide green tree structure.

proposed critical habitat for the NSO. *See* 77 Fed. Reg. at 72053;²⁰ BA at 59-60. BLM noted that the barred owl's range likely overlaps NSO home ranges and poses a threat to the NSO. BA at 36-37.

BLM measured the effects logging would have on NSO home range, core area, and nest patch scales²¹ based on the "ability of the habitat to function post-treatment." *Id.* at 79. Tree felling would significantly reduce canopy closures to 10-15 percent in the areas to be harvested, reducing NSO habitat at each scale. *Id.* However, the harvest would not reduce overall levels of suitable habitat within the five known or presumed home ranges below the threshold of 40 percent suitable habitat established by FWS. *Id.*²²

Though the Pilot Project's post-harvest, open-canopy conditions would allow residual trees in the dispersed retention areas to develop important NSO habitat that

²⁰ The proposed critical habitat was located in the Klamath East Critical Habitat Unit, Subunit KLE 2. The function of proposed Subunit KLE 2 is to provide east-west connectivity and to contribute to the demographic stability of the area. The rule became final on Dec. 4, 2012, with an effective date of Jan. 3, 2013. 77 Fed. Reg. 71876.

²¹ These areas consist of public and private lands. The home range is a 1.3-mile radius around an activity center (*i.e.*, a nest site). To ensure NSO viability, home ranges should be a minimum of 40 percent of suitable habitat. The core area is a 0.5-mile radius centered on the activity center, which represents the area most heavily used during the nesting season, and should contain no less than 50 percent of NSO suitable habitat. The nest patch is a 300-meter radius around the activity center. EA at 62.

²² In the Blue Oyster Cultus home range, 71 percent is suitable habitat and the core area contains 82 percent. Harvest would reduce suitable habitat levels to 69 percent at the home range, while 82 percent suitable habitat remains in the core area. The Curtin Creek home range, 76 percent is suitable habitat and 93 percent of the core area is suitable. Harvest would reduce suitable habitat levels in the home range and core area to approximately 74 and 91 percent respectively. In the Deadman Mountain home range, suitable habitat is presently at 50 percent in the home range and 64 percent in the core area. Harvest would reduce suitable habitat levels in the home range to 49 percent, and reduce suitable habitat levels in the core area by 1 percent. The Roseburg Estimated contains 76 percent suitable habitat in the home range and 93 percent in the core area. Timber harvest would reduce suitable habitat by 2 percent for each scale. The Cultus Estimated 67 percent home range suitable habitat and 74 percent core area suitable habitat. The harvest would leave these percentages unchanged. No nest patches would be affected by the proposed project. BA at 56 (Table 9).

provides wider and deeper canopies and increased limb girth over the long-term, the immediate impacts of loss of NSO habitat caused BLM to conclude that Project activities are likely to adversely affect the NSO in its home ranges and one core area. *Id.* at 79. BLM came to the same conclusion regarding proposed critical habitat. *Id.* at 81-87.

Based upon its review of BLM's BA, FWS issued a June 4, 2012, Biological Opinion, No. 01EOW00-2012-F-0094 (BO),²³ concluding that, while expected operations are likely to adversely affect the NSO, the Project was not likely to jeopardize the continued existence of the NSO or result in the destruction or adverse modification of its existing or proposed critical habitat. *See* AR 10 (BO) at 72-73; AR 9 (BO Errata) at 2. FWS determined the Project would not result in an "incidental take" of NSO, and stated the proposed action adequately applied relevant recommendations of the Recovery Plan. BO at 69-73.

Appendix 2 of the BO contained FWS' "Additional Analyses of Proposed Spotted Owl Critical Habitat Effects Determination." *Id.* at 90. FWS delineated a 500-acre radius around the center of each harvest unit containing existing and proposed NSO critical habitat and selected the three units where the largest quantity of suitable NSO habitat was affected, and also selected the units containing the least amount of suitable NSO habitat. FWS found that, while the Pilot Project would be implemented only in the northeastern edge of critical habitat Subunit KLE2 (and not in any other nearby habitat subunits or in one of the few blocks of contiguous BLM land), habitat contiguity or connectivity to other critical habitat areas was not likely to be decreased by harvest activities to measurably affect NSO movements through the proposed action area, "because the affected landscape will still be over 90% dispersal or better quality habitat post project implementation." *Id.* at 91. Moreover, "portions of the stands proposed for harvest are less than 110 years old, although there are older components . . . ; many if not all of those will be protected in aggregate retention blocks or with dispersed retention" to contribute to NSO demographic support. *Id.* FWS concluded:

[T]he conservation value, in terms of the stated conservation objective for the subject [Critical Habitat Unit] subunit (connectivity and demographic support), will not be significantly altered at the subunit scale by the proposed action. Therefore we conclude the proposed action is not likely to destroy or adversely modify proposed critical habitat for the spotted owl.

²³ A BO is a written statement determining whether the proposed action "is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat." 50 C.F.R. § 402.14(g)(4).

Id. at 92.

After the proposed critical habitat designation became final in December 2012, BLM again consulted with FWS to determine whether the conclusions regarding impacts on proposed critical NSO habitat would be altered by the final critical habitat designation. FWS found that the effects from the proposed action are substantially similar to those in the BO and therefore a new BO was not necessary. *See* AR 2 (Memorandum from FWS to BLM dated Jan. 11, 2013).

Cascadia Has Not Shown a Violation of the ESA

[1] According to Cascadia, BLM's reliance on the BO was incorrect because "the White Castle project will adversely modify critical habitat," which is prohibited by the ESA. SOR at 2. In support of this claim, Cascadia maintains "[e]xtinction risk is increased by this loss of habitat," and "any loss of [NSO] habitat will likely . . . result in further reductions in Spotted Owl populations," in violation of the ESA. SOR at 15, 19. To the extent Cascadia challenges the merits of FWS' jeopardy assessment, that matter is clearly beyond the Board's delegated authority. This Board has no authority to review the substantive merits of a BO. 212 DM 13.8D, Delegation of Authority to the Office of Hearings and Appeals (eff. 6/1/2012 #3946); Memoranda from the Secretary, Department of the Interior, to the Assistant Secretary, Policy, Management and Budget dated Jan. 8 and Apr. 20, 1993; *S. Utah Wilderness Alliance*, 128 IBLA 52, 60-61 (1994); *see also Backcountry Against Dumps*, 179 IBLA 148, 180-81 (2010); *Wyoming Outdoor Council*, 159 IBLA 388, 402-03 (2003); *F. Duane Blake v. BLM (On Reconsideration)*, 156 IBLA 280, 281-82 (2002). Our task is only to determine whether BLM reasonably relied upon the BO to fulfill its obligations under NEPA and the ESA, and we consider Cascadia's complaints in that light.

Section 7(a)(2) of the ESA prohibits BLM from authorizing actions that will cause the "destruction or adverse modification" of designated NSO critical habitat. 16 U.S.C. § 1536(a)(2). However, consultation with FWS does not automatically establish BLM's compliance with its substantive obligations under the ESA; the responsibility for complying with the ESA ultimately falls on BLM as the action agency. *See* 16 U.S.C. § 1536(a)(1)-(2). On the other hand, as the Ninth Circuit succinctly expressed it, an agency is not required to "reinvent the wheel and conduct an independent jeopardy analysis when nothing more is offered than evidence and arguments already considered by the consulting agency," in this case BLM. *Aluminum Co. of Am. v. Adm'r, Bonneville Power Admin.*, 175 F.3d 1156, 1161 (9th Cir. 1999).

To show BLM's reliance upon a BO was unreasonable, the appellant must "provide [a] substantive basis for disputing the reasonableness of the [FWS] analysis." *Klamath Siskiyou Wildlands Ctr.*, 157 IBLA 322, 331 (2002); *see San Luis &*

Delta-Mendota Water Auth. v. Salazar, 760 F. Supp. 2d 855, 967 (E.D. Cal. 2010) (requiring the challenging party to show “new information that was unavailable to” FWS that would give the acting agency “a basis for doubting the expert conclusions in the BOs those agencies prepared”) (quoting *City of Tacoma v. Fed. Energy Regulatory Comm’n*, 460 F.3d 53, 76 (D.C. Cir. 2006)), *rev’d on other grounds*, 747 F.3d 581 (9th Cir. 2014); *see also Pyramid Lake Paiute Tribe v. U.S. Dep’t of the Navy*, 898 F.2d 1410, 1415 (9th Cir. 1990).

In the BO, FWS considered the BA’s findings and conclusions and determined the timber harvest may have short-term adverse effects, but was not expected to adversely modify NSO critical habitat. *See* 50 C.F.R. § 402.14(g)(4). Cascadia has presented no information or data that was not available to BLM and FWS or was not considered, either in the BA or when the BO was prepared, that would furnish reason to find BLM should have rejected the BO’s findings and conclusions in fulfilling its obligations under NEPA or the ESA. Instead, Cascadia presents its own conclusory disagreements regarding the timber sale’s short- and long-term effects on the NSO. *See, e.g.*, SOR at 20 (Logging “is evidence of adverse modification of critical habitat.”) Cascadia seems to argue that BLM should have reached a different conclusion than FWS did in the BO. *See* SOR at 1-3. To accept this argument would essentially nullify section 7(a)(2)’s consultation requirements when FWS “is far more knowledgeable than other federal agencies about the precise conditions that pose a threat to listed species, and . . . in the best position to make discretionary factual determinations about whether a proposed agency action will create a problem for a listed species. . . .” *City of Tacoma*, 460 F.3d at 76 (citing *Bennett v. Spear*, 520 U.S. 154, 169-170 (1997)). Moreover, Federal actions may adversely affect a protected species or its habitat without placing either in jeopardy within the meaning of the ESA. *See Butte Envtl. Council v. U.S. Army Corps of Engineers*, 620 F.3d 936, 948 (9th Cir. 2010). This is because

[a]dverse effects on individuals of a species or constituent elements or segments of critical habitat generally do not result in jeopardy or adverse modification determinations unless that loss, when added to the environmental baseline, is likely to result in significant adverse effects throughout the species’ range, or appreciably diminish the capability of the critical habitat to satisfy essential requirements of the species.

Id. (quoting U.S. Fish & Wildlife Serv. & Nat’l Marine Fisheries Serv., ENDANGERED SPECIES CONSULTATION HANDBOOK: PROCEDURES FOR CONDUCTING CONSULTATION AND CONFERENCE ACTIVITIES UNDER SECTION 7 OF THE ENDANGERED SPECIES ACT 4-34 (1998)). Thus, BLM’s adverse effect determination, *i.e.*, its finding that the timber sale would destroy critical habitat, does not establish a violation of the ESA. We find BLM was justified in relying on the BO. *City of Tacoma*, 460 F.3d at 76.

Next, Cascadia claims that the timber sale violates the ESA because the project does not comply with the Recovery Plan for the NSO. SOR at 4; *id.* at 15-19 (logging will not comply with the Recovery Plan's measures for managing the barred owl because forest reduction will increase NSO and barred owl competition), 20 ("Logging forests that are soon-to-be suitable [NSO habitat] will conflict with the goal of [NSO] habitat recruitment."). Cascadia's challenge is belied by both the law and the facts of record.

Section 4 of the ESA addresses "recovery plans" that are to guide the direction, strategy, and benchmarks that will enhance species recovery so that ESA protection is no longer needed. 16 U.S.C. § 1533(f). While FWS prepares and issues a recovery plan, it is agencies that must "carry[] out programs for the conservation of endangered species." 16 U.S.C. § 1536(a)(1). Nevertheless, a recovery plan, standing alone, does not have the force of law; it is for guidance purposes only. *Id.* § 1533(f); *Ctr. for Biological Diversity v. BLM*, 746 F. Supp. 2d 1055, 1103 (N.D. Cal. 2009), *vacated in part*, 2011 WL 337364 (N.D. Cal. Jan. 29, 2011); *Biodiversity Legal Found. v. Norton*, 285 F. Supp. 2d 1, 13 (D.D.C. 2003) ("Recovery Plan was merely a guideline, which [the agency] had discretion to follow.").²⁴ While BLM must take a recovery plan into consideration when assessing whether a project will comply with the ESA's overarching purposes, the agency has no legal obligation to adopt, as a part of its project approval, every recommended action and criterion set forth in such a plan.

In this case, there can be no serious question about the role the Recovery Plan played in BLM's analysis of the proposed action. Not only did BLM extensively consider the Recovery Plan's guidance when analyzing the proposed action, but the agency designed the project "for the purpose of applying Recovery Actions from the Northern Spotted Owl Recovery Plan." EA at 2. BLM actually adopted the Plan's ecological forestry principles and techniques to help, not hinder, the NSO's long-term persistence. Cascadia's arguments to the contrary are rejected.

Cascadia Has Not Shown a Violation of Survey and Manage Requirements

Cascadia argues BLM failed to survey for red tree voles (*Arborimus longicaudis*), an NSO prey species, in portions of stands that may qualify for survey, and that the Decision "did not adequately respond to this argument." SOR at 24. Cascadia alleges

²⁴ FWS has reported to Congress that "[i]mplementation of all recovery tasks identified in a recovery plan is not assured by publication of the plan." U.S. Fish & Wildlife Service, REPORT TO CONGRESS ON THE RECOVERY PROGRAM FOR THREATENED AND ENDANGERED SPECIES (1996). This document is available at <http://www.fws.gov/endangered/esa-library/pdf/1996-1.pdf> (last visited on June 2, 2014).

BLM looked only at the stand level instead of at the portion-of-a-stand level, and that this practice violated the Survey and Manage Guidelines under the NFP component of the Roseburg RMP. *Id.* Cascadia points to the survey effort of an interested citizen group, the Northwest Ecosystem Survey Team (NEST). NEST reported finding an additional 22 nest trees in Unit 28-3-25A. *See* AR 22 (Non-High Priority Designation (NHP Designation)) at unpag. 5; AR 27 (NEST Red Tree Vole Survey Results and Statement of Qualifications) (according to the organization, “NEST volunteers have been trained by biologists or professionals working for biologists. NEST volunteers receive about 40 hours of training to locate and identify red tree vole nests.”)²⁵ NEST asserted that Unit 28-2-31A, a 9-acre tract containing 3 harvestable acres, met the Survey and Manage criteria and reported several red tree vole nest trees there. BLM discounted this information because its biologists determined the Unit did not possess the criteria for red tree vole habitat, as enumerated in the Survey Protocol. Decision at 38; NHP Designation at unpag. 6.

The NFP’s Survey and Manage Guidelines are intended to help maintain certain species’ habitat on Federal lands. These directives require BLM to conduct site-specific, pre-habitat-disturbing surveys for about 400 rare and/or isolated species to ensure they persist. The red tree vole is a Survey and Manage species.²⁶ *See* 1994 ROD at C-4 to C-6, C-59 to C-61.²⁷ Under the 2000 FSEIS/2001 ROD, the red tree

²⁵ There is nothing in the record that shows who those professionals are, whether they supervised their volunteers’ on-the-ground activities, the nature of the volunteer training that was provided, or what survey protocol was employed. Indeed, BLM noted in its Survey and Manage Report that:

It is not known what criteria they used to select trees for climbing, and their reported sites have not been climbed by agency personnel for verification. Additionally, their training, their credentials, and the chain of custody of the samples are self-reported and have not been verified. For these reasons, their reported site locations are included here for informational purposes, but are not considered to be protocol survey data.

NHP Designation at unpag. 6.

²⁶ The red tree vole is also a BLM-designated sensitive species. That designation requires BLM to ensure that its actions conserve the species and its habitat and avoid contributing to the need to list the species as a threatened or endangered species under the ESA. *See* BLM *Manual*, §§ 6840.01, 6840.02, 6840.06, 6840.2 (Rel. 6-125 (12/12/2008)); *see also* Roseburg RMP at 42 (“Retain habitat of candidate, bureau sensitive, and assessment species where disposal would contribute to the need to list the species” under the ESA.).

²⁷ In 2000, the FS and BLM published a Final Supplemental Environmental Impact
(continued...)

vole has been classified as a Category C species; it relatively uncommon, but “not all known sites or population areas are likely to be necessary for reasonable assurance of [the species’] persistence.” 2000 FSEIS/2001 ROD, Attach. 1 (Standards and Guidelines for Survey and Manage and Management Recommendations) at 10.

To “manage habitat for the species on sites where they are located,” BLM is to compose Survey Protocols and Management Recommendations for each Survey and Manage species. 1994 ROD at C-5. A team of BLM experts designed the October 2002 *Survey Protocol for the Red Tree Vole*, version 2.1 (Survey Protocol); “to ensure a high probability of finding red tree vole nests across the species’ range.” Survey Protocol at unp. 13.²⁸ This protocol sets out three criteria for determining when to conduct pre-disturbance surveys, all of which must be met to trigger a survey.²⁹ BLM determined which forest distribution zone the Project area is in, identified which of the sale units contained trees of the applicable size (18" or more DBH) with a canopy closure greater than 60 percent, and acknowledged the Pilot Project would result in the loss and modification of suitable habitat for the red tree vole by removing overstory trees. NHP Designation at unp. 2; Survey Protocol at unp. 5-6. “If the stand does not meet the minimum diameters described above, then surveys are not needed.” Survey Protocol at unp. 6. Only Unit 28-3-25A met all three criteria. NHP Designation at unp. 2.

Once surveyed, red tree vole sites are managed to protect the species’ nests from human activities. *Red Tree Vole Management Recommendations* (Version 2.0)

²⁷ (...continued)

Statement for Amendment to the Survey and Manage, Protection Buffer, and Other Mitigation Measures Standards and Guidelines (2000 FSEIS) and issued the corresponding ROD in 2001 (2001 ROD). The 2000 FSEIS/2001 ROD remains in effect. See *Conservation NW. v. Sherman*, 715 F.3d 1181, 1183 (9th Cir. 2013); *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549 (9th Cir. 2006); *NW Ecosystem Alliance v. Rey*, 2006 WL 44361 (W.D. Wash. Jan. 9, 2006).

²⁸ This document is available at http://www.blm.gov/or/plans/surveyandmanage/files/13-red-tree_vole_V2-1_enclosed.pdf (last visited on June 2, 2014).

²⁹ The criteria are: the project is within the known or suspected geographic range of the species; suitable habitat that may contribute to a reasonable assurance the species will persist in the project area; and the proposed activity has the potential to cause significant negative effect on the species’ habitat or the persistence of the species at the site. Survey Protocol at unp. 4.

(Management Recommendations)³⁰ directs BLM to delineate habitat areas by grouping nest trees within 100 meters of each other into a nest cluster and then adding a buffer zone equal to one-tree height around the nest cluster area. Management Recommendations at 14. Management activities within a habitat area may “include retention of residual, large, live trees and promotion of conifer growth in the understory,” but the Recommendations otherwise advocate against any logging. *Id.* at 15.

Subject to Management Recommendations, the Survey and Manage standards allow BLM to designate nesting structures as non-high priority sites on a case-by-case basis. Non-high priority sites need not be surveyed. *See* 2000 FSEIS/2001 ROD, Attach. 1 (Standards and Guidelines for Survey and Manage and Management Recommendations) at 10. BLM must consider certain criteria before it can designate vole habitat as non-high priority. Specifically, it must determine through interagency database consultation whether a “[m]oderate-to-high number of likely extant sites/records” is likely at the watershed level; whether Reserve land allocations actually or potentially possess a high proportion of vole sites and habitat; whether those sites are relatively well distributed within the watershed; and whether the land use plan provides reasonable assurance of species persistence. *Id.* at 5; *see also* Instruction Memorandum No. OR-2012-036 (Identification of Non-high Priority Sites: Four-step Process for Category C and D Species) (Mar. 7, 2012). If “most of these criteria . . . [are] met to indicate that concern for persistence does not exist,” then BLM may designate a site as non-high priority, with the concurrence of FS and FWS. 2000 FEIS/2001 ROD, Attach. 1 at 10.

BLM conducted a survey of red tree voles in Unit 9 (28-3-25A). NHP Designation at unp. 2; AR 25 (Red Tree Vole Survey Documentation) at 1-64. That unit consists of 138 acres, 93 of which are to be harvested. Following the Modified Line Transect Survey Method described in the Survey Protocol, BLM completed ground studies and tree climbing efforts on 100 percent of the unit. NHP Designation at unp. 4; *see* Survey Protocol at unp. 8-12. BLM biologists identified a total of 66 vole nests. NHP Designation at unp. 3.

Pursuant to the Management Recommendations and based on the data it had collected, BLM designated 9 red tree vole sites (7 active, 2 inactive) within Unit 28-3-25A. Seven management areas were created to protect the 7 active sites, and these include a total of 17 acres, 15 of which are in the sale unit. NHP Designation at 5; AR 23 (BLM Biologist’s Survey Summary for Unit 25A (Survey Summary)) at 4. BLM designated habitat areas 1, 3, 5B, 6, and 7 as non-high priority sites. BLM made

³⁰ This document is available at <http://www.blm.gov/or/plans/surveyandmanage/files/mr-rtv-v2-2000-09-att1.pdf> (last visited on June 2, 2014).

this determination after following the analytical steps set out in multi-agency species databases. Those databases include the numbers and distribution of known vole sites in the Myrtle Creek and adjoining Little River watersheds, and take into account the general habitat condition in both surveyed habitat areas and adjacent lands. BLM found that over 50 percent of Federal lands capable of supporting forests within the watersheds provide vole habitat. NHP Designation at unp. 9-11. BLM noted that technical specialists and managers had concluded red tree voles are well-distributed in Federally-managed lands, determining there was a “0 percent likelihood of [the species] extirpation in the [NFP] Area.” *Id.*

Lands containing high priority red tree vole habitat include 20 harvestable acres and 21 aggregate retention acres. About 34 acres outside of Unit 28-3-25A were considered one habitat area subject to Management Recommendations. NHP Designation at unp. 15. NEST survey data was included to protect 41 nest trees situated on harvestable lands (32 nest trees identified by BLM and 9 identified by NEST). *Id.* at 14. Aggregate retention blocks within the unit would protect an additional 11 nests (7 identified by BLM and 4 identified by NEST). *Id.* FWS concurred with BLM’s Survey and Manage Report by memorandum dated March 29, 2012. *See* Ex. 21 at 1. FS also concurred. *See* AR at 21 (e-mail from FS to BLM (“Attached is the RTV [red tree vole] document with my electronic signature.”); AR 22 at 17 (Survey and Manage Report electronically signed by FS on Mar. 27, 2012).

As we have observed innumerable times, BLM is entitled to rely upon the professional opinion of its technical experts where that opinion is reasonable and supported by the evidence. *W. Watersheds Project*, 184 IBLA 106, 121 (2013) (citing *S. Utah Wilderness Alliance*, 182 IBLA 377, 386 (2012)). BLM’s determination, as detailed in our discussion above, is amply supported by the record. Moreover, it appears BLM considered NEST’s findings, despite questions about the qualifications and training of volunteers and the methods they used. NHP Designation at unp. 14-15; *cf.* Decision at 24. In these circumstances, Cascadia has not shown that BLM misconstrued Survey and Manage mandates, wrongly applied the Survey criteria, or that there was error in its survey method. Cascadia simply objects. Mere disagreement does not suffice to discharge an appellant’s burden on appeal. *See, e.g., Mark Patrick Heath*, 181 IBLA 114, 137 (2011). BLM complied with its obligations under the NFP component of the Roseburg RMP.

Cascadia Has Not Shown a Violation of NEPA

According to Cascadia, BLM failed to show a need for more early seral forest habitat, violating an unspecified section of NEPA. “[T]he landscape already contains adequate early seral habitat resulting from ongoing clearcuts on the non-federal part of the checkerboard, as well as past clearcuts on federal land.” SOR at 5; *see id.* at 8 (“[T]he need to restore complex early seral habitat . . . needs to be validated . . .”).

Cascadia also asserts that natural processes diminish the need to create early seral forests artificially: “Natural disturbance processes continue to operate across the landscape, including fire, wind, ice storms, landslides, floods, volcanoes, native insects, native disease, etc. Each of these helps create various sized patches of early seral forests every year.” *Id.* at 9, 13. “The older forest in this project are [sic] doing just fine, developing along a pathway toward complex old growth habitat. Given time, the trees will grow, some trees will die and recruit dead wood habitat, also creating small canopy gaps that bring in light to enhance the understory. No logging is needed for these developments to occur.” SOR at 21.³¹

[2] Applicable regulations implementing NEPA specify that an EA must include brief discussions of “[t]he need for the proposal.” 43 C.F.R. § 46.310(a)(2); *see* 40 C.F.R. § 1508.9. Clearly, the agency must state the underlying purpose and need to which it is responding. However, Cascadia does not show, and we are not aware of, any codified requirement “that the statement of purpose and need be objectively verifiable or supported by scientifically verifiable evidence.” *Backcountry Against Dumps*, 179 IBLA 148, 165 (2010); *see Powder River Basin Res. Council*, 183 IBLA 242, 248 (2013) (“Agencies enjoy considerable discretion to define the purpose and need of a project.”) (internal quotations and citation omitted).

We are unable to find that BLM’s purpose and need statement was unreasonable or unsupported by the AR in this case. *See City of Alexandria v. Slater*, 198 F.3d 862, 867 (D.C. Cir. 1999) (“The proper question to ask at the outset of a NEPA inquiry is not whether the [government] focused on environmental goals but rather . . . whether its stated objectives were reasonable.”). The record demonstrates that the purpose and need statement was derived from a thoughtful, deliberative effort to balance logging and current environmental concerns. BLM clearly explained why it excluded non-federal land in considering the need. Decision at 7, 9. It equally clearly explained the data it used to conclude early seral/early successional habitat is needed. *Id.* at 5-9. That data confirms BLM administers 70 percent of the lands in three

³¹ Cascadia maintains there are no species dependent on early seral forests that are listed as threatened or endangered under the ESA, and argues this circumstance proves that abundant early successional habitat presently exists. *Id.* at 6-7. The organization does not offer any evidence or explain how it measured early seral forest to support this contention. We note that BLM has identified endangered species that are dependent on early seral habitat. Decision at 7. BLM draws a distinction between early seral *forest* (a plant community dominated by conifer trees) and early seral or early successional *habitat* (a plant community of deciduous and conifer trees and shrubs with grasses, herbs, and forbs). *Id.* (citing EA at 2). In any case, we would require much more than a naked assertion to accept the proposition that the absence of an endangered species dependent on early seral habitat proves that “a lot” of such habitat presently exists. SOR at 6.

watersheds (approximately 300,000 acres), the Project area is not checkerboard ownership, so there are no nearby clearcuts to compromise Project goals, 27 percent of the land is under 30 years old, and 1 percent is under 20 years old. *Id.* at 6 (citing EA at 35, Table 3-3). We find the record contains sufficient data to support the need for the proposed action. See EA at 1-3, 10, 34-35, 44-45, 63-65, 72-75, 83-88, 90-92 (explaining the need for early seral habitat). In such circumstances, this Board properly defers to BLM's discretionary authority and expertise in evaluating the need for the action proposed and the objectives to be accomplished by implementing it.

Moreover, Cascadia cannot refuse to view BLM's purpose and need in light of Congressional objectives under the O&C Lands Act. See, e.g., *League of Wilderness Defenders–Blue Mountains Biodiversity Proj. v. U.S. Forest Serv.*, 689 F.3d 1060, 1070 (9th Cir. 2012) (considering project's enabling statute to determine reasonableness of purpose and need statement); *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991); see *City of Las Vegas*, 184 IBLA 13, 26 (2013); see also Roseburg RMP at 8. Simply put, BLM's purpose and need statement was adequate – Cascadia's disagreement with BLM's objectives does not make it any less so.

Nor do we find any merit in Cascadia's related contention that BLM failed to consider reasonable alternatives to creating early seral/early successional habitat. According to Cascadia, BLM can meet its objectives and avoid logging owl habitat "by conducting variable density thinning . . . in dense young planted stands." SOR at 11; *id.* at 13. Cascadia instead insists BLM should have focused on "over abundant stands in middle 30-80 years old [sic]. Some of those middle stands can be used to address . . . the deficit of complex young forests." SOR at 22. As for BLM's goal of creating an income-generating project, "mills that remain dependent on large logs from mature & old-growth forests should grow[] those trees themselves." SOR at 14.

Among other requirements, NEPA mandates that BLM "study, develop, and describe appropriate alternatives to recommended courses of action." 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1508.9(b) (an EA "[s]hall include brief discussions . . . of alternatives as required by section 102(2)(E)"); see *S. Utah Wilderness Alliance*, 182 IBLA 377, 390 (2012), and cases cited. Appropriate alternatives are those that will accomplish the project's intended purpose, are technically and economically feasible, and will avoid or minimize adverse environmental impacts. See 40 C.F.R. § 1500.2(e); *Biodiversity Conservation Alliance*, 183 IBLA 97, 124 (2013). Alternatives that do not advance the purpose of BLM's proposed project will not be considered reasonable or appropriate. A "rule of reason" governs the selection of alternatives, both as to which alternatives an agency must discuss and the extent to which it must discuss them. *S. Utah Wilderness Alliance*, 182 IBLA at 390, and cases cited.

Despite Cascadia's assertion to the contrary, BLM plainly discussed thinning in Reference Analysis One. However, this action would not advance the Project's

purpose and need, *i.e.*, to create early seral habitat and to provide jobs and contribute timber for manufacturing. Thinning did not qualify as a reasonable or appropriate alternative because it did not meet the ecological restoration principles to be tested and the character and size of thinned logs would result in reduced timber-related employment and limited manufacturing options. See EA at 24-25. While Cascadia certainly has a differing opinion as to how BLM should manage its Federal lands in this case, the organization has not shown any violation of section 102(E) of NEPA. See *Klamath-Siskiyou Wildlands Ctr.*, 182 IBLA at 299-300, and cases cited; *S. Utah Wilderness Alliance*, 152 IBLA 216, 224 (2000) (“The fact that a party may favor an alternative other than that adopted by BLM does not render the action taken by BLM erroneous.”). Cascadia has not shown that thinning is an alternative that would satisfy the Pilot Project’s purpose and we therefore find no error in BLM’s NEPA analysis.

Cascadia next asserts BLM’s decision to approve the timber sale violated NEPA because the agency inadequately considered the positive environmental impacts selecting the no action alternative would have on the surrounding environment. Cascadia argues the no action alternative would, among other things, protect remaining NSO suitable habitat and allow the forest to expand and restore itself naturally. SOR at 4, 15-19.

[3] Failing to implement a no action alternative is not *per se* a ground for error. Cascadia fails to understand that the no action alternative is included in an environmental document to provide an analytical benchmark to compare existing resource conditions and the potential impacts of the proposed action. See *Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1065-66 (9th Cir. 1998) (holding that, in a proposed timber sale, a no-action alternative “is required within all NEPA analyses to provide a benchmark to compare outputs and effects”). The no action alternative is rarely an action alternative simply because it does not meet or further the purpose and need for a project; it is used to ensure an agency has taken a “hard look” at the proposed action’s environmental consequences. See *id.* (stating that the FS’ decision to reject the no action alternative was reasonable in light of the proposed action’s goal to create timber-related employment). There is no requirement to consider alternatives proposing actions for purposes that are fundamentally inconsistent with the action BLM has determined is needed in a given circumstance. As Cascadia cannot show how taking no action would meet BLM’s stated goals and objectives, the argument is appropriately rejected. See *Bark (In re Rusty Saw Timber Sale)*, 167 IBLA 48, 79 (2005).

Finally, Cascadia claims BLM violated NEPA by failing to disclose and discuss significant new information regarding the Pilot Project’s effect on interspecies competition between the NSO and the barred owl. In making this claim, Cascadia ignores applicable law, its burden of proof, and the evidence of record.

NEPA requires BLM to take a hard look at new information or circumstances concerning the environmental effects of the proposed action if either occurrence “raise significant new information relevant to environmental concerns.” *Montana Trout Unlimited*, 178 IBLA 159, 168 (2009) (quoting *Coalition of Concerned Nat’l Park [Service] Retirees*, 169 IBLA 366, 375). While Cascadia identifies the presence of the barred owl and competition for habitat and prey as a concern, it notably has not shown that the presence and impact of the species was ignored, nor has it convincingly shown that BLM errs in pursuing the creation of complex early successional habitat to create more of the habitat and prey for which both species compete. Our review of the record shows that BLM acknowledged the barred owl as a threat to the NSO and understood the likely relationship between reducing suitable NSO habitat and increasing direct competition between the NSO and barred owls. See BA at 36-37; EA at 64-65. The record further confirms that managing the barred owl is part of the Revised Recovery Plan considered by BLM. BA at 42. In these circumstances, Cascadia cannot establish that the presence of the barred owl in the Project area presents “a seriously different picture of the likely environmental effects of the proposed action” not considered in the EA. *Forest Guardians*, 170 IBLA 80, 96 (quoting *Wisconsin v. Weinberger*, 745 F.2d 412, 420 (7th Cir. 1984)). Accordingly, Cascadia has failed to show BLM should have prepared a supplemental NEPA analysis before it could authorize the Pilot Project. BLM has met its procedural obligations under NEPA.³²

³² Cascadia advances several other conclusory arguments, which, because of their cursory nature, require little discussion. For example, Cascadia asserts this timber sale required the preparation of an EIS. See SOR at 19. Cascadia’s SOR also contains several sentences relating to BLM’s “incomplete and inadequate” carbon and climate change analysis assessing the effects timber harvest would have on carbon release and storage. See SOR at 28. More than a handful of statements is required to demonstrate error in the analysis and reasoning set forth in the EA at 153 (Table 3-27, Effects of the Alternatives and Reference Analyses on Carbon Release and Storage) and Appx. F (Carbon Storage/Release Analytical Methodology). Cascadia’s view that it was error to compare the pre-harvest amount of carbon storage with a predicted post-harvest amount instead of comparing the proposed action to the no action alternative does not serve to establish that a “very different analysis” is involved or that “BLM is doing it wrong.” SOR at 29. Without a more thorough explanation regarding the perceived distinction between the analysis that was conducted and the process it posits, Cascadia has not shown a qualitative difference or its significance to the merits of the EA’s findings and conclusions. This Board has no duty to guess, find, or formulate arguments not adequately communicated by an appellant. *W. Watersheds Project*, 184 IBLA at 121-22.

Conclusion

We find no basis for disturbing BLM's Decision. While Cascadia clearly abhors BLM's decision to permit the White Castle VRH timber sale, impassioned disagreement does not demonstrate reversible error. *See W. Watersheds Project*, 184 IBLA at 121, and cases cited. In *Alan Winter*, 62 IBLA 299, 302 (1982), we stated that this Board cannot set aside BLM's timber sale decision where

appellants' underlying wish is simply that this Board will order appellants' recommendations substituted for the actions and decisions of BLM, which has legal responsibility therefor. Mere disagreement with BLM timber management policies or actions, where, as here, the position of disagreement has only *arguable* basis, does not alter the Board's general obligation to rely upon BLM's expertise and to give deference to action it takes pursuant to defined statutory authority, where BLM's determinations are supportable.

Our holding in *Winter* squarely applies here.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision is affirmed.

// original signed _____

T. Britt Price
Administrative Judge

I concur:

// original signed _____

Christina S. Kalavritinos
Administrative Judge