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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

UMPQUA WATERSHEDS; CASCADIA
WILDLANDS; WILDLANDS CPR; OREGON
WILD; and CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiffs,

vs.

UNITED STATES FOREST SERVICE, an
administrative agency of the United States
Department of Agriculture,

Defendant.

Civ. Case No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

(Violation of Administrative Procedure Act,
National Environmental Policy Act, and
National Forest Management Act)

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief, arising under the Administrative Procedure Act (“APA”), 5 U.S.C. §§701 et seq., and alleging violations of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§4321 et seq., and the National Forest Management Act (“NFMA”), 16 U.S.C. §§1600 et seq.
2. Plaintiffs Umpqua Watersheds, Cascadia Wildlands, Wildlands CPR, Oregon Wild, and Center for Biological Diversity (“Plaintiffs”) seek a declaration that the United States Forest Service (“Defendant” or “Forest Service”) violated federal laws in planning and approving the Riley Ranch Access Project (“the Project”) in the Oregon Dunes National Recreation Area (“Oregon Dunes NRA”). Plaintiffs also seek injunctive relief to redress the injuries caused by these violations of law.
3. Specifically, this action is a challenge to the Forest Service’s April 27, 2009 Decision Notice (“DN”) and Finding of No Significant Impact (“FONSI”) for the Riley Ranch Access Project. The DN and FONSI authorize construction of a .9-mile route through an Inventoried Roadless Area (“IRA”) in the Oregon Dunes NRA. The route would be 14 to 24 feet wide and open for use by off-highway vehicles (OHVs), including full size vehicles such as jeeps and dune buggies. The DN also amends the existing Oregon Dunes Management Plan to allow motorized use in an area that is otherwise closed to vehicles.
4. By initiating this action, Plaintiffs seek to: (1) obtain a declaration that the Riley Ranch Access Project violates NEPA, NFMA, APA, and their implementing regulations; (2) compel the Forest Service to modify the Project to comply with applicable laws; and (3) enjoin the Forest Service and its contractors, assigns and other agents from proceeding with the Project, or any

portion thereof, unless and until this court determines that the violations of law set forth herein have been corrected.

5. Should Plaintiffs prevail, Plaintiffs will seek an award of costs and attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412.

JURISDICTION

6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (federal question), 1346 (United States as a defendant), 2201 (injunctive relief), and 2202 (declaratory relief). The current cause of action arises under the laws of the United States, including APA, NEPA, and NFMA. An actual, justiciable controversy exists between Plaintiffs and Defendant. The requested relief is proper under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.

7. Plaintiffs exhausted their administrative remedies by filing an administrative appeal of the DN and FONSI on June 15, 2009 pursuant to 36 C.F.R. Part 215.

8. On July 30th 2009, Defendant denied Plaintiffs' administrative appeal.

VENUE

9. Venue in this court is proper under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district. The Forest Supervisor who authorized the decision is headquartered in Corvallis, Oregon, which is located within this district. Plaintiffs have offices within this district.

10. This case is properly filed in Eugene, Oregon pursuant to Local Rules 3.3 and 3.4 because the Riley Ranch Access Project is located in Coos County, Oregon.

11. If Plaintiffs prevail, Plaintiffs will seek an award of costs and fees, including attorneys' fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

PARTIES

12. Plaintiff UMPQUA WATERSHEDS is a non-profit corporation based in Roseburg, Oregon. Umpqua Watersheds is dedicated to the protection and restoration of the watersheds in southern Oregon.

13. Plaintiff CASCADIA WILDLANDS is an Oregon non-profit corporation headquartered in Eugene, Oregon that educates, agitates, and inspires a movement to protect and restore Cascadia's wild ecosystems. Cascadia Wildlands envisions vast old-growth forests, rivers full of salmon, wolves howling in the backcountry, and vibrant communities sustained by the unique landscapes of the Cascadia Bioregion. Cascadia Wildlands regularly challenges unsustainable management practices that affect public lands such as clear-cutting, road building, and mining.

14. Plaintiff WILDLANDS CPR is a non-profit corporation headquartered in Missoula, Montana that focuses on promoting watershed restoration through road removal, preventing new wildland road construction, and stopping off-road vehicle abuse.

15. Plaintiff OREGON WILD is a non-profit corporation with approximately 7,000 members and supporters throughout the state of Oregon and the Pacific Northwest. Oregon Wild and its members are dedicated to protecting and conserving Oregon's lands, wildlife, and waters as an enduring legacy. Oregon Wild was actively involved in the review and development of the Siuslaw National Forest Land & Resource Management Plan, the Oregon Dunes Management Plan, and many subsequent projects in the Oregon Dunes National Recreation Area. Oregon Wild advocates for low-impact, non-motorized recreation that protects water, native vegetation, and wildlife. Oregon Wild members use the Riley Ranch planning area for hiking, recreation, bird watching, and other recreational and professional pursuits. The interests of Oregon Wild's members will be irreparably impaired if the Riley Ranch project is allowed to proceed without

compliance with our federal environmental laws.

16. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“the Center”) is a non-profit corporation dedicated to the preservation, protection and restoration of biodiversity, native species, and ecosystems. The Center has over 42,000 members worldwide, including members within this district. The Center has offices in Tucson and Phoenix, Arizona; Silver City, New Mexico; Washington, D.C.; San Francisco, Los Angeles, and Joshua Tree, California; and Portland, Oregon. The Center’s members and staff regularly visit, use, and enjoy the Riley Ranch planning area and surrounding areas of the Oregon Dunes NRA for hiking and other non-motorized recreational uses, wildlife observation, and aesthetic appreciation. Plaintiffs’ members have in the past, and intend to continue to use and enjoy the Siuslaw National Forest, including the Oregon Dunes NRA, frequently and on an ongoing basis in the future, including the fall and winter of 2009/2010.

17. The aesthetic, recreational, scientific, educational, and religious interests of Plaintiffs’ members have been and will continue to be adversely affected and irreparably injured if Defendants continue to act and fail to act as alleged, and affirmatively implement the action that Plaintiffs challenge with this litigation. These are actual, concrete, particularized injuries caused by Defendants’ failure to comply with mandatory duties under NFMA, NEPA, and the APA. These injuries would be redressed by the relief sought.

18. Plaintiffs also have organizational interests in the proper and lawful management of the Oregon Dunes NRA and the Siuslaw National Forest. Plaintiffs have participated extensively in administrative actions to protect the Siuslaw National Forest and the Oregon Dunes NRA. Plaintiffs have actively participated in the public process leading to the Riley Ranch Access Project, and have exhausted any and all available administrative remedies.

19. Defendant UNITED STATES FOREST SERVICE is an agency of the United States and is a division of the Department of Agriculture. The Forest Service is charged with managing the lands and resources within the Oregon Dunes NRA and the Siuslaw National Forest in accordance and compliance with NEPA, NFMA, and other federal laws and regulations.

LEGAL BACKGROUND

National Environmental Policy Act

20. Congress enacted NEPA in 1969, directing all federal agencies to assess the environmental impact of proposed actions that significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C). NEPA's disclosure goals are two-fold: (1) to insure that the agency has carefully and fully contemplated the environmental effects of its action, and (2) to insure that the public has sufficient information to challenge the agency's action.

21. The Council on Environmental Quality (CEQ) promulgated uniform regulations to implement NEPA that are binding on all federal agencies. 42 U.S.C. § 4342; 40 C.F.R. §§ 1500 et seq.

22. NEPA requires the Forest Service to prepare an environmental impact statement (EIS) for any "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

23. When it is not clear whether or not an action will require the preparation of an EIS, the regulations direct agencies to prepare a document known as an Environmental Assessment (EA) in order to determine whether an EIS is required. 40 C.F.R. §§ 1501.4(b), 1508.9.

24. An EA must analyze the direct, indirect, and cumulative environmental impacts of the proposed action. Direct effects are caused by the action and occur at the same time and place as the proposed project. 40 C.F.R. § 1508.8(a). Indirect effects are caused by the action and are

later in time or farther removed in distance, but are still reasonably foreseeable. Id. at § 1508.8(b). Both types of impacts include “effects on natural resources and on the components, structures, and functioning of affected ecosystems,” as well as “aesthetic, historic, cultural, economic, social or health [effects].” Id. at § 1508. Cumulative impact results when the “incremental impact of the action [is] added to other past, present, and reasonably foreseeable future actions” undertaken by any person or agency. Id. at § 1508.7.

25. The NEPA regulations require the agency to consider ten “significance factors” in determining whether a federal action may have a significant impact, thus requiring an EIS. Among other factors, the agency must consider: (1) the degree to which the proposed action affects public health or safety; (2) unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas; (3) the degree to which the effects on the quality of the human environment are likely to be highly controversial; (4) the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration; (5) whether the action may have cumulatively significant impacts; (6) the degree to which the action may adversely affect an endangered or threatened species or its habitat; and (7) whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. 40 C.F.R. §§ 1508.27(b)(2), (b)(3), (b)(4), (b)(6), (b)(7), (b)(9), (b)(10). If the agency’s action may be environmentally significant according to any of these criteria, the agency must prepare an EIS.

National Forest Management Act

26. In 1976, Congress enacted the National Forest Management Act (NFMA) 16 U.S.C. § 1600 et seq., which governs the Forest Service’s management of the National Forests.

27. NFMA establishes a two-step process for forest planning. It first requires the Forest Service to develop, maintain, and revise Land and Resource Management Plans (LRMP) for each national forest. 16 U.S.C. § 1604(a). The LRMP guides natural resource management activities forest-wide, setting standards, management area goals and objectives, and monitoring and evaluation requirements.

28. The Oregon Dunes NRA Management Plan is the adopted land use plan governing the management of public lands on the Oregon Dunes NRA.

29. Once an LRMP is in place, site-specific actions are assessed by the Forest Service in the second step of the forest planning process. Site-specific decisions must be consistent with the broader forest plan. 16 U.S.C. § 1604(i).

Administrative Procedure Act

30. The Administrative Procedure Act (“APA”) confers a right of judicial review on any person that is adversely affected by agency action. 5 U.S.C. §702. Upon review, the court shall “hold unlawful and set aside agency actions...found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.” 5 U.S.C. §706(2).

Roadless Area Conservation Rule

31. Roadless areas include “inventoried roadless areas,” and “unroaded areas.”

32. “Inventoried roadless areas” are undeveloped areas typically exceeding 5,000 acres that met the minimum criteria for wilderness consideration under the Wilderness Act and that were inventoried during the Forest Service’s Roadless Area Review and Evaluation (RARE II) process, subsequent assessments, or forest planning.

33. “Unroaded areas” are any areas, without the presence of a classified road, of a size and configuration sufficient to protect the inherent characteristics associated with its roadless condition. Unroaded areas do not overlap with inventoried roadless areas.

34. Roadless areas provide clean drinking water and function as biological strongholds for populations of threatened and endangered species. They provide large, relatively undisturbed landscapes that are important to biological diversity and the long-term survival of many at risk species. Roadless areas provide opportunities for dispersed outdoor recreation, opportunities that diminish as open space and natural settings are developed elsewhere. They also serve as bulwarks against the spread of non-native invasive plant species and provide reference areas for study and research.

35. Other values associated with roadless areas include: high quality or undisturbed soil, water, and air; sources of public drinking water; diversity of plant and animal communities; habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land; primitive recreation; reference landscapes; natural appearing landscapes with high scenic quality; traditional cultural properties and sacred sites; and other locally identified unique characteristics.

36. Recognizing the high ecological, social, and economic value of roadless areas, on October 13th 1999, President Clinton directed the Forest Service to initiate a nationwide planning process to protect roadless areas in the National Forests.

37. In May 2000, the Forest Service published a draft environmental impact statement analyzing the environmental consequences of protecting roadless areas across the country. The agency published the final EIS in November of that year.

38. In January 2001, after accepting more than 1.5 million public comments on the environmental impact statements, the Forest Service published a final rule – known as “the Roadless Area Conservation Rule” or “Roadless Rule” – in the Federal Register protecting approximately 58.5 million acres of roadless forests across the National Forest System.

39. Although the Roadless Rule has been challenged in several federal courts, the Rule remains in effect for the National Forest lands within the Ninth Circuit Court of Appeals, including Oregon.

40. The proposed Riley Ranch project is located within an inventoried roadless area.

FACTUAL BACKGROUND

Oregon Dunes National Recreation Area

41. The Oregon Dunes National Recreation Area (Oregon Dunes NRA) is a 31,500-acre strip of central Oregon coastline approximately 40 miles long and averaging 1½ miles wide between Coos Bay-North Bend to the south and Florence to the north. It is comprised primarily of sand dunes, but also contains extensive areas of wetland, as well as upland coniferous forest.

42. The Oregon Dunes NRA is the most extensive and unique expanse of sand dunes along the Pacific Coast in all of North America. Very unique geologic features occur in the Oregon Dunes NRA, including tree islands, huge parabola dunes (defined by their unusual U-shaped ridges), and oblique dunes (with slanted weathering patterns) found nowhere else in the world.

43. The Oregon Dunes NRA also features a variety of unusual and limited habitats. The area sustains several globally significant plant communities (i.e., plant communities that are imperiled globally because of rarity (less than 20 occurrences) or because of some factor(s) making it especially vulnerable to extinction throughout its range), five sensitive plants, and critical habitat for snowy plover, a threatened shorebird.

44. Congress established the Oregon Dunes NRA in 1972. The Oregon Dunes NRA is to be managed for “public outdoor recreation use and enjoyment” and for “the conservation of scenic, scientific, historic, and other values contributing to public enjoyment.” Congress specifically directed the Forest Service to manage the Oregon Dunes NRA for the appreciation and enjoyment of future as well as the current generation of Americans.

1994 Oregon Dunes Management Plan

45. In 1994, the Forest Service published the Oregon Dunes NRA Management Plan (“Dunes Management Plan”) to govern the use of the Oregon Dunes NRA. The Dunes Management Plan established several different Management Areas (“MAs”) within the Oregon Dunes NRA and set forth standards and guidelines applicable to each of those MAs.

46. MA10(c) is an area where OHV’s are restricted to designated routes. The area is predominantly covered with vegetation. There is little evidence of human use, disturbance or management, except for the presence of a limited number of designated routes suitable for use by OHVs.

47. The 1994 Dunes Management Plan specifically states that OHV routes in MA10(c) must be designated within three years of the approval of the Dunes Management Plan, or not at all. Thus, any and all OHV routes through MA10(c) must have been designated no later than 1997.

48. There is a significant amount of illegal OHV use in MA10(c), as many users do not restrict themselves to the designated routes as required.

49. Located adjacent to MA10(c) and within the project area, MA10(f) is specifically designed to protect globally significant plant communities. Within this land allocation, there is little evidence of human influence except for control of encroaching non-native vegetation and

restoration activities. A few low-standard trails and some non-motorized recreation activities such as hunting, fishing, photography and wildlife viewing may be present.

50. There is almost no enforcement of OHV requirements within the Oregon Dunes NRA, including within MA10(c) and MA10(f).

Riley Ranch Access Project

51. In April 2009, the Forest Service authorized construction of a .9 mile route through the Oregon Dunes NRA. The purpose of the route is to provide OHV access from a Coos County campground on the east side of the Oregon Dunes NRA, to the open sand dunes on the west.

52. The proposed “trail,” however, will be at least 14 to 24 feet wide and open to use by motor vehicles of all sizes. The eastern half of this trail will be surfaced with rock. The Forest Service has also authorized construction of a bridge to take vehicles over a railroad track about half way into the proposed route.

53. Most of the proposed route would be constructed through MA10(c), where the designation of new routes was prohibited after 1997.

54. Concurrently with the Riley Ranch Project, the Forest Service amended the Dunes Management Plan to permit the construction of the new proposed route, despite the clear prohibition of such a trail in the Dunes Management Plan.

55. The proposed route would also be constructed through an Inventoried Roadless Area, where road construction is prohibited.

FIRST CLAIM FOR RELIEF

The Forest Service Violated NEPA by Failing to Disclose and Analyze the Cumulative Impacts of the Riley Ranch Access Project

56. Plaintiffs incorporate by reference all preceding paragraphs.

57. There has been a significant amount of illegal (off-route) OHV use in the Oregon Dunes NRA and in the Riley Ranch Project area. Undesignated user-created trails are evident and common, even in the MA10(c) area where such trails are prohibited.

58. Both the Forest Service and local law enforcement officers have expressed concerns that groups of OHV users are getting “out of control” and developing a “gang-like mentality” in the Oregon Dunes area. The Forest Service has determined that in some circumstances it is unsafe to send unarmed employees to make courtesy or enforcement contacts with OHV riders, even during daylight hours.

59. Illegal OHV use in the Oregon Dunes NRA has had, and continues to have, significant impacts on the dunes environment. These impacts are measurable and known to the Forest Service. The Forest Service is required under the Dunes Management Plan to monitor and document the frequency and impact of illegal OHV use within the Oregon Dunes NRA.

60. NEPA requires the Forest Service to document and disclose the cumulative impact of a proposed action, which is the impact of the action when combined with the impacts of past, present, and reasonably foreseeable future actions, whether federal or non-federal. 40 C.F.R. § 1508.7.

61. The Dunes Management Plan requires the Forest Service to analyze an area larger than the actual project area when necessary to determine cumulative effects.

62. The Forest Service did not analyze an area any larger than the identified project area – i.e., the Inventoried Roadless Area through which the ORV “trail” will run – for the Riley Ranch Access Project when determining cumulative impacts.

63. The EA for the Riley Ranch Project fails to disclose the cumulative impact of the past, present, or reasonably foreseeable illegal OHV use in the Oregon Dunes NRA.

64. The EA fails to consider the cumulative impact of OHV use on adjacent Coos County land.

65. The decision to implement the Riley Ranch Access Project was therefore arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedures required by law. 5 U.S.C. § 706(2)(A).

66. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the EAJA, 28 U.S.C. § 2412.

SECOND CLAIM FOR RELIEF

The Forest Service Violated NEPA by Basing a FONSI on Mitigation Measures that are not Certain to Occur and that will not Completely Compensate for Adverse Environmental Impacts

67. Plaintiffs incorporate by reference all preceding paragraphs.

68. When an EA relies on mitigation measures to reach a Finding of No Significant Impact, those mitigation measures must be certain to occur and must completely compensate for any possible adverse environmental impacts. If the effectiveness of mitigation measures is not assured, the Forest Service cannot reach a FONSI and must prepare an EIS.

69. The Forest Service is obligated to detail in an EA the mitigation measures that it relied on to obtain a FONSI. A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.

70. In the Riley Ranch Project EA, the Forest Service notes several “project design features” that are intended to mitigate the effects of the proposed route. Specifically, the Forest Service relies on law enforcement and ground-based log barriers to prevent illegal OHV use from spreading off of the designated corridor.

71. There is substantial evidence in the record that these measures have failed to prevent illegal OHV use in the past, are continuing to fail in the present, and are very likely to fail in the future.

72. The Forest Service has failed to present evidence that the same mitigation measures will be effective for the Riley Ranch project.

73. There is also substantial evidence in the record that the Forest Service has not and will not commit the resources necessary to enforce OHV rules in the Oregon Dunes NRA.

74. The Forest Service has not assured the effectiveness or reliability of its mitigation measures. The issuance of a FONSI and failure to publish an EIS was therefore arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedures required by law. 5 U.S.C. § 706(2)(A).

75. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the EAJA, 28 U.S.C. § 2412.

THIRD CLAIM FOR RELIEF

An Environmental Impact Statement is Required

76. Plaintiffs incorporate by reference all preceding paragraphs.

77. NEPA requires the Defendant to prepare an EIS when a major federal action is proposed which may significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C).

78. In determining whether a proposed action may “significantly” impact the environment, both the context and intensity of the action must be considered. 40 C.F.R. § 1508.27.

79. The NEPA regulations require the agency to consider ten “significance factors” in determining whether a federal action may have a significant impact, thus requiring an EIS. Among other factors, the agency must consider: (1) the degree to which the proposed action

affects public health or safety; (2) unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas; (3) the degree to which the effects on the quality of the human environment are likely to be highly controversial; (4) the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration; (5) whether the action may have cumulatively significant impacts; (6) the degree to which the action may adversely affect an endangered or threatened species or its habitat; and (7) whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. 40 C.F.R. §§ 1508.27(b)(2), (b)(3), (b)(4), (b)(6), (b)(7), (b)(9), (b)(10).

80. As the Forest Service has acknowledged, the ongoing illegal OHV activity in the planning area has posed, and is likely to continue to pose, a threat to public safety. 40 C.F.R. § 1508.27(b)(2).

81. The Riley Ranch project is located within the Oregon Dunes NRA, an Inventoried Roadless Area, and a land use allocation dedicated to the protection of globally significant plant species, all of which contains unique characteristics of the geographic area and are ecologically critical areas. 40 C.F.R. § 1508.27(b)(3).

82. The Riley Ranch project proposes to construct an OHV route through an Inventoried Roadless Area to sanction what is presently illegal OHV use, an action that has controversial impacts. 40 C.F.R. § 1508.27(b)(4).

83. Constructing an OHV route through an Inventoried Roadless Area may establish a precedent for future actions with significant effects, and represents a decision in principle about a future consideration. 40 C.F.R. § 1508.27(b)(6).

84. The Riley Ranch project may have cumulatively significant impacts when combined with the effects of historic management, illegal OHV use, OHV use on adjacent Coos County land, and increased motorized access to the Oregon Dunes NRA. 40 C.F.R. § 1508.27(b)(7).

85. The Forest Service has failed to engage in Section 7 consultation with the United States Fish and Wildlife Service, as required by the Endangered Species Act. 16 U.S.C. § 1536.

Therefore, the Forest Service has not made an informed decision regarding whether the project will adversely affect listed species. 40 C.F.R. § 1508.27(b)(9).

86. Because the Forest Service has failed to undertake Section 7 consultation as required by the Endangered Species Act, the Riley Ranch project threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. 40 C.F.R. § 1508.27(b)(10).

87. That the proposed activities are occurring in an Inventoried Roadless Area may, in itself, be significant.

88. The Defendant has failed to prepare an EIS for the Riley Ranch project, despite the presence of several significance factors. The Defendant's decision to implement and proceed with the proposed action without first preparing an EIS was arbitrary, capricious, an abuse of discretion, not in accordance with NEPA, and without observance of procedures required by law. 5 U.S.C. § 706(2)(A).

89. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the EAJA. 28 U.S.C. § 2412.

FOURTH CLAIM FOR RELIEF

The Forest Service Violated NFMA by Approving a Site-Specific Project that is Inconsistent with the Dunes Management Plan and by Authorizing a Significant Plan Amendment without Following Necessary Procedures

90. Plaintiffs incorporate by reference all preceding paragraphs.

91. The Oregon Dunes Management Plan states that for management area 10(C), OHVs are restricted to designated routes only, and that the Forest Service must “identify designated routes within 3 years of Dunes Plan approval. Obliterate or allow all other routes to revert naturally.”

The Dunes Plan was signed in July 1994, amending the Siuslaw National Forest LRMP.

92. The Forest Service never designated any trails within this portion of management area 10(C), which means that this area was automatically closed to motorized recreation by July 1997.

93. In order to implement the Riley Ranch project, the Forest Service must amend the Dunes Plan and Siuslaw LRMP to permit a new motorized route through MA10(C).

94. The Riley Ranch EA states that opening MA10(C) to motorized recreation is a “nonsignificant forest plan amendment,” which does not require the preparation of an environmental impact statement.

95. According to the Forest Service Manual (“FSM”), types of nonsignificant changes to the land management plan include:

1. Actions that do not significantly alter the multiple-use goals and objectives for long-term land and resource management.

2. Adjustments of management area boundaries or management prescriptions resulting from further on-site analysis when the adjustments do not cause significant changes in the multiple-use goals and objectives for long-term land and resource management.

3. Minor changes in standards and guidelines.

4. Opportunities for additional projects or activities that will contribute to achievement of the management prescription.

96. Also according to the FSM, “the following examples indicate circumstances that may cause a significant change to a land management plan,” thus requiring the preparation of an environmental impact statement:

1. Changes that would significantly alter the long-term relationship between levels of multiple-use goods and services originally projected (see section 219.10(e) of the planning regulations in effect before November 9, 2000 (see 36 CFR parts 200 to 299, revised as of July 1, 2000)).

2. Changes that may have an important effect on the entire land management plan or affect land and resources throughout a large portion of the planning area during the planning period.

Id. at Section 1926.52.

97. Changing this portion of the MA10(C) land allocation from what is presently “closed to motorized use” to “open on designated trails” in the Riley Ranch project will “significantly alter the multiple-use goals and objectives for long-term land and resource management,” and will “cause significant changes in the multiple-use goals and objectives for long-term land and resource management.” Such a change will also “significantly alter the long-term relationship between levels of multiple-use goods and services originally projected” and will have “an important effect on the entire land management plan or affect land and resources throughout a large portion of the planning area during the planning period.”

98. According to the Dunes Management Plan EIS, “road and facility construction will eliminate areas from being considered roadless until the evidence of those activities is essentially gone. This will probably be never for some areas.”

99. Also according to the Dunes Management Plan EIS, “If roads, recreations sites or other developments are constructed in [Inventoried Roadless Areas] within the planning period (10-15 years), eligibility for wilderness consideration will be adversely affected. This, in itself, may be a significant consequence.”

100. Because the Riley Ranch trail affects a significant change in management, the proposed LRMP amendment is “significant,” and an EIS is required.

101. The Defendant's decision to implement and proceed with the proposed action without first preparing an EIS is arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedures required by law. 5 U.S.C. § 706(2)(A).

102. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the EAJA. 28 U.S.C. § 2412.

PLAINTIFFS' PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

1. Declare that Defendant violated the National Environmental Policy Act, the National Forest Management Act, the Administrative Procedure Act, and their implementing regulations in preparing and approving the Riley Ranch Access Project EA, DN, and FONSI;
2. Declare that the Defendants' actions as set forth in this complaint are arbitrary, capricious, an abuse of discretion, are not in accordance with law, and are without observance of procedures required by law, and therefore must be set aside;
3. Enjoin the Forest Service and its agents from proceeding with the Riley Ranch Access Project, or any portion thereof, unless and until the violations of federal law set forth herein have been corrected to the satisfaction of this court;
4. Award Plaintiffs their reasonable fees, costs and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412 or other authority; and
5. Grant Plaintiffs such other and further relief as the Court deems just and equitable.

Respectfully submitted and dated this 7th day of December, 2009.

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