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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

CASCADIA WILDLANDS, an Oregon non-profit organization, **UMPQUA WATERSHEDS**, an Oregon non-profit organization, **OREGON WILD**, an Oregon non-profit organization

Plaintiffs,

v.

UNITED STATES BUREAU OF LAND MANAGEMENT, a federal agency,

Defendant,

AMERICAN FOREST RESOURCE COUNCIL, an Oregon non-profit corporation, and **ASSOCIATION OF O&C COUNTIES**, an unincorporated association,

Defendant-Intervenors.

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND MEMORANDUM IN SUPPORT

ORAL ARGUMENT REQUESTED

Civil Case No.: 6:26-cv-00126-AP

MOTION

Plaintiffs Cascadia Wildlands, Oregon Wild and Umpqua Watershed ("Plaintiffs") hereby submit their *Motion for Preliminary Injunction* pursuant to Federal Rule of Civil Procedure 65(a) and Local Rule 65. Plaintiffs respectfully ask this Court to grant preliminary relief enjoining the Bureau of Land Management ("BLM") from implementing commercial logging in the 42 Forest Management Project ("42 Divide Project") until this Court has had an opportunity to hear and adjudicate the merits of this case as a matter of law. Pursuant to Federal Rule of Civil Procedure 65(a)(1) and Local Rule 7-1(a)(1), the undersigned has conferred with counsel for Defendant and Defendant-Intervenors and were unable to resolve this dispute.

Commercial logging in up to six BLM timber sale contracts that implement the 42 Divide Project could begin as early as July 15th, 2026. The Parties agreed upon a briefing schedule for resolution of this motion, and Defendant has agreed that it will not waive any seasonal restrictions that would allow logging to begin earlier than the contractual date. Unless a Preliminary Injunction is granted, contract operators can implement the commercial logging aspects of this project before this court is able to fully adjudicate the project's legality.

This case challenges BLM's decisions to authorize the 42 Divide Project, which Plaintiffs allege violates the Federal Land Management Policy Act ("FLPMA") and the National Environmental Policy Act ("NEPA"). Plaintiffs note that they raised several other NEPA issues in their Complaint but are focusing this motion for preliminary injunction on those aspects of the project which have the highest likelihood of causing irreparable harm and hardship to the Plaintiffs' interests.

In its Decision Record, BLM approved commercial logging on approximately 6,039 acres and construction of the associated logging infrastructure, including roads and yarding corridors,

necessary to implement timber harvest, and 850 acres of understory and pre-commercial thinning. AR 583. For the purposes of this motion, Plaintiffs do not seek to enjoin understory and pre-commercial thinning, the majority of which is associated with the fuels reduction sub-alternative. AR 22.

Plaintiffs have been diligently communicating with BLM about their concerns with the 42 Divide Project and filed this litigation before BLM auctioned any timber sale contracts to ensure that BLM and prospective purchasers were advised that this project was subject to litigation. BLM has since auctioned and awarded six sale contracts, and the purchasers have declined to voluntarily stay operations during the resolution of this suit, ultimately leaving Plaintiffs little option but to file this motion to seek emergency relief.

In support of this *Motion*, Plaintiffs respectfully refers this Court to the following *Memorandum in Support*, and the declarations of Joseph Patrick Quinn, Madeline Cowen, Janice Reid, Mary Gayl Bowser, Chandra LeGue and Peter Jensen, filed herewith, together with the exhibits containing supporting materials attached to these filings.

MEMORANDUM IN SUPPORT

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GLOSSARY OF TERMS

APA	Administrative Procedure Act
BA	Biological Assessment
BLM	Bureau of Land Management
BiOp	Biological Opinion
Cascadia	All named Plaintiffs
CEQ	Council on Environmental Quality
Defendants	All named Defendants
DR	Decision Record
EA	Environmental Assessment
EIS	Environmental Impact Statement
ESA	Endangered Species Act
FWS	Fish and Wildlife Service (US)
FLPMA	Federal Land Policy & Management Act
FONSI	Finding of No Significant Impact
HLB	Harvest Land Base
LSR	Late Successional Reserve
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NSO	Northern Spotted Owl
Northwestern RMP	2016 Northwestern and Coastal Oregon Record of Decision and Resource Management Plan
NRF	Nesting, roosting, and foraging habitat
Programmatic FEIS	2016 Proposed Resource Management Plan/Final Environmental Impact Statement for the Resource Management Plans for Western Oregon
RMP	Resource Management Plan
RR	Riparian Reserve
42 Divide Plan	42 Divide Forest Management Plan
2016 RMP	2016 Southwestern Oregon Record of Decision and Resource Management Plan
VRH	Variable Retention Harvest
WDA	Wildland Developed Areas

INTRODUCTION

"All the information we have at hand at this moment, [what] seems to be a more likely outcome is that the [2026] wildfire season could be more active and a lot of the fire agencies are starting to prepare for that right now."

-Oregon State Climatologist, Larry O'Neill, April 9, 2026[1]

Oregon has just experienced one of its warmest, driest winters on record, and the snow pack in the Coast Range and Cascade mountains is at 5-7% of its average.[2] All over the state, including in Douglas County, local communities and fire departments are preparing for a very active fire season—one that could start earlier, last longer, and have higher temperatures and drier fuels.[3] Weather events and climatic conditions, including intense drought, have the potential to result in unexpected and extreme fire behavior. AR 55115. In the context of this potentially severe fire season, the Bureau of Land Management's ("BLM") recognition that its 42 Divide Forest Management Project ("the Project" or "42 Divide Project") will increase wildfire hazard over current conditions[4] and that "[t]his fuel loading is of particular concern when it occurs in proximity to developed areas including residential areas," takes on special significance. AR 27.

While Plaintiffs Cascadia Wildlands, Oregon Wild & Umpqua Watersheds (collectively, "Plaintiffs") support some aspects of the 42 Divide Project designed to restore natural ecosystem

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[1]https://www.opb.org/article/2026/04/09/forecasters-predict-prepare-increased-drought-wildfire-risk-oregon/

[2] https://www.nrcs.usda.gov/oregon/snow-survey (see snow water equivalent for Rogue-Umpqua and Lower Willamette Valley)

[3]Douglas County issued an Emergency Drought Order on May 1, 2026 after "[t]he Commissioners determined that extraordinary measures must be taken to alleviate the suffering of citizens and livestock and to protect or mitigate economic loss, as well as be responsive to the threat of wildfires." https://www.douglascountyor.gov/m/newsflash/home/detail/356.

[4] "[I]mmediately following commercial harvest, residual activity fuels left on the forest floor (e.g., tree tops and limbs) would increase surface fuel loadings and have the potential to increase surface fire behavior and pose a risk to the residual stand and other human values[.]" AR 27.

processes to forests that have departed from historic conditions, including thinning in young, dense plantations (homogenous tree stands resulting from past clearcut harvests), and non-commercial fuel reduction treatments, many of the harvest units included in the 42 Divide Project target healthy, functioning mature and old growth forest, which have the highest "resistance to stand replacement fire". AR 55115. This is another BLM management project where "[g]etting this project right could benefit southwestern Oregon for years to come, while getting it wrong may have devastating consequences across the landscape for fire behavior and wildlife habitat." *Klamath-Siskiyou Wildlands Ctr. v. United States BLM*, No. 1:23-cv-00519-CL, 2024 U.S. Dist. LEXIS 105741, at *41 (D. Or. May 24, 2024), (internal citation omitted), adopted in full, *Klamath-Siskiyou Wildlands Ctr. v. United States Bureau of Land Management*, No. 1:23-cv-00519-CL, 2025 LX 242175, at *4 (D. Or. Mar. 31, 2025). Unfortunately, BLM has again failed to strike the right balance.

In late 2025, Defendant BLM approved the 42 Divide Project, authorizing up to a decade of commercial logging on approximately 6,039 acres, pre-commercial thinning on 850 acres, and building the associated logging infrastructure, including roads and yarding corridors, necessary to implement timber harvest. The majority of the logging is scheduled to occur n Late Successional Reserves ("LSR"), which BLM designated to protect and/or develop older forest habitat for late-successional dependent species, including the northern spotted owl and marbled murrelet, both listed as threatened under the Endangered Species Act ("ESA"). Not only will the 42 Divide Project degrade habitat currently relied upon by these protected species and significantly delay other LSR stands from developing into high-quality habitat, but it will also exacerbate wildfire hazards to the local communities by converting closed canopy forests to dry, open landscapes covered in slash.

Of all the proposed action alternatives BLM analyzed, it selected Alternative 3, which poses the greatest fire risk until/unless BLM treats the activity fuels. AR 26-27. The BLM plans to treat activity fuels only where "post-harvest units exceed an average of eight tons per acre of woody debris less than three inches in diameter", and this treatment would occur at some unspecified future point, but at least a year after the logging operation is completed. AR 4303. This means the most extreme risks for the adjacent community would likely occur this summer and fall. In addition to the immediate increase in fire risk from activity fuels, heavy thinning and variable retention harvest (VRH) create rapid regrowth and ladder fuels, which increase the fire hazard for decades. AR 26.

In planning 42 Divide, the BLM failed to forthrightly address its competing mandates—to protect old forest and the species that rely upon this critical habitat, to foster increased forest resiliency in a warmer and drier climate, and to meet active management targets. Without addressing that tension, BLM was unable to produce an environmental analysis that took the requisite "hard look" at the project's environmental impacts. The analysis did not include details about vegetation modeling or disclose current canopy cover and habitat conditions in the logging units and avoided honestly grappling with the very real danger to local communities from increasing fire danger, both in the short and long term. Furthermore, BLM failed to prepare an environmental impact statement ("EIS") despite substantial questions about the significance of the Project's impacts. BLM instead ignored scientific research and field-verified information provided by Plaintiffs, failed to ensure that the Project conforms to the agency's own standards for LSR management, and ultimately authorized a risky and controversial decision that runs counter to the facts.

Absent judicial intervention, this diverse forest, and the communities that live in and around it, will be adversely impacted and Plaintiffs and their members will be irreparably harmed. Accordingly, Plaintiffs now respectfully request that this Court grant their Motion for Preliminary Injunction, and ultimately, hold unlawful and set aside BLM's 42 Divide Environmental Assessment, Finding of no Significant Impact ("FONSI"), and Decision Record, and remand the Project to the agency until it complies with the Federal Land Policy and Management Act ("FLPMA") and the National Environmental Policy Act ("NEPA").

LEGAL FRAMEWORK

I. National Environmental Policy Act

NEPA[5] requires federal agencies to "promote efforts which will prevent or eliminate. damage to the environment and biosphere and stimulate the health and welfare of man" "to the fullest extent possible." 42 U.S.C. §§ 4321, 4332. NEPA has twin aims: "First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action. Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process." *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97, 103 S. Ct. 2246, 2252 (1983) (quotations omitted). To this end, NEPA sets forth "action-forcing" procedures designed to (1) ensure agencies take a "hard look" at the environmental effects of proposed actions, and (2) foster meaningful public participation.

[5] In the EA, BLM stated that it "verifies that it has complied with the requirements of NEPA, including the Department's regulations and procedures implementing NEPA at 43 C.F.R. Part 46 and Part 516 of the Departmental Manual, consistent with the President's January 2025 Order and Memorandum. **The BLM has also voluntarily considered the Council on Environmental Quality's rescinded regulations implementing NEPA, previously found at 40 C.F.R. Parts 1500–1508**, as guidance to the extent appropriate and consistent with the requirements of NEPA and Executive Order 14154." EA at 11, fn.8 (emphasis added).

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349, 109 S. Ct. 1835, 1845 (1989)

NEPA requires agencies to prepare an Environmental Impact Statement ("EIS") for "major Federal actions." 42 U.S.C. § 4332(C). If an agency is unsure whether its action will have significant environmental impacts, it may first prepare an Environmental Assessment ("EA"). *Metcalf v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000). If the agency does not prepare an EIS, it must provide a "convincing statement of reasons to explain why [the] project's impacts are insignificant" in the FONSI. *350 Mont. v. Haaland*, 29 F.4th 1158, 1163 (9th Cir. 2022) (citation omitted).

As this Court has explained, a "'hard look' requires a consideration of all foreseeable direct and indirect impacts and a full assessment of the cumulative impacts of the proposed action." *Cascadia Wildlands v. BLM*, 410 F. Supp. 3d 1146, 1156 (D. Or. 2019) (citation omitted). "To take the required 'hard look' at a proposed project's effects, an agency may not rely on incorrect assumptions or data." *Native Ecosystems Council v. United States Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005) (citing 40 C.F.R. § 1500.1(b)) ("Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA."). Nor is it sufficient to make speculative, conclusory statements about the impact of an action. *Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 735 (9th Cir. 2001). The "hard look" applies in the context of EA. *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998). When "[p]roperly applied, NEPA helps agencies to make better decisions and to ensure good project management." *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 177, 145 S. Ct. 1497, 1510 (2025).

II. Federal Land Management and Policy Act

In enacting FLPMA, "Congress declared that it is the policy of the United States to manage the public lands in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air, and atmospheric, water resource, and archeological values." *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 499 (9th Cir. 2011) (internal quotations omitted). To achieve these goals, FLPMA requires BLM to develop resource management plans ("RMPs") to govern the use of BLM-administered lands. 43 U.S.C. §§ 1701(a)(2), 1712. An RMP defines the values for which BLM must manage particular lands, and contains substantive standards by which to do so. Once a plan has been adopted, BLM must ensure that any site-specific projects conform to the applicable RMP. 43 U.S.C. § 1732(a); 43 C.F.R. § 1610.5-3(a); *Or. Nat. Res. Council Fund v. Brong*, 492 F.3d 1120, 1125 (9th Cir. 2007). The applicable land management plan in this case is the Southwestern Oregon Record of Decision and Resource Management Plan ("2016 RMP"), which covers ~1.2 million acres of forest in western Oregon. *See Pac. Rivers v. United States BLM*, No. 6:16-cv-01598-JR, 2018 U.S. Dist. LEXIS 222981 (D. Or. Oct. 12, 2018).

III. Administrative Procedure Act

Plaintiffs' claims are reviewed pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2). Agency actions must be "set aside" if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or adopted "without observance of procedure required by law." *Id.* § 706(2)(A), (D). Agency action is arbitrary or capricious where the agency "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency[.]" *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto.*

Ins. Co., 463 U.S. 29, 43, 103 S. Ct. 2856, 2867 (1983). "Although the scope of this review is 'narrow and a court is not to substitute its judgment for that of the agency,' the agency must nevertheless 'examine the relevant data and articulate a satisfactory explanation for its action.'" *Cascadia Wildlands v. United States BLM*, 153 F.4th 869, 892 (9th Cir. 2025), quoting *All. for the Wild Rockies v. U.S. Forest Service*, 907 F.3d 1105, 1112 (9th Cir. 2018).

IV. Preliminary Injunction

A plaintiff seeking a preliminary injunction must establish: (1) it is likely to succeed on the merits; (2) it will likely suffer irreparable harm absent the injunction; (3) that the balance of the equities tips in the plaintiff's favor; and (4) that the injunction would serve the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 374 (2008).

Courts in the Ninth Circuit employ a "sliding scale" approach in which "a stronger showing of irreparable harm to plaintiff might offset a lesser showing of likelihood of success on the merits." *All. For The Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Under this approach, a preliminary injunction may issue where the plaintiff's likelihood of success is such that "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." *Id*. at 1131-32 This is often referred to as the "serious questions" approach. *Id*. at 1132. "Serious questions" are those that "cannot be resolved one way or the other at the hearing on the injunction and as to which the court perceives a need to preserve the status quo lest one side prevent resolution of the questions or execution of any judgment by altering the status quo." *Republic of Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (*en banc*). They are "substantial, difficult and doubtful" such that they are "a fair ground for litigation and thus for more deliberative investigation." *Id.* (citation omitted)

When deciding whether to issue a preliminary injunction, the court may rely on

declarations, affidavits, and exhibits, among other evidence. *See Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009). This evidence need not conform to the standards that apply at summary judgment or trial. *Id; Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984).

FACTUAL BACKGROUND

Located near Camas Valley, Oregon on either side of Highway 42, the 42 Divide Forest Management Project authorizes commercial logging on up to 6,039 acres and pre-commercial understory thinning on 850 acres. AR 583-84. The majority of the Project area is on land designated as Late Successional Reserve ("LSR") and the remainder of the Project is designated as "Harvest Land Base" (24%) and Riparian Reserve (16%). AR 4008. In LSRs, management directions include: (1) protecting stands of older, structurally complex coniferous forest; (2) protecting marbled murrelet occupied stands; and (3) applying silvicultural treatments to foster the growth of complex forest habitat, especially for northern spotted owls. *Cascadia Wildlands,* 153 F.4th at 883-84, AR 57028. "Since their emergence, LSRs have safeguarded areas for habitat preservation expressly so that other areas may be logged concurrently, without threatening species loss." *KS Wild*, 2024 U.S. Dist. LEXIS 105741, *22-23. Half of the 42 Divide project is located in forests that are "structurally complex" (SC-Dev) or "mature multi canopy" (MMC) which provide the large diameter trees, multiple canopies and abundant down wood that provide northern spotted owl nesting-roosting habitat and marbled murrelet nesting habitat. AR 4010, 4042.

The LSR logging units fall into two categories: forests that currently provide nesting-roosting habitat for northern spotted owls, and those that are still developing into such habitat (often referred to as "dispersal habitat"). Of the 123 LSR logging units, 38 are in mature or

structurally complex forest that correlates with owl nesting-roosting habitat. AR 59. Regardless of whether or not the forest currently provides nesting-roosting habitat, commercial logging prescriptions for the LSR units are substantially similar: remove enough trees to bring the average stand relative density ("RD") down to 20 - 45%, with up to 25% of the unit in gaps, where all trees would be removed, and 10-15% of the unit in skips, where all trees are left standing. AR 4021, 4026.[6] The only difference in management between nesting-roosting and dispersal habitat is that BLM assumes, post-logging, there will remain a 60% canopy cover in nesting-roosting habitat and a 40% canopy cover in dispersal habitat. AR 4026.

BLM initiated public scoping for this project in November 2021 and, after a long pause, released a draft Environmental Assessment ("EA") and final draft Finding of No Significant Impact ("FONSI") on May 1, 2025. BLM held two more public comment periods, in June and September 2025. Plaintiffs submitted multiple comments to the BLM during these comment periods and continued to communicate with the BLM as they gathered more information.

In comments, Plaintiffs raised concerns about the BLM's failure to adequately analyze the scientific opposition to logging mature, native forests for the purpose of affecting fire behavior and the resulting increased risk of fire danger that follows such logging. AR 3002-03. Plaintiffs highlighted the danger to adjacent communities from the increase in fire risk that follows converting fire-resilient forest stands to young plantations and the rapid regrowth of ladder fuels in gaps and throughout VRH units.[7] AR 26. Plaintiffs also raised many other

[6] RD is not a standard that measures quality of habitat. It is a way foresters measure competition among trees in a stand, relative to a theoretical maximum based on tree density, size, and species composition. AR 4036.

[7] VRH is a type of regeneration harvest, which the EA describes as: "[r]egeneration harvesting is the removal of trees intended to promote the survival and growth of regeneration already present or to create conditions to make establishment of regeneration possible." AR 4288.

concerns about the project, including BLM's plan to log extensively in occupied and unoccupied northern spotted owl nesting-roosting habitat. AR 2987-2990.

In its final decision, the BLM responded in part to these concerns by deferring or modifying prescriptions on 15 units of logging in occupied northern spotted owl habitat,[8] resulting in a final action that combines Alternative 3, as modified, and the fuels reduction "sub-alternative". AR 584-85. To facilitate this project, BLM authorizes building approximately 15.2 miles of new road, renovating 122.9 miles of old road and clearing 68 additional acres to create yarding corridors through which to transport felled trees. AR 583-84. In January 2026, BLM began auctioning, selling, and awarding contracts implementing the commercial logging components of 42 Divide: Petty Larceny, Boulder Shield, Muley Mount, Reston Pieces, Camas Meadow, and Picadilly. Declaration of Peter Jensen ("Jensen Decl.") at ¶3. Logging in the awarded contract areas can begin as early as July 15th, 2026, and is expected to continue throughout the summer and fall. *Id.* at ¶4.

ARGUMENT

I. This Court Has Jurisdiction Over Plaintiffs' Claims: Plaintiffs Have Standing and This Case is Ripe for Review.

As set forth in the declarations filed herewith, Plaintiffs are non-profit organizations whose members, supporters, and staff use and enjoy the public lands managed by the Roseburg District BLM, and whose interests are harmed by the approval of the 42 Divide Project but would be redressed by a favorable decision. "[E]nvironmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons for whom the aesthetic and

[8] BLM deferred logging on 266 acres, shifted from variable retention harvest to commercial thinning on 147 acres, and retained 55 acres of variable retention harvest in occupied owl habitat. AR 585.

recreational values of the area will be lessened by the challenged activity." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 183, 120 S. Ct. 693, 705 (2000) (citations omitted). The injury here is "actual or imminent, not conjectural or hypothetical." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 2136 (1992) (citations omitted).

Plaintiffs live near and/or frequently visit the 42 Divide area and the specific timber sale units. Declaration of Mary Gayl Bowser ("Bowser Decl.") at ¶ 3 ("[My] property is directly adjacent to a portion of the proposed BLM 42 Divide logging operation."); Declaration of Joseph Patrick Quinn ("Quinn Decl.") at ¶7 ("Our property shares two sides/boundaries with BLM land . . .which is part of the agency's 42 Divide Forest Management Project"); Declaration of Madeline Cowen ("Cowen Decl.") at ¶¶8, 9, 23 ¶¶; Declaration of Janice Reid ("Reid Decl.") at ¶¶8, 10; Declaration of Chandra LeGue ("LeGue Decl.) at ¶¶8-11. Plaintiffs and their members frequently use and enjoy the forest for recreation, watching birds and other wildlife, foraging, and more, and have deep and ongoing personal connections to the specific forests slated to be logged. *See id. and* Bowser Decl. ¶¶ 5, 6; Quinn Decl. ¶15; Cowen Decl. ¶¶ 14, 22.

As detailed below, Plaintiffs' members' interests would be irreparably damaged by implementation of the 42 Divide Project and the remedy requested will redress the injury, thus Plaintiffs have standing.[9] Cowen Decl. ¶27, LeGue Decl. ¶¶26-7, *see also Summers v. Earth Island Inst.*, 555 U.S. 488, 494, 129 S. Ct. 1142, 1149 (2009) ("While generalized harm to the forest or the environment will not alone support standing, if that harm in fact affects the recreational or even the mere esthetic interests of the plaintiff, that will suffice."); *Lujan*, 504 U.S. at 560–63, 572–73 n.7.

[9] Because Plaintiffs' members have standing, Plaintiffs themselves have organizational standing to bring the case. *See Friends of the Earth*, 528 U.S. at 181.

II. Plaintiffs Are Likely to Succeed on the Merits.

A likelihood of success on any one of Plaintiffs' claims is sufficient to obtain an injunction. *League of Wilderness Defs./Blue Mts. Biodiversity Project v. Connaughton ("LOWD")*, 752 F.3d 755, 760 (9th Cir. 2014). In the alternative, when Plaintiffs raise at least "serious questions" on the merits—all that is necessary in these circumstances—the balance of harms tips sharply in Plaintiffs' favor and the Court may issue an injunction. *See infra* pp. 22-23. As discussed below, Plaintiffs satisfy the applicable standard as to both FLMPA and NEPA compliance.

A. The 42 Divide Project Violates FLPMA.

The 42 Divide Project and its implementing timber sales must comply with the 2016 RMP and the substantive direction therein. *See* 43 U.S.C. § 1732 (a); 43 C.F.R. § 1610.5-3(a). The extensive commercial logging planned within LSRs violates two RMP management directions—to protect stands of older, structurally-complex conifer forest, and to ensure that logging in LSRs will not delay developing high-quality spotted owl habitat.

(1) BLM failed to demonstrate compliance with the RMP requirement to protect stands of older, structurally complex forest.

In managing LSRs, the 2016 RMP clearly instructs BLM to "[p]rotect stands of older, structurally-complex conifer forest. Such stands are a subset of, and represent the highest value, northern spotted owl nesting-roosting habitat." AR 57029. "Protect" is further defined as "prohibiting harvesting activities" in such forests.[10] *Id.* Felling hazard trees and the construction

[10] Regulations are interpreted according to the same rules as statutes, applying traditional rules of construction. *Mt. Cmtys. for Fire Safety v. Elliott*, 25 F.4th 667, 676 (9th Cir. 2022) (citation omitted). Courts must "exhaust all traditional tools of construction" in interpreting a regulation. *Id*. (citing *Kisor v. Wilkie*, 588 U.S. 558, 575, 139 S. Ct. 2400, 2415 (2019)). We encourage the court to use the plain meaning rule for interpreting the RMP and give the words "protect" and "prohibit" their ordinary, everyday meaning. *Id*.

of linear rights of way, spur roads, yarding corridors and other facilities are allowed so long as the forest stand continues to support the same spotted owl habitat requirements. *Id.* Other activities, such as fuels reduction and insect and disease control, are allowed if they are needed to protect the overall health of the stand or adjacent stands. *Id.* Thus, the starting point from which to analyze compliance with this standard is that the RMP prohibits harvesting activities in older, structurally complex LSRs. Only an affirmative finding that fuels reduction and/or insect and disease control are *needed* to protect the health of the stand can overcome this prohibition. In its decision to authorize logging in 38 units of mature and old growth LSR, modifying 1,321 acres that currently provide nesting-roosting habitat, BLM made no such finding. AR 4236.

Over the past two years, volunteers for Plaintiffs' organizations spent hundreds of hours hiking the proposed 42 Divide Project units, collecting information about the conditions of the forest, waterbodies and roads in the planning area. AR 2983. Plaintiffs' field information shows that many LSR units have already been thinned and/or have naturally grown to exhibit the exact characteristics that the EA suggests logging is needed to create: a healthy forest with a robust canopy that is fire resilient and has a diverse mix of species in the mid-story and understory. For example, BLM categorizes the forest in Unit 30-8-17A as structurally complex and Plaintiffs' site visit found it to have a healthy diversity of species, plentiful canopy, and well-spaced large trees that create high-quality nesting, roosting and foraging for spotted owls. Cowen Decl. ¶14, AR 1221-23. Commercial logging, and the yarding corridors, landings and roads necessary to remove logs, will adversely impact this, and other, functioning owl habitat. See AR 2979, Reid Decl. ¶11-12. At no place in the EA or DR does BLM explain why commercial logging in these specific units is needed to "protect" existing structurally complex, high quality spotted owl

habitat.[11] BLM also provided no charts, models, or information that depict or explain how logging in mixed-multi canopy and structurally complex units will affect the forest conditions or improve their resilience. See AR 4042.

The plain language of the RMP sets out a clear prohibition on harvest activities in older, structurally complex LSRs that represent the highest value, spotted owl nesting-roosting habitat. By approving harvesting activities in 38 units of mature and old growth LSR forest, without invoking any of the exceptions to the standard, the 42 Divide Project violates the RMP. Failure to demonstrate compliance with an RMP standard violates FLPMA. *Brong*, 492 F.3d 1124-26, 32; *Native Ecosystems Council*, 418 F.3d at 963 (while the analysis need not be perfect, the court "must still be able reasonably to ascertain from the record" that the agency is in compliance with the plan standard).

(2) BLM failed to demonstrate compliance with the RMP's 20-Year Standard.

In LSR stands that do not currently provide northern spotted owl nesting-roosting habitat, the RMP directs BLM to administer treatments to speed the development or improve the quality of nesting-roosting habitat and to limit such treatments "to those that do not preclude or delay by 20 [years] or more the development of… habitat… as compared to development without treatment." *KS Wild*, 2024 U.S. Dist. LEXIS 105741, *23. In several recent projects, BLM's models have shown, and courts have found, that this same logging prescription violates the "20-year standard," yet BLM has authorized it again. Plaintiffs raised this concern consistently and in detail in comments, but BLM did not provide any modeling to demonstrate how or why these same prescriptions would have a different outcome. AR 2995-97.

[11] In its Response to Comments, BLM explicitly acknowledged: "The overall purpose of the project is to improve forest stand resilience **not** to specifically treat existing pathogens, disease, or insects in the project area." AR 51 (emphasis added).

The 42 Divide Project has many similarities to the BLM's Integrated Vegetation Management for Resilient Lands Program ("IVM"), which the Oregon District Court recently found violated the RMP's 20-year standard. See *KS Wild,* 2024 U.S. Dist. LEXIS 105741. In that case, to evaluate whether certain LSR logging prescriptions would meet the 20-year standard, BLM selected three sample stands and modeled the stand-level inventory plot data in ORGANON, a tree growth and yield simulator.[12] Growth for each representative stand was modeled through time under a no treatment scenario and three treatment scenarios based on the proposed action with relative density ("RD") targets of 30%, 40%, and 45%. *Id.* at *29.

Based on the results of those models, Judge Clarke found that the IVM Program would lead to "massive canopy reductions" and couldn't possibly maintain the canopy cover necessary to avoid delay of habitat development and thus comply with the 20-year standard. *See Id.* at *29-30 ("The sheer results of the modeling exhibited that the treated stands could not return to the minimum threshold levels for canopy cover and basal area that is required for functional habitat even after 50 years."). For IVM, the BLM did not model Open treatments (RD to 20%). Given that the Open prescription allows openings of up to 4 acres and massive canopy reduction, Judge Clarke found that, "it is likely that had BLM actually modeled the Open prescription, the modeling would have demonstrated a violation of the 20-year standard, emphasizing even further the propriety of obligating BLM to demonstrate compliance." *Id.* at *28.

There are three independent yet intertwined reasons that the BLM cannot demonstrate compliance with the 20-year standard in 42 Divide: 1) Courts have found the same prescription

[12] ORGANON is an individual tree growth model developed for Southwest Oregon, Northwest Oregon, the lands of the Stand Management Cooperative, and red alder plantations in Oregon and Washington. It will project stand development for several species mixes, stand structures and management activities. See https://cips.forestry.oregonstate.edu/organon.

violates the standard and the BLM provided no modeling or site-specific information to support a different conclusion; 2) BLM's assumptions about "no action" are counterfactual and result in an inaccurate baseline by which to assess compliance; and 3) the EA included no information about canopy closure, before or after logging, which is necessary to assess compliance with the 20-year standard.

First, treatment prescriptions for the LSR logging in 42 Divide are similar to those found illegal in IVM, as they would also bring the average stand RD, currently averaged around 65%, down to 20% to 45%,[13] with 10-25% of the unit in gaps. AR 4013, 4026. In comments, Plaintiffs noted the similarity between logging prescriptions in 42 Divide and IVM and attached the recent court opinion. AR 3002-03; see also AR 3375-3413. Plaintiffs also included ORGANON models from the Rogue Gold project, another BLM sale with a similar prescription, to use as comparison. AR 3029-32. In the Rogue Gold EA, BLM analyzed the impact of logging a stand down to 20 and 35% RD and concluded there that "stands modeled . . . with a target of 20 and 35% RD **did not** reach target nesting-roosting conditions, particularly target canopy cover, within 20 years of the No Treatment model." AR 3032. (emphasis added).[14]

In contrast to IVM and Rogue Gold, the 42 Divide EA does not include any modeling for specific units of the 42 Divide Project but rather used more generalized information about stand classifications and treatments across a 200,000+ acre analysis area. AR 4042. While there is scant information about this approach, BLM admits to making several "treatment assumptions" in its modeling, including assuming that commercial thinning in dispersal/recruitment would

[13] Note that the 20% RD at the low end of the range is equivalent to the "Open" treatments in IVM.

[14] Plaintiff Cascadia Wildlands and Oregon Wild litigated Rogue Gold, alleging that BLM violated the 20-year standard for several LSR units. BLM voluntarily withdrew the project and removed the contested units.

retain a minimum canopy cover of 40%, and commercial thinning in nesting-roosting habitat would retain a minimum canopy cover of 60%. *Id.*

While not explicit, BLM seems to rely on these general models and assumptions to assess compliance with the 20-year standard, as illustrated by Figure 3-3. AR 4045. This generalization is not sufficient to overcome the fact that BLM's own detailed modeling for similar logging prescriptions shows that it is not possible to dramatically reduce the RD while still meeting the 20-year standard, as explained in detail by Judge Clarke. *KS Wild.,* 2024 U.S. Dist. LEXIS 105741, *11-12, 28. Absent site-specific models for this Project that find otherwise, BLM cannot overcome this flawed assumption that has twice been proven false.

Second, not only does Figure 3-3 appear to not be based on any actual logging units, it also contains a significant error as its depiction of the "no action" alternative assumes that, in the absence of the project, *no* new nesting-roosting habitat will develop over the next 60 years. The EA explains that, for modeling purposes, since "[s]tochastic events are a constant across all alternatives, we make no attempt to account for them". AR 4042. Stochastic events are events that occur naturally to create the canopy gaps for initiation of a secondary canopy such as windthrow, snow break, insect/disease outbreaks, or small-scale fires. *Id.* However, without modeling that accounts for natural disturbances, BLM cannot accurately establish the "no action" baseline. This error is repeated later in the EA: "Without any stand treatments, MSC and YHD stands (dispersal/recruitment habitat) would not develop sufficient heterogeneity in tree diameters to be classified as NRF/MMH [nesting-roosting] habitat within 60 years. Disturbance events, single tree to several acres in size, are necessary to introduce heterogeneity into the typically, homogeneous YHD and MSC stands." AR 4310. BLM's conclusion that, over time, "no action" will not result in the heterogeneity that develops from natural tree mortality is

especially irrational as a key purpose given for this project is to *prevent* tree mortality from natural disturbance: "[t]hese treatments would promote resistance and resiliency to stand-replacing fires and reduce stand susceptibility to disease and insect infestations." AR 4013. Given that these stochastic events are the types of disturbances that naturally create more structural complexity in a "no action" scenario, their omission leads to an artificial baseline.

Compliance with this standard is based on a comparison—whether the project will preclude or delay by 20 years or more the development of habitat, *as compared to development without treatment*—so it is essential that the BLM accurately model habitat development without treatment and account for the heterogeneity that develops from competition and natural disturbances. The record must show that BLM's analysis was based on accurate information and defensible reasoning; contradictory assumptions are insufficient. *KS Wild*, 2024 U.S. Dist. LEXIS 105741, at *29-*31, citing *Env't. Def Ctr, v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 874 (9th Cir. 2022).

Third, even though BLM bases its determination of current and future spotted owl habitat quality on percent of canopy cover, the EA does not contain any information about the *existing* canopy cover in the LSR units.[15] Without knowing the baseline canopy cover, or which prescription BLM intends to apply to each unit, it is impossible to verify the BLM's assumptions that heavy thinning would *retain* a minimum canopy cover of 60% or 40%, especially in light of models that predict contrary results and units that already appear to be below canopy targets. Indeed, Plaintiffs' field work revealed that several LSRs proposed for logging have already been thinned down to a fairly open canopy. For example, units within section 30-8-5 were logged as part of a commercial thinning project called the Burma Shave Commercial Thinning project,

[15] *See* Forest Stand Attribute chart that does not include canopy cover. AR 4279-82.

completed in 2001.[16] AR 1212-14. The forest has responded well to the previous thinning but it appears that removing additional canopy would significantly delay the stands from achieving the cover needed for nesting-roosting habitat. AR 1212. Similarly, LSR units 30-8-9C and 30-8-9L were logged with variable density thinning as part of the Pass the Buck CT & DM Reoffer project, completed in 2013. AR 1214-15. There appear to be at least eleven LSR units that currently have an RD under 40%, including one with an RD of only 24%. *See* AR 4279-82. It is highly unlikely that BLM can further reduce the canopy in these LSR units and still meet the 20-year standard. Plaintiffs raised these issues in comments and received no substantive answer.

As the court concluded in IVM, "LSRs, by their genesis, are endowed with the purpose of habitat protection. That purpose is clearly and properly reflected in the management directions for LSRs in the 2016 RMP. BLM cannot ignore that simply because it wants to increase commercial logging in addition to administering fire resiliency treatments." *KS Wild*, 2024 U.S. Dist. LEXIS 105741, at *26-27. BLM's desire to ignore the 20-year standard seems to permeate the 42 Divide Project analysis as well. Instead of preparing site specific models that would likely show the project would not meet the 20-year standard, BLM skipped the modeling. Instead of providing accurate information about what happens to forest habitat if it is not logged, BLM did not include stochastic events. And, instead of providing accurate amounts of canopy cover pre- and post- project, BLM omitted the former and assumed the latter, with no supporting data or analysis. BLM cannot conduct a full-blown commercial logging project throughout the LSRs without first demonstrating that it complies with the 2016 RMP's 20-year standard, in accordance with FLPMA. *Id.* at *28.

[16] While canopy cover and RD do not directly correlate, several units in 30-8-5 have RD already within the prescribed range: 30-8-5C has an RD of 32, 30-8-5F and 5J have an RD of 37. AR 4280.

B. The 42 Divide Project Violates NEPA

In Western Oregon, land management agencies often make decisions requiring serious consideration of the important and complex interplay between logging and wildfire. *See e.g., Bark v. United States Forest Serv.*, 958 F.3d 865 (9th Cir. 2020); *KS Wild,* 2024 U.S. Dist. LEXIS 105741 at *3; *Thurston I*, 410 F. Supp. 3d 1158. Yet of all the alternatives it analyzed, BLM selected the one that most increases fire risk to local communities and is most dependent on future resources it may not have. AR 27-28 (Alternative 3 has "the highest short term fire risk of all action alternatives"), ("[f]ire risk in the WDA[17] would increase from the creation of residual activity fuels on the landscape following timber harvest. This fuel loading is of particular concern when it occurs in proximity to developed areas including residential areas."); AR 4056 ("Alternative 3 consistently had larger modeled fires, except when all activity fuels are treated."); AR 4052 ("[BLM] acknowledges due to funding, personnel constraints, and weather, it is unlikely all commercial thinning or selection harvest areas would be treated for activity fuels. . .").

Notwithstanding the admitted increase of wildfire risk in the area, BLM authorized the 42 Divide Project without grappling with what that risk means for the local community, including its next-door neighbors. BLM's failure to take a hard look at public safety, the consequences of wildfire on the local community, and the agency's ability, resources, and funding to address those consequences is inconsistent with the purpose of NEPA. BLM's choice

[17] Wildland Development Area ("WDA") "represents the geographic scope of possible immediate risks to the public and firefighter safety within close proximity to communities located within the Wildland Urban Interface (WUI)" (PRMP/FEIS, p. 253), essentially using the WDA as a surrogate for WUI and representing an area of high human value." AR 4050.

not to prepare an EIS that thoroughly addresses these issues, along with contrary science and public concerns about wildfire, violates NEPA.

(1) The context and intensity of the 42 Divide Project warrant the preparation of an EIS.

The 42 Divide Project necessitates the preparation of an EIS because both the context and intensity may be significant, and Plaintiffs have raised substantial questions about the agency's evaluation of local interests, analysis of risk, consideration of public safety, and preparation and capacity to manage the exacerbated wildlife conditions directly associated with this project.

a. The context of this Project counsels heavily in favor of preparing an EIS.

"Context simply delimits the scope of the agency's action, including the interests affected." *Babbitt*, 241 F.3d at 731. The context of an action for purposes of weighing significance "usually depend[s] upon the effects in the locale rather than in the world as a whole." *Bark*, 958 F.3d at 869. Here, the context is southwest Oregon, where "[t]he [BLM] administers 1.2 million acres of federal land . . . a region uniquely and extraordinarily vulnerable to severe wildfire." *KS Wild,* 2024 U.S. Dist. LEXIS 105741 at *3 ("Of the fifty communities in Oregon identified as 'the highest cumulative wildfire risk,' nearly half are located in southwestern Oregon."). Large wildfires have burned near the 42 Divide project area, such as the Douglas Complex fire of 2013, the Horse Prairie fire of 2017, the Archie Creek Fire that burned approximately 40,600 acres of BLM administered lands in the Swiftwater Resource area of the Roseburg District in 2020. AR 4015; AR 4267.

As is often the case in this part of Oregon, "[w]ildfire prevention is an acutely important interest for this area's affected residents and neighbors, who have consistently demonstrated their dedication to effective land planning solutions by actively participating in BLM's process and voicing concerns." *KS Wild*, 2024 U.S. Dist. LEXIS 105741, at *37. And again here, the public

has expressed their interest in the project and shared concerns about wildfire effects on the health, safety, homes, and lives. AR 3002-03; *see also* AR 4692-93; *compare KS Wild,* 2024 U.S. Dist. LEXIS 105741 at *27 (fn. 13 summarizing comments expressing "disapproval of BLM's 'insensitive' process to approve its 'timber agenda,' believed to 'make the problem worse,' while communities are actively preparing for ongoing wildfire.").

Much of the heaviest logging, resulting in the most adverse fire effects, is located close to developed areas and homes in Camas Valley. AR 4061 ("[T]he majority of HLB acres appropriate for VRH [variable retention harvest] are *physically located in the northern end, which is closest to major roads and structures*" and as VRH treated stands are "*more prone to support high severity fire, more structures would be at risk*."). And, as noted above, this coming fire season is expected to be particularly severe. *See supra*. at 1–2. This is the relevant context for this large-scale forest management project, and it should be indisputable that a steep increase in fire risk and severity next to homes and communities is significant.

b. The intensity of this project weighs sharply in favor of preparing an EIS.

Intensity refers to the severity of the impact. *Ocean Advocates v. United States Army Corps of Eng'rs*, 402 F.3d 846, 864 (9th Cir. 2004). BLM's controversial, uncertain, and risky approach to forest management triggers several intensity factors and thus warrants a more robust and searching analysis—an EIS. "The purpose of an EIS is to obviate the need for speculation[.]" *Babbitt*, 241 F.3d at 737.

In comments, Plaintiffs stated that "BLM's chosen [logging] prescriptions would not have the intended effect and would instead exacerbate fire issues." AR 3003; AR 3000 ("negative fire implications at the site-level and could compromise the safety of forest conditions in specific areas near at-risk communities" cutting against "the project's purpose and need."). Plaintiffs

provided research that demonstrates that "BLM's approach to fire is highly controversial and scientifically uncertain." AR 3003 ("[M]ore open conditions and more intensive forest management led to accelerated levels of fire severity (Lesmeister. 2019, Zald. 2018).") Plaintiffs also highlighted that the "studies cited by BLM in the fire hazard section only pertain to dry forests," calling into question BLM's justification for logging moist forest in the Project Area. AR 3000; AR 584 (742 acres of LSR are moist); see AR 4064; see also AR 22 (Table 1). Plaintiffs also provided BLM analysis and recent court decisions where BLM itself and/or the court had determined that this same approach, utilizing identical prescriptions, resulted in lower forest health and decreased fire resilience, and actually increased fire hazard. See AR 3003; see also AR 2996-97. Last, Plaintiffs raised concerns about prospective mitigation and the agency's resources and staffing to deal with the steep increase in both short-term and long-term fire hazard. AR 3004.

Notwithstanding, BLM authorized the Project and summarily concluded that the effects of this project would be "beneficial" but "not significant under NEPA." AR 25-26, AR 31. Responding to concerns expressed by the public about the agency's ability to mitigate and manage the acknowledged and admitted risks, BLM offered only that "[f]uture staffing and funding levels are outside the scope of this analysis." AR 110.

This approach to forest management is inconsistent with court decisions finding that federal agencies' assumption that they can heavily log their way out of wildfire problems is at best scientifically uncertain and controversial, and at worst results in the opposite outcome. *Bark*, 958 F.3d 870-71; *Blackwood*, 161 F.3d at 1213 (holding that conflicting evidence on the effects of ecological intervention in post-fire landscapes made a proposed project highly uncertain, thus requiring an EIS); *KS Wild*, 2024 U.S. Dist. LEXIS 105741, at *39 (identifying "substantial

evidence that BLM's chosen logging prescriptions would not have the intended effect and would instead exacerbate fire issues"). Plaintiffs have presented substantial scientific research that presents serious controversy and uncertainty to which BLM has not substantively responded. This creates a live and unresolved dispute as to the effects of this Project and, like in *Bark*, "[t]his dispute is of substantial consequence because…fire management is a crucial issue that has wide-ranging ecological impacts and affects human life." *Bark*, 958 F.3d 871. As currently planned, the 42 Divide project would increase high-severity fire and risks to human life, health, and property, and depends on a controversial premise and uncertain mitigation—all of which require a more robust analysis in an EIS. Whether conceived of as "intensity" under the prior NEPA regulations that BLM applied in reaching its significance determination, or the "degree of effects" as described in the 2026 Department of Interior NEPA Handbook,[18] BLM's failure to complete an EIS violates NEPA.

(2) BLM failed to take a hard look at the consequences of increasing wildfire severity on the landscape and its effects on public health, human safety and the local community.

BLM is well aware of the relationship between forests, wildfire, and the health and safety of communities in southwest Oregon, "a region uniquely and extraordinarily vulnerable to severe wildfire." *KS Wild*, 2024 U.S. Dist. LEXIS 105741, at *3. Yet despite having selected the alternative with the greatest increase in fire risk and severity to homes and communities in Camas Valley, BLM did not to analyze: (1) the impacts of the project on public health and safety

[18] U.S. Dep't of Interior, Handbook of National Environmental Policy Act Implementing Procedures (February 2026), 516 DM 1 at pg. 41-43 ("2026 NEPA Handbook") ("set[ting] forth several considerations the Responsible Official may weigh when determining the "significance" of a proposed action," including (1) both short-term and long-term effects, (2) both beneficial and adverse effects, (3) effects on public health and safety, (4) economic effects, and (5) effects on the quality of life of the American people).

of local communities; and (2) its own capacity to manage and mitigate the ongoing wildfire risk and hazard created by this project.

NEPA's policy goals are "realized through a set of 'action-forcing' procedures that require that agencies take a 'hard look' at environmental consequences." *Robertson*, 490 U.S. at 350 (quoting *Kleppe v. Sierra Club,* 427 U.S. 390, 410 96 S. Ct. 2718 (1976) (fn. 21)). The Ninth Circuit has repeatedly maintained that "general statements about 'possible' effects and 'some risk' do not constitute a 'hard look' absent a justification" for why an agency could not supply more "definitive information." *Or. Nat. Desert Ass'n v. Rose*, 921 F.3d 1185, 1191 (9th Cir. 2019). More specifically, the Oregon district court has specifically held that "[an EA] that "simply acknowledge[s] that there would be a significant increase in stand-level fire hazard in the Project area for the next 40 years without explaining what that means or analyzing the degree or severity of fire hazard to the community and neighboring landowners" is inadequate. *Thurston I*, 410 F. Supp. 3d 1158.

Here, BLM selected the alternative with the most severe post-harvest wildfire impacts and acknowledged that this is of "particular concern when it occurs in proximity to developed areas including residential areas." AR 27-28. As noted above, most VRH units are located close to roads and homes and will increase fire risk in those neighborhoods as VRH units age. *See supra* at 24, and AR 4061 (VRH units "result[] in continuous horizontal and vertical fuel profiles more prone to support high severity fire, more structures would be at risk"). And those structures, in many cases, are peoples' homes. Over 5,000 acres of commercial thinning also present serious wildfire concerns, as BLM's own analysis and synthesis of relevant literature concluded that "immediately following commercial harvest, residual activity fuels left on the forest floor (e.g., tree tops and limbs) would increase surface fuel loadings and have the potential

to increase surface fire behavior and pose a risk to the residual stand and other values, if not adequately treated." AR 22; AR 4050; *see also supra* at 22 (controversy weighs in favor of significance). BLM acknowledges that "[i]n those areas not treated for activity fuels, residual risk may continue for up to ten years." AR 4049.

What BLM did *not* address is how this increased risk would affect local communities, specifically their health and safety. See 2026 NEPA Handbook at pg. 41 (setting forth considerations for determining significance, including "effects on public health" and "effects on the quality of life of the American People"). In fact, these were among the first issues and considerations dismissed from detailed analysis in the EA. AR 30. The only mention of the potential fire impacts on the people of Camas Valley was a stray reference to air quality impacts from smoke. *Id*. Understandably, local residents are more concerned about the more acute and severe impacts associated with increasing the risk of wildfire—the very real potential for loss of life and property. *See infra* at 26 (balance of hardship). The BLM's lack of analysis of public safety and impacts to the local community violates NEPA, whether under caselaw within this circuit or regulations. *Thurston I*, 410 F. Supp. 3d at 1158 (an EA authorizing a steep increase in wildfire risks "without explaining what that means or analyzing the degree or severity of fire hazard to the community and neighboring landowners" is inadequate); *see also* 2026 NEPA Handbook at 43 ("effects should be evaluated at the local level").

Additionally, the agency's recognition that the success of this project is entirely dependent on future mitigation that requires sufficient funding and staff, without analyzing its capacity to accomplish that mitigation, does not provide the hard look that NEPA requires. See AR 4052 ("[D]ue to funding, personnel constraints, and weather, it is unlikely all commercial thinning or selection harvest areas would be treated for activity fuels…"). Given that Alternative

3 "has the highest short term fire risk of all action alternatives if the activity fuels aren't treated" and requires "full treatment follow-through to maintain the benefit and reduced fire risk," the BLM's lack of assurance regarding future mitigation begs for further analysis.[19] AR 26.

BLM's failure to demonstrate that mitigation would be successful, or even likely to happen at all, does not pass the hard look test. *S. Fork Band Council of W. Shoshone v. United States DOI*, 588 F.3d 718, 727 (9th Cir. 2009) ("An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective… A mitigation discussion without at least *some* evaluation of effectiveness is useless in making that determination."); *Neighbors of Cuddy Mt. v. United States Forest Serv.*, 137 F.3d 1372, 1381 (9th Cir. 1998) (disapproving an EIS that lacked such an assessment); *Cascadia Wildlands v. Adcock*, 779 F. Supp. 3d 1213, 1229 (D. Or. 2025) (mitigation cannot cure a hard look problem when the agency does "not detail their extent or expected level of success" or "provide analytical data supporting mitigation measures.").

Agencies must consider "important aspect[s] of the problem" before them. *State Farm*, 463 U.S. at 43; *see also Balt. Gas & Elec. Co.*, 462 U.S. at 97 (NEPA obligates agencies "to consider every significant aspect of the environmental impact of a proposed action."). For a large-scale forest management project in an area acutely vulnerable to wildfire and interspersed with private residences, BLM's failure to analyze these issues violates NEPA and creates unacceptable risks for the local community.

[19] As noted above, Plaintiffs specifically inquired about this in comments, but BLM's only response was that "[f]uture staffing and funding levels are outside the scope of this analysis." AR 3004; *see also* AR 4052.

III. An Injunction Is Necessary to Avoid Irreparable Harm.

To satisfy the irreparable harm prong for preliminary relief, plaintiffs must "establish that irreparable harm is *likely*, not just possible." *Cottrell*, 632 F.3d at 1131 (citing *Winter*, 555 U.S. at 22). The Supreme Court has held that "[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable." *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545, 107 S. Ct. 1396, 1404 (1987). Moreover, "[w]hen a court finds a likelihood of success on the merits of a NEPA claim coupled with likely environmental harm, the NEPA violation generally is found to rise to the level of irreparable harm supporting preliminary injunctive relief." *W. Watersheds Project v. Bernhardt*, 391 F. Supp. 3d 1002, 1022 (D. Or. 2019); *cf. Citizens for Better Forestry v. United States Dep't of Agric.*, 341 F.3d 961, 970 (9th Cir. 2003).

A. Implementation of the Project would cause irreparable harm to the environment and Plaintiffs' interests.

In the 42 Divide Project area, logging is imminent. Each of the timber sale contracts impacts places with unique characteristics, the loss of which would cause irreparable harm to Plaintiffs. According to the Ninth Circuit, Plaintiffs may satisfy the irreparable harm requirement when a project will harm Plaintiffs' members' ability to "view, experience, and utilize the areas in their undisturbed state," and will "prevent [their] use and enjoyment . . . of the forest." *Cottrell*, 632 F.3d at 1135. For the purposes of establishing irreparable harm, "undisturbed" refers to the state of the forest before the challenged activities occur. *See id*.

Once mature forests are logged, the harm is long-lasting if not permanent. *LOWD*, 752 F.3d at 764-65 ("The logging of mature trees, if indeed incorrect in law, cannot be remedied easily if at all. Neither the planting of new seedlings nor the paying of money damages can normally remedy such damage."). Absent preliminary relief from this court, Plaintiffs and their

members will suffer irreparable harm from the loss of these trees and harm to the wildlife that utilize them. As noted above, several of Plaintiffs' members own homes directly adjacent to proposed sale units, and others have a long-standing relationship with this particular area that will be irreparably harmed by the logging. *See, e.g.*, Quinn Decl. ¶15 ("If this spur road #1 is constructed, [our ability] to recreate and enjoy the shade of the large old trees that grace this bucolic hilltop location will be gone; gone, if not forever, then far beyond our lifetimes."); Cowen Decl. ¶¶21-24; Reid Decl. ¶12; Le Gue Decl. ¶¶23-25 ("The natural beauty and wildlife values of the mature and old trees and diverse forests found here will be irreversibly damaged by logging.")

More than half of the 42 Divide Project Area is located in mature and old growth forest, much of which is designated LSR and provides spotted owl nesting, roosting, and foraging habitat. The 42 Divide sale units are situated within a "checkerboard" landscape of BLM land interspersed with private lands, some of which have been so heavily logged they can no longer support owl habitat, rendering the remaining mature stands located in the public domain even more important. Cowen Decl. ¶17, Le Gue Decl. ¶20. Plaintiff member Janice Reid spent her professional career as a U.S Forest Service Wildlife Biologist studying northern spotted owls, with a considerable amount of time focused on owls in the project area. Decl. Reid ¶¶ 3, 9. Ms. Reid is very concerned about the impacts of logging and road building on particular owl pairs, especially a reproductively successful pair that would be impacted by logging within their core use area. Decl. Reid ¶¶10-11. This action would directly and adversely affect habitat essential to the continued occupancy and viability of this northern spotted owl site. *Id.*

The logging and construction of roads, landings and yarding corridors[20] will remove up to 46 acres of existing nesting-roosting habitat and 131 acres of dispersal habitat. AR 28, AR 753. While large old trees are generally protected by the RMP, BLM has sited roads and yarding corridors through groves of very large, old forests to reach logging units, such as 30-8-15L and 30-8-15M, even though these units are adjacent to an existing road. Decl. LeGue ¶¶14-15, Decl. Cowen ¶13 ("The yarding corridor is abnormally large . . . and made up almost entirely of rare old-growth forest."). Plaintiffs brought this particular yarding corridor to the BLM's attention, requesting that it be relocated, as "the impacts from building it in this location far outweigh the benefit of thinning the unit itself." AR 1216-20. Cutting old growth trees and the lush native forest surrounding them would cause irreparable harm to Plaintiffs' enjoyment of the forest. Decl. LeGue ¶¶23-24, Decl. Cowen ¶19. Finally, by drastically increasing fire hazard during this particularly hot, dry fire season, logging this summer could lead to irreparable loss of health and home for local residents. Bowser Decl.¶8, Quinn Decl. ¶¶17-19.

For purposes of preliminary relief, "[t]he NEPA duty is more than a technicality; it is an extremely important statutory requirement to serve the public and the agency *before* major federal actions occur. If plaintiffs succeed on the merits, then the lack of an adequate environmental consideration looms as a serious, immediate, and irreparable injury." *Bernhard*, 391 F. Supp. 3d at 1022 (citation omitted). Procedural harms, when paired with irreparable environmental harms, result in irreparable procedural injury. *Cf. Save Strawberry Canyon v. DOE*, 613 F. Supp. 2d 1177, 1189 (N.D. Cal. 2009) ("The procedural injury is also irreparable"

[20] Yarding corridors are wide strips of forest where all standing trees are removed to allow cut trees to move from the timber sale unit to a landing, from which the logs are loaded onto a truck.

and "imminent" given "the project will soon break ground, including clearing out acres of trees. . ."). Plaintiffs meet this *Winter* factor.

IV. The Balance of Hardships and Public Interest Favor an Injunction.

When the government is a party, the last two *Winter* factors—balance of the equities and public interest—merge. *Envtl. Prot. Info. Ctr. v. Carlson ("EPIC")*, 968 F.3d 985, 991 (9th Cir. 2020). There is a "well-established public interest in preserving nature and avoiding irreparable environmental injury." *Cottrell*, 632 F.3d at 1138 (internal quotations omitted). Thus, if irreparable environmental injury is sufficiently likely, the balance of harms usually will favor the issuance of an injunction to protect the environment. *EPIC*, 968 F.3d at 991 (citing *Amoco Prod. Co.*, 480 U.S. at 545). Moreover, "[w]hen the alleged action by the government violates federal law, the public interest factor weighs in favor of the plaintiff." *Bernhardt*, 391 F. Supp. 3d at 1026 (citing *Valle del Sol, Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)).

The public interest element of this project is not abstract. The public has a "manifest interest in the preservation of old growth trees." *Seattle Audubon Soc'y v. Evans*, 771 F. Supp. 1081, 1096 (W.D. Wash. 1991) (citing *Pilchuck Audubon Soc'y v. MacWilliams*, 19 ELR 20526, 20529 (WD.WA)). In addition to the community members who live near and/or recreate in the Project area, more than 1,500 people wrote to BLM during the public comment period, most of whom expressed their concerns about logging in mature and old growth public forests. AR 586, see generally AR 5326-5722. As the manager for federal public land, BLM has the responsibility to closely adhere to the law in its management, and to honestly account for the impact to the public's interest in both ecological forest management and public safety. *Seattle Audubon Society,* 771 F.Supp. at 1096.

It is also in the public's interest for BLM to be a good neighbor. Plaintiffs repeatedly raised their specific concerns about this project and its adverse impacts on their interests, but the BLM did not correct its information or analysis to remedy these concerns. For example, Mr. Quinn has spent numerous years communicating with the BLM about the actual age and stand conditions of the forest in which he has lived for 40 years, to no avail. Quinn Decl. ¶9. He spent countless hours sending letters, making phone calls, and talking to BLM staff about mistakenly aging the forest around his house as 50 years old, when it is actually hundreds of years old. Quinn Decl. ¶¶10-12. Now, not only does the BLM plan to build a road on top of Mr. Quinn's daily hiking trail, and drastically diminish his enjoyment of his backyard forest, the project itself is moving forward on a false premise. Decl. Quinn ¶¶15, 13 ("I ask: how can a management plan be valid if the actual condition of the public forestland in question is not accurately represented?"). Similarly, Ms. Bowser shared many of her concerns about the impact of BLM's management - past and future - on her residence and received little communication or changes addressing those concerns, which has caused deep frustration. Bowser Decl. ¶¶14-16 ("[t]he short-shift and disinterested approach to public engagement and local interests in BLM's forest planning has impaired trust and dissolved the faith of many in our community.").

On the balance of harms inquiry, the question is not whether BLM can ever move forward with its planned activities; rather, the question is whether BLM needs to conduct these commercial timber sales **during the pendency of this litigation**. Much of the proposed logging is located adjacent to rural residences in the WDA and implementing the 42 Divide Project *this summer* could cause significant hardship to Plaintiffs by increasing fire hazard to the local community. For example, Ms. Bowser currently lives next to a closed canopy forest with moist and spacious undergrowth, yet, recently had her home insurance cancelled with fire risk given as

one of the main reasons. Bowser Decl. ¶8, Exhibit A, see also AR 1225-26 (pictures of the logging unit adjacent to Ms. Bowser's house). This stand is included in the Camas Meadow sale and logging would transform the closed canopy forest into an open canopy filled with tons of post-logging slash. See Jensen Decl., Exhibit 4 at pg. 30 (map of proposed sale unit adjacent to Ms. Bowser's home). Not only would the animals that live in this forest invade Ms. Bowser's garden and residence, but the untreated slash will also increase fire hazard within a few hundred feet of her house. Bowser Decl. ¶¶8,11. BLM admits that until the slash is treated this logging would increase fire danger for the community. AR 26-27. However, as noted above, BLM is not confident that it will treat all the slash. Indeed, there are piles of slash on BLM land near Ms. Bowser's house that BLM has never treated. Bowser Decl. ¶9 ("My experience is that BLM does not timely return and complete its fuels reduction and slash removal work"). But, even if all the slash is treated, both the VRH prescription and heavy commercial thinning increases fire hazard for many years by exposing and drying out the forest and filling it with small saplings. AR 26. Living with the threat of increased fire danger during an extreme fire season, with recently cancelled home insurance, is a tangible, imminent, hardship. Bowser Decl. ¶8.

Mr. Quinn also lives adjacent to a proposed logging unit and would experience hardship if the 42 Divide Project is implemented this summer. This project "admittedly exacerbates wildlife hazard both in the short-term and long-term" and Mr. Quinn is particularly concerned about the upcoming fire season. Quinn Decl. ¶19 ("With such a low precipitation winter and spring and an anticipated hot dry summer on the horizon, BLM and its current plan for the forest have left us by the wayside crossing our fingers for mild fire impacts."). BLM did not adequately analyze or account for the public safety impact from this increased risk and the balance of hardships tips sharply towards Plaintiffs interests and the affected community.

Absent any evidence that implementing this commercial logging must occur prior to BLM conducting additional NEPA analysis and re-designing the project to comply with the 2016 RMP, the balance of harms weighs in the Plaintiffs' favor. The public's interest in making sure that federal agencies manage public lands in compliance with environmental laws "invokes a public interest of the highest order: the interest in having government officials act in accordance with the law." *Seattle Audubon Soc'y*, 771 F. Supp. at 1096.

V. Scope of Injunction

District courts enjoy "considerable discretion in fashioning suitable relief and defining the terms of an injunction," but "injunctive relief must be tailored to remedy the specific harm alleged." *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1195 (9th Cir. 2024) (citations omitted). Plaintiffs do not seek to enjoin any pre-commercial thinning associated with fuel reduction, only the commercial logging that impacts their interests regarding mature forests, habitat for threatened species, and increased fire hazard. *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1022 (9th Cir. 2009) ("When deciding whether to issue a narrowly tailored injunction, district courts must assess the harms pertaining to injunctive relief in the context of that narrow injunction."). Here, balancing the equities favors injunctive relief because of the irreparable environmental injury stemming from the commercial logging of mature trees as well as procedural harms from the failure to comply with NEPA's requirements.

VI. No Bond Should Be Required

Federal Rule of Civil Procedure 65(c) ordinarily requires that a party moving for a preliminary injunction provide a security in an amount determined by the court "to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P., Rule 65(c). The Ninth Circuit, however, has long held that courts have discretion to

dispense with the requirement "where requiring security would effectively deny access to judicial review." *People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985), *amended*, 775 F.2d 998 (9th Cir. 1985). A finding that the plaintiff is likely to succeed on the merits also "tips in favor of a minimal bond or no bond at all." *Id.* at 1326. "Moreover, special precautions to ensure access to the courts must be taken where Congress has provided for private enforcement of a statute." *Id.* at 1325–26 (citing *Friends of the Earth, Inc. v. Brinegar*, 518 F.2d 322, 323 (9th Cir. 1975)).

Courts consider themselves to possess broad discretion "as to the amount of security required, *if any*." *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (quoting *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003)). "[N]o bond or a nominal bond may be appropriate in cases involving the public interest." *Santa Rosa Mem'l Hosp. v. Maxwell-Jolly*, 380 F. App'x 656, 658 (9th Cir. 2010) (citing *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005) (abrogated on other grounds); *Ex rel. Van De Kamp*, 766 F.2d at 1325. "It is well established that in public interest environmental cases the plaintiff need not post bonds because of the potential chilling effect on litigation to protect the environment and the public interest." *Cent. Or. Landwatch v. Connaughton*, 905 F. Supp. 2d 1192, 1198 (D. Or. 2012). Plaintiffs are environmental interest non-profit organizations with limited resources; imposition of a bond would have a "chilling effect." *Id.*; *see* Cowen Decl. ¶29, Reid Decl. ¶¶15-16.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully ask this Court to grant their Motion for Preliminary Injunction.

DATED this 5th day of May 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brenna Bell, hereby certify that on May 5, 2026, caused the foregoing to be served upon counsel of record through the Court's electronic service system.

Dated this 5th day of May, 2026.

/s/ Brenna Bell
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