United States Department of Agriculture
Forest Service
Pacific Northwest Region
333 SW First Avenue
PO Box 3623
Portland, OR 97208-3623
503-808-2468

File Code: 1570
Date: August 31, 2011

Mr. Eric Navickas
27 1/2 N. Main St., Suite 1
Ashland, OR 97520

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
NUMBER: 7008 1300 0002 3962 7233

Dear Mr. Navickas:

This constitutes my decision, pursuant to 36 CFR 215.18(b)(1), on your appeal (#11-06-00-45-215) of Rogue River-Siskiyou Forest Supervisor Scott Conroy's Supplemental Record of Decision for the Mt. Ashland Ski Area Project Final Supplemental Environmental Impact Statement.

Background

On April 22, 2011, Scott Conroy, signed a Supplemental Record of Decision (SROD) for the Mt. Ashland Ski Area (MASA) Project Final Supplemental Environmental Impact Statement (FSEIS). The preparation of the FSEIS and SROD stemmed from the February 2007 ruling by the Ninth Circuit Court of Appeals that found the Forest Service failed to properly evaluate the impact of the proposed MASA expansion on the Pacific fisher, in violation of both the National Environmental Policy Act (NEPA) and the National Forest Management Act (NFMA) and that it violated the NFMA by failing to appropriately designate riparian reserves and restricted watershed terrain and follow applicable standards and guidelines. The SROD affirms the 2004 decision, which includes:

- Clearing and construction of 71 acres of associated new ski run terrain primarily within the western half of the special use permit (SUP) area;
- Construction of two chairlifts, two surface lifts, and widening of existing runs; construction of a 4-acre tubing facility in the southern portion of the SUP area; construction of three guest services buildings and a yurt; additional night lighting; additional maintenance access road segments; and an increase in 220 parking spaces;
- Clearing approximately 4 acres for lift corridors, helispot, and staging areas;
- Watershed restoration projects including structural storm water control and non-structural controls, such as the placement of large and small woody material.

Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of the appeals. The record indicates that informal resolution was not reached.

My review of this appeal has been conducted in accordance with 36 CFR 215.18, *Formal review and disposition procedures*. I have reviewed the appeal record, including the recommendations of the Appeal Reviewing Officer. A copy of her recommendation is enclosed. The Appeal Reviewing Officer focused her review on the appeal record and the issues that were raised in your appeal.

Appeal Decision

After a detailed review of the record and the Appeal Reviewing Officer's recommendation, I affirm the Responsible Official's decision on the Mt. Ashland Ski Area Project.

This decision constitutes the final administrative determination of the Department of Agriculture [36 CFR 215.18(c)]. A copy of this letter will be posted on the national appeals web page at **http://www.fs.fed.us/appeals**.

Sincerely,

/s/ Nora B. Rasure (for):

KENT P. CONNAUGHTON
Regional Forester

Enclosure

cc: Debbie Anderson
Maurice L Moss
David J Krantz
Steven R Johnson

Forest Service

Willamette National Forest
Supervisor's Office

3106 Pierce Parkway, Suite D
Springfield, Oregon 97477

File Code: 1570
Route To:

Date: August 31, 2011

Subject: Appeal Recommendation, Mt. Ashland Ski Area Expansion

To: Regional Forester

This memorandum documents my recommendations regarding the disposition of the appeals on the Mt. Ashland Ski Area Expansion Supplemental Record of Decision (SROD). I have enclosed a summary of the appellant's issues, along with a description of my findings.

Background

On April 22, 2011, Scott Conroy, Forest Supervisor for the Rogue River-Siskiyou National Forest signed a SROD for the Mt. Ashland Ski Area Expansion Final Supplemental Environmental Impact Statement (FSEIS). This 2011 SROD affirms the 2004 ROD, which included:

- The construction of two chairlifts, two surface lifts, and approximately 71 acres of associated new ski run terrain primarily within the western half of the special use permit (SUP) area, including widening of existing runs;
- Approximately 4 acres of clearing for lift corridors, helispot, and staging areas;
- A 4-acre tubing facility in the southern portion of the SUP area; three guest services buildings and a yurt; additional night lighting; additional maintenance access road segments; additional power, water lines, water storage tank, and sewer lines; an additional snow fence; and an increase in parking by 220 spaces;
- Watershed restoration projects including structural storm water control and non-structural controls, such as the placement of large and small woody material;
- Use of a stream crossing which will use log footings;
- Use of a lightweight, low ground pressure machine (e.g., a "spider") for run clearing (and other excavation work associated with clearing for lifts; lift towers and creek crossings, except where accessible by road);
- Low impact glading (partial clearing by selective tree removal);
- Required mitigation measures as outlined in Attachment B and monitoring elements outlined in Attachment C of the 2004 ROD.

Twenty-six appeals were filed by the following individuals and organizations: Center for Biological Diversity, Eileen Chieco, Kathleen Meagher, Barbara Keen, Eric Navickas, Frances Dunham, Allan Peterson, Rivers Brown, Carol Hwoschinsky, B.G. Hicks, Grace Neff, Paul Hwoschinsky, Miriam Reed, Gayla Barrows, Genevieve MacKinnon, Connie Lynn, Nina Council, Patti Sanders, Terrence Stenson, Allan Weisbard, Oregon Wild, Rogue Group Sierra Club, Cherie Reeves, Lisa Wale, Judy Newton and Judith McClure.

Most of the appellants requested that the decision be withdrawn and reconsidered, that the community alternative be given additional consideration, and that the restoration projects be implemented. Pursuant to 36 CFR 215.17, an attempt was made to seek informal resolution of the appeals. The record indicates that informal resolution was not reached.

Review and Findings

My review was conducted in accordance with 36 CFR 215.19 to ensure that the analysis and decision are in compliance with applicable laws, regulations, policies, and orders. The appeal record, including the appellant's issues and requests for relief has been thoroughly reviewed. Having reviewed the SROD, FSEIS, and the project record, as required by 36 CFR 215.19(b), I conclude the following:

1. The decision clearly affirms the actions to be taken that were set forth in the 2004 ROD. The 2011 SROD provides sufficient detail that the reader can easily understand what will occur as a result of the decision.
2. Affirming the modified alternative selected in the 2004 ROD will accomplish the purpose and need established in the 2004 FEIS. The purpose and need stated in the FEIS reflects consistency with direction in the Rogue River National Forest Land and Resource Management Plan (LRMP), as amended.
3. The decision is consistent with policy, direction, and supporting evidence and it complies with the requirements set forth by the Ninth Circuit Court of Appeals. The record contains documentation regarding resource conditions and the Responsible Official's decision document is based on the record in its entirety and reflects a reasonable conclusion based on the information that was prepared in both the 2004 FEIS and in the 2011 FSEIS.
4. The record reflects that the Responsible Official provided adequate opportunity for public participation during the analysis and decision making process, both in 2004 and in 2010 and 2011. The Responsible Official's efforts allowed interested publics the opportunity to comment and be involved in the site-specific proposal.

After considering the claims made by the appellants and reviewing the record, I found that the Responsible Official conducted a proper and public NEPA process that resulted in a decision that is consistent with the Rogue River National Forest LRMP, as amended. I found no violations of law, regulations, or Forest Service policy.

Recommendation

After reviewing the appeal record, I recommend affirming the decision. I believe that the project documentation adequately supports the Forest Supervisor's decision with regards to all appeal points raised by the appellant and that the requested relief should be denied. Enclosed with this memo are my responses to each appeal issue.

Margaret Mitchell

MEG MITCHELL
Willamette Forest Supervisor

Enclosure

cc: Debbie Anderson, Maurice L Moss

Mt. Ashland Ski Area (MASA) Expansion
Final Supplemental Environmental Impact Statement (FSEIS)
and Supplemental Record of Decision (SROD)
Appeal Statements and Responses
Rogue River-Siskiyou National Forest

Appellant	Appeal Number
Terrence Stenson (TS)	11-06-00-20-215
Gayla Barrows (GB)	11-06-00-22-215
Judy Newton (JN)	11-06-00-24-215
Judith McClure (JM)	11-06-00-25-215
Carol Hwoschinsky (CH)	11-06-00-26-215
Paul Hwoschinsky (PH)	11-06-00-27-215
Barbara Keen (BK)	11-06-00-28-215
Genevieve MacKinnon (GM)	11-06-00-29-215
Miriam Reed (MR)	11-06-00-30-215
Connie Lynn (CL)	11-06-00-31-215
Eileen Chieco (EC)	11-06-00-32-215
Cherie Reeves-Rutledge (CR)	11-06-00-33-215
Patti Sanders (PS)	11-06-00-35-215
Grace Neff (GN)	11-06-00-36-215
Oregon Wild (OW)	11-06-00-37-215
Nina Council (NC)	11-06-00-38-215
Allan Weisbard (AW)	11-06-00-39-215
Liisa Wale (LW)	11-06-00-40-215
Rogue Group Sierra Club (RGSC)	11-06-00-41-215
Frances Dunham (FD)	11-06-00-43-215
Allan Peterson (AP)	11-06-00-44-215
Eric Navickas (EN)	11-06-00-45-215
Rivers Brown (RB)	11-06-00-46-215
B.G. Hicks (BH)	11-06-00-47-215
Center for Biological Diversity (CBD)	11-06-00-48-215
Kathleen Meagher (KM)	11-06-00-50-215

List of important acronyms in relationship to this response document:

- **SROD** – supplemental record of decision: refers to April 2011 decision that led to these appeals.
- **FSEIS** – final supplemental environmental impact statement: refers to April 2011 final EIS that led to the SROD.
- **DSEIS** - draft supplemental environmental impact statement: refers to March 2010 draft EIS that preceded the 2011 FSEIS.
- **ROD** – record of decision: refers to 2004 decision that was litigated that led to the supplemental EIS ordered by the United States Court of Appeals for the Ninth Circuit (the Court).
- **FEIS** – final environmental impact statement: refers to 2004 final EIS that led to the 2004 ROD.

In accordance with 36 CFR 215.11(b), appeals were limited to the scope of the FSEIS, therefore, this document is broken into two sections: appeal statements that are within the scope of the remedy required by the Ninth Circuit Court (as remanded to the U.S. District Court) injunction and thus

addressed in the FSEIS, and issues raised by appellants that are beyond the scope of the remedy required by the Court.

These appeal statements are within the scope of the remedy required by the Court in ONRC v. Goodman, 505 F.3d 884 (9th Cir. 2007).

Impacts to Fisher

Appellant Statement #1: Appellants state that the Forest has not adequately studied the direct, indirect, and cumulative impacts of the project on the fisher and did not use the best available science to predict the impacts. JN; BK; GN; CR; RB; JM; GB; BN; FD at 2; RGSC at 6; CBD at 24. Appellant states that the Forest's cumulative impact analysis for fisher is flawed because the Forest claims that thinning in the surrounding area will help grow large trees faster and/or reduce fire effects on habitat. Fishers require habitat with more big trees; they also need large amounts of large dead wood and logging will cause a significant long-term reduction in recruitment of dead wood. OW at 4.

Response: I find that the Responsible Official adequately considered impacts to the Pacific fisher (fisher) and used the best available information in the analysis.

The Code of Federal Regulations (CFR) at 40 CFR 1500.1(b) require the agency to use information of "high quality" and 40 CFR 1502.24 requires the agency to insure "professional integrity, including scientific integrity" of the analysis in an EIS. In addition, the regulation at 40 CFR 1502.16 requires the agency to discuss the direct, indirect, and cumulative effects (40 CFR 1508.7) of the proposed project.

The FSEIS at II-14 discusses the direct and indirect effects of ski area expansion and the amount of fisher habitat that would be removed. The ski area expansion is expected to affect habitat components including standing live trees, snags, and large woody debris, particularly in the areas of runs and lifts. This led to the conclusion that the habitat and home range for one female fisher and one male fisher would potentially be affected. Habitat removal from project activities are not expected to affect potential travel/migration routes, which are largely north/south oriented and avoid non-forested areas (such as the summit of Mt. Ashland) in the landscape. Supplemental fisher habitat information on snags and large woody debris is discussed in the FSEIS at II-17.

The FSEIS at II-22 to II-25 supplements the cumulative effects analysis documented in the FEIS at IV-152 and IV-153 for the fisher. Specifically, the Court required the agency to consider the cumulative impacts from this project, when combined with the Ashland Forest Resiliency Project (AFRP), the Ashland Watershed Protection Project (AWPP), and the Mt. Ashland Late-Successional Reserve Habitat Restoration and Fuels Reduction Project (MALSR Project); the Forest also analyzed the 2009 Wagner Gap Timber Sale and timber sales on private timber lands for their potential contributions to cumulative effects. FSEIS at II-20. Each of these other projects identified the need to reduce fuel loads that may lead to catastrophic fire events at the landscape scale, if stands were left untreated. The emphasis of the treatments in these projects was thinning of younger second-growth trees to reduce fuel loads. The effects analyses of these projects documented that the consequences of thinning would reduce canopy levels down to 40-60 percent, thereby limiting preferred denning and resting habitat for the fisher. Specifically, the MALSR Project (as documented in that project's ROD at 2-2) used a Forest Vegetation Simulator (FVS) model which predicts that stand conditions after treatment will exhibit structural complexity commonly associated with late-successional stands used by fishers. All stands in the

treatment area for the MALSR Project are less than 80-90 years old, which is not considered suitable fisher habitat. Overall, in the short-term, each project that may contribute to cumulative effects acknowledges that fisher habitat may be degraded from project implementation, including some loss of denning and resting habitat in the AFRP and AWPP. None of the projects concluded that habitat impacts would lead to Federal listing of the fisher. In consideration of the potential for these projects to contribute to cumulative effects when combined with the ski area expansion, the FSEIS at II-25 concluded that implementation of the ski area expansion project would not contribute towards a loss of species viability or trend towards Federal listing. FSEIS at II-25 to II-26.

The FSEIS also responded to similar statements made by people or organizations who submitted comments on the DSEIS. As documented in the FSEIS at B-16, the discussions regarding thinning and how it affects tree growth and down wood are related to the projects listed above; the effects analyses in those documents are not re-assessed in this FSEIS.

Appellant Statement #2: Appellant states that the Forest has not looked at the problems expansion might create in the fisher moving from west of Mt. Ashland to east of Mt. Ashland. The appellant states that the Forest was directed to look at the corridor between the Siskiyous and Cascades, but only looked at I-5 and did not look at how this project would affect the corridor. RGSC at 6.

Response: I find that the Forest did consider impacts to fisher movement. The regulation at 40 CFR 1502.16 requires the agency to discuss the direct, indirect, and cumulative effects (40 CFR 1508.7) of the proposed project.

The FSEIS at II-10 documents that fisher experts conclude that Interstate 5, east of the project area, acts as a barrier that minimizes dispersal (east and west) across the Interstate and restricts the corridors. Within the fisher local population area, habitat quality and availability serves as an indicator for the potential of an area to support fisher populations. Analysis in the FSEIS focused on the local fisher population area, as documented in the FSEIS at II-11. The FSEIS further documents that the primary migration routes of fisher occur along north and south routes, because of the availability of habitat. The FSEIS documents that the summit of Mt. Ashland serves as a barrier because it is not considered habitat for the fisher, as it is non-forested, so it also restricts the corridors. FSEIS at II-16 and II-17. The dispersal map for fisher, Figure FSEIS II-4, clearly shows the non-forested areas that do not serve as habitat, as well as areas that do not meet habitat requirements. These non-forested areas limit east and west migration directly within the project area. Fisher movement east to west was fully considered in the FSEIS at II-18 to II-20. Figure FSEIS II-4 reiterates this, depicting the primary north/south migration routes that fall outside of the project area and illustrating the presence of non-forested or non-habitat areas within the project boundary. FSEIS at II-16. Therefore, I find that the Forest did consider migration routes of the fisher.

The FSEIS also responded to similar statements made by people or organizations who submitted comments on the DSEIS. As documented in the FSEIS at B-16 and B-17, dispersal potential east to west is limited by the location of I-5 and there is no evidence that dispersal is occurring at three underpasses south of Ashland under I-5.

Appellant Statement #3: Appellant states the Forest Plan requires that "If sensitive species are found in a project area, avoidance or other mitigation to minimize impacts to local populations shall be used for those species whose viability has been identified as a concern." CBD at 20. Therefore, the appellant

states the Forest violated the National Forest Management Act (NFMA) by failing to avoid the fisher, mitigate effects of the expansion, or even consider maintaining population viability. CBD at 21.

Response: I find that the Forest did consider impacts to fisher and determined that direct and indirect impacts would be limited to one female and one male home range. The regulation at 40 CFR 1502.16 requires the agency to discuss the direct, indirect, and cumulative effects (40 CFR 1508.7) of the proposed project, while the 1982 implementing regulations for NFMA at 219.19 discuss species viability.

The FSEIS states that the ski area expansion would theoretically impact the habitat within the home range of one female and one male fisher. FSEIS at II-14 and II-17. These impacts are localized and would occur within the areas designated for lifts and ski runs. Optimal fisher habitat and movement routes were avoided by this project. As described in the response to Appellant Statement #2, the project design does not impact migration of fisher to other areas north or south of the project, since primary fisher migration corridors fall outside of the project area. Fishers are expected to generally avoid ski areas due to seasonal disturbance from human activities. As stated in the FSEIS, the potential impact from this project to the home range of one female and one male is not expected to contribute to a trend towards Federal listing or cause a loss of viability to the population or species. FSEIS at II-25 and II-26; SROD at 6.

Appellant Statement #4: Appellant states that the Forest did not correct the deficiencies identified by the Court that found that the Forest's use of habitat as a proxy for fisher populations violated the NFMA. RGSC at 2. Appellant states that the Forest has continued to use habitat as a proxy after the ruling of the Court. RGSC at 2. Appellants state that the Forest's assumption that all fisher habitats are occupied is inadequate because of the use of proxy-on-proxy to analyze fisher habitat in the expansion area. Appellants state that by overestimating habitat capability and population size for the fisher, the agency underestimates the significance of the ski area expansion on fisher viability. RGSC at 5; CBD at 21 and 22. Appellants state that the Forest erred by only using geographic information systems (GIS) modeling to determine what habitat is adequate for the fisher. Appellants state that by using GIS, the Forest could only look at canopy closure and not other important known limiting factors (such as subcanopy structure) for fisher habitat. RGSC at 5; CBD at 21-24. Appellant states that the Forest has no knowledge of what the quality of habitat is in the expansion area. RGSC at 5.

Response: I find that the supplemental biological evaluation (beginning at FSEIS II-3) prepared as part of the FSEIS sufficiently describes a reasonably reliable and accurate methodology to determine local fisher populations.

The Forest Service Manual (FSM) at 2672.2 outlines the requirements for preparation of a biological evaluation. The Court found that the 2004 analysis did not properly use habitat as a proxy for population viability for the fisher. The Court stated that species viability may be met by estimating and preserving habitat "only where both the Forest Services' knowledge of what quality and quantity of habitat is necessary to support the species and the Forest Service's method for measuring the existing amount of habitat are reasonably reliable and accurate." FSEIS at II-3. The Forest outlined and then followed the biological evaluation process that was used in the FSEIS to comply with the Court's order. FSEIS at II-3.

To understand the quality of habitat necessary to support the fisher, baseline habitat conditions were assessed using satellite imagery in conjunction with an accuracy assessment. FSEIS at II-12. The habitat assessment by satellite was rated at 80 percent or greater accuracy. FSEIS at II-12 through II-14. An

understanding of fisher habitat requirements was demonstrated in the FSEIS through the description of the project's effects to the fisher, which were described in detail, discussing habitat impacts in conjunction with fisher life requirements, i.e. denning, resting, foraging, dispersal habitat components and habitat utilization. Impacts to specific habitat components discussed included effects related to disturbance, effects to large snags, effects to coarse woody material, and effects to prey species. FSEIS at II-14 to II-16. A cumulative impacts analysis is addressed in FSEIS pages II-21 through 26. The analysis includes other Forest Service projects as discussed in the response to Appellant Statement #1, as well as the cumulative impact of non-federal timber harvest projects. FSEIS at II-25. Thus, the quality of the habitat to support fisher was fully described.

To understand the quantity of habitat necessary to support the fisher, information from multiple trapping and observational studies was utilized in concert with GIS imagery, which was further verified by local knowledge and experience to estimate the local fisher population. FSEIS at II-9 and II-12. Field reconnaissance in the project area has occurred since 2001, using carnivore bait stations that were photographed and winter snow track surveys to document fisher presence in the area. FSEIS at II-8 and II-9. Other recent surveys include hair snaring and DNA analysis. FSEIS at II-9. A trapping effort initiated in 2010 has resulted in ten trapped and radio-collared fisher. This project-specific population information was then used in the biological investigation process (described at FSEIS II-10 to FSEIS II-12) to predict local and total populations and effects of project activities on those populations.

The accuracy of the GIS data used was disclosed, as well as the limitations of the data (i.e., this data is intended to be used at the landscape level as is appropriate for large scale analysis ; FSEIS at II-12). The imagery captured stand conditions where fisher habitat values were defined based on minimum stand canopy closures and corresponding stand tree diameters. Consequently, the amount and distribution of fisher habitat combined with local knowledge, based on trapping, tracking and observational studies, provided a reasonable basis for assessing local fisher populations. In addition, a literature review of similar habitats revealed that the population estimate and home range size is consistent with other research. FSEIS at II-10 to II-12.

Therefore, I find that the Forest complied with the biological evaluation process for fisher, has adequate knowledge of the quality and quantity of habitat needed to support fisher populations, used a reliable method to assess habitat conditions, and has site-specific knowledge of local populations, thus allowing the use of habitat as a proxy for population viability.

Scientific Accuracy/ Landslide Hazard

Appellant Statement #5: Appellant states that there is a lack of engineering geologic and geotechnical field data for the planned expansion area and that this lack of information along all feature alignments can lead to destructive erosion and possible debris landslides. BH at 3. Appellant states that sources of construction materials need to be explored and confirmed for quality and quantity. BH at 3. Appellant states that the Forest does not know enough about the ski expansion area regarding debris landslides and states that a new, up-to-date analysis of the landslide hazard needs to be completed to understand the impacts of the current proposal. BH at 3.

Response: While the supplemental analysis did not require further collection of geologic and geotechnical field data, since the necessary modeling had already occurred, I find the Responsible Official adequately defined, analyzed and delineated geotechnical data for the planned expansion area, as discussed in the 2004 FEIS.

Overall, the project area was delineated into landslide hazard zones (LHZ) 1 through 4 based on the risk of mass wasting through the landslide hazard zonation process. Based on the Court's order, the supplemental analysis revised the riparian reserve delineation to include LHZ 2. SROD at 8; FSEIS at 35-42. This inclusion of LHZ 2 into the riparian reserves resulted in analysis that supplemented the 2004 FEIS and contributed to further understanding of the potential landslide hazards in the area. This process adequately defined, analyzed and delineated those areas of concern in regards to mass wasting. Specifically, in the 2004 FEIS, several "worst-case" computer simulations were run for the alternatives to distinguish the probability for mass wasting from proposed activities. This analysis showed that fully saturated soil conditions combined with zero soil and root cohesion led to only one new slope failure, which was projected to occur in an area near run 11. Because of this potential, mitigation in the form of maintaining root strength is prescribed for this run. 2004 FEIS, III-13 to III-17 and IV-10 to IV-20. The FEIS also discussed the potential for erosion, mass wasting or other potential pollutants to adversely affect water quality. 2004 FEIS at IV-21 to IV-97.

Sources of construction materials are described in contract provisions and in design specifications, and as such, are not yet determined and outside the scope of the court-ordered supplement. Therefore, based on the information found in the 2004 FEIS and 2011 FSEIS, I find the Responsible Official had access to sufficient geotechnical data analysis and interpretation to make an informed decision regarding the potential for ski area expansion to result in erosion or mass wasting.

Appellant Statement #6: Appellant states that the normal and acceptable impacts of logging and road construction in areas of high landslide risk that is tolerated in a regular forest logging operation is not acceptable for a ski area. BH at 3.

Response: While the supplemental analysis did not require further analysis of the impacts of tree clearing and run construction, I find the Responsible Official adequately discussed the impacts in the 2004 FEIS. The regulation at 40 CFR 1502.16 requires the agency to discuss the direct, indirect, and cumulative effects (40 CFR 1508.7) of the proposed project.

The impacts of clearing trees for lift and run construction is discussed for each individual resource in the 2004 FEIS beginning at III-4. Road related effects are discussed in the 2004 FEIS at IV-206 to IV-208 with additional project level information located in the analysis found in the 2004 FEIS at Appendix G. The proposed action would include 0.44 miles of newly constructed access road, which is not within the inventoried roadless area and not for the purpose of logging. In addition, the potential for landslides and erosion are discussed in the FEIS, as explained in the response to Appellant Statement #5.

Appellant Statement #7: Appellants state that a clearcut on unstable slopes and decomposed granite greatly increases the chances of landslides and erosion directly affecting the drinking water. GN; GB; CR; NC; CL; GM; PH; CH; RB; KM; EC; LW; JM; JN; PS; AW; FD AT 2; AP at 1.

Response: Since the supplemental analysis did analyze the vegetation on the LHZ 2 areas as non- or sparsely-forested, (FSEIS at II-42), I find the Responsible Official adequately discussed and displayed the potential effects from vegetation manipulation on landslide potential and also disclosed potential impacts to water quality.

The regulation at 40 CFR 1502.16 requires the agency to discuss the direct, indirect, and cumulative effects (40 CFR 1508.7) of the proposed project. The 2004 FEIS included a thorough discussion of

landslide hazard, erosion, and water quality. 2004 FEIS at IV- 10 to IV-97; 2004 ROD at 18-20 and 23-26; and 2004 FEIS Appendix H at 89-93. Specifically, the 2004 FEIS documented the effects of specific actions that would occur under each alternative. For all action alternatives, a 'worst-case' scenario was modeled for mass wasting (landslides). This analysis showed that fully saturated soil conditions combined with zero soil and root cohesion led to only one new slope failure, which was projected to occur in an area near run 11. Because of this potential, mitigation in the form of maintaining root strength is prescribed for this run. Specific to Alternatives 2 and 6, the 2004 FEIS discloses all potential stability issues associated with the skiway run, the ski runs, the ski lifts, the parking lot expansion, the lodge, and the tubing facility. Of all of the activities proposed, the skiway run and ski runs have the most potential to affect LHZ 2 lands; however, the Forest concluded that none of the actions would occur in high risk areas, thus the potential for impacts to drinking water is minimized. 2004 FEIS at IV-11. Also, mitigation to maintain vegetative root structure is required for holding soil in place at this location. 2004 FEIS at IV-11. I also find that additional required mitigation measures are described including the effectiveness ratings of the measures based on current scientific research or professional experience. 2004 ROD, Attachment B. The intent of the mitigation measures pertinent to mass wasting are for prevention, not after initiation of an event. The mitigation measures required an erosion control plan and revegetation plans; the effectiveness of these measures will be monitored and addressed as they are implemented. In addition, there is required monitoring, and if the initial erosion control measures are not as effective as desired, then additional measures are required. 2004 ROD, Attachment B-5.

Appellant Statement #8: Appellants state that the Forest has failed to demonstrate that LHZ 2 areas are not "potentially unstable". Appellants state that the Forest failed to designate the LHZ 2 land as a riparian reserve and by not designating them as such, the Forest violated NFMA, the Rogue River Land and Resource Management Plan (LRMP), and the Northwest Forest Plan (NWFP) and also went against its own watershed analysis by authorizing significant ground disturbance on high risk landslide terrain. CBD at 11, 12 and 20; RGSC at 7 and 8. Appellant states that the judge made it clear that the Forest could not allow ski runs on LHZ 2 areas, and the Forest has done nothing to modify the runs to avoid LHZ 2 land, and has not chosen another alternative that avoids these areas. RGSC at 8.

Response: I find the Responsible Official adequately characterized LHZ 2 areas regarding their stability and that the Forest did designate LHZ 2 lands as riparian reserves, in compliance with the Court's order.

Stability of LHZ areas is documented throughout the 2004 FEIS. Specifically, the FEIS states that LHZ 2 areas are the "second highest risk terrain" and concluded that the risk of landslides in LHZ 2 is "moderate to high" and the sediment delivery potential is "high." 2004 FEIS at III-13 to III-15. The 2004 FEIS documented the effects of specific actions that would occur under each alternative. For all action alternatives, a 'worst-case' scenario was modeled for landslides. This analysis showed that fully saturated soil conditions combined with zero soil and root cohesion led to only one new slope failure, which was projected to occur in an area near run 11. Because of this potential, mitigation in the form of maintaining root strength is prescribed for this run.

In compliance with the Court's order, the supplemental analysis did revise the riparian reserve delineation to include LHZ 2 areas. SROD at 4 and 8; FSEIS at II-35 to II-42. The analysis of the LHZ 2 areas that had not previously been included as riparian reserves showed that those areas were mostly in an upland position and on dry sites. SROD at 8. The analysis showed the areas were not associated with perennial streams or wetlands and that the standards and guidelines continue to be met. SROD at 8. Upon completion of the analysis of these areas as riparian reserves, the Responsible Official determined that the inclusion of LHZ 2 as riparian reserves will not prevent attainment of Aquatic Conservation

Strategy (ACS) objectives or riparian reserve standards and guidelines, and as such is consistent with the LRMP, NWFP and NFMA. SROD at 12. Thus, I find that the Forest did document the stability of LHZ 2 areas and did comply with the Court's order to delineate LHZ 2 areas as riparian reserves. Upon review of the Court's opinion, I do not find that the Court ordered the Forest to avoid LHZ 2 lands; instead, the opinion states that "until the Riparian Reserves and Restricted Watershed lands are properly classified and subjected to the additional scrutiny required by these classifications, the possibility of environmental harm to the ecological health of the region's waterways remains." *ONRC v. Goodman*, 505 F.3d 884, 898 (9th Cir. 2007).

Appellant Statement #9: Appellant states that the Forest failed to present any evidence in the record that sedimentation resulting from a debris flow landslide, once initiated, can be effectively mitigated by applying the measures described in the 2004 ROD. CBD at 15. Appellant states that the Forest failed to express any qualitative or quantitative data expressing how effective the best management practices and mitigation measures were at containing soil erosion. CBD at 15 and 16.

Response: While the supplemental analysis did not require further analysis of the effects of sedimentation resulting from a debris flow landslide and the mitigation measure(s) associated with them, I find that the Responsible Official adequately addressed the landslide potential resulting from the proposed project. 2004 FEIS at III-13 to III-17 and IV-10 to IV-20. Discussion about potential sedimentation from the proposed project is found in the 2004 FEIS at IV-21 to IV-59.

The regulation at 36 CFR 1502.14(f) requires the agency to include appropriate mitigation measures in their description of alternatives. Mitigation is defined by CEQ as: (a) Avoiding the impact altogether by not taking a certain action or parts of an action; (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (e) Compensating for the impact by replacing or providing substitute resources or environments. 40 CFR 1508.20.

The subwatersheds that surround the ski area are located in granitic terrain, which produce high amounts of sediment to watershed streams as a naturally occurring process. 2004 ROD at 17. Since 1963, operation of the existing ski area has not resulted in accelerated landslide activity within the special use permit (SUP) area. 2004 FEIS at IV-10; 2004 ROD at 17). After the 1974 flood it was found that 94% of the landslides that had occurred originated in the transient snow zone below 5,000 foot elevation (1991 Mt. Ashland Ski Area Expansion FEIS, Chapter 3 at 4), which is well below the existing ski area. Similar results were found following the 1997 flood.

Computer runs for "worst-case" scenarios were analyzed for mass wasting and one new occurrence for potential failure was identified in the proposed action. Mitigation to maintain vegetative root structure is required for holding soil in place at this location. 2004 FEIS at IV-11. I also find that additional required mitigation measures are described including the effectiveness ratings of the measures based on current scientific research or professional experience. 2004 ROD, Attachment B. The intent of the mitigation measures pertinent to mass wasting are for prevention, not after initiation of an event. The mitigation measures required an erosion control plan and revegetation plans; the effectiveness of these measures will be monitored and addressed as they are implemented. In addition, there is required monitoring, and if the initial erosion control measures are not as effective as desired, then additional measures are required. 2004 ROD, Attachment B-5.

Restricted Watershed - Soils

Appellant Statement #10: Appellant states that the supplemental ROD may exceed soil disturbance limits applicable to 35 acres of MS-22 lands located in the northwest portion of the SUP area. Appellant states that the Forest should change its 1990 allocation of 35 acres in the SUP area from MS-22 to MS-4 in order to comply with NFMA. CBD at 6. Appellant states that the Forest was required to include a forest plan amendment for restricted watershed MS 22 in this SEIS, however, the Forest has still failed to include the forest plan amendment required for the area. Appellant states that instead of amending the plan, the Forest now treats the area as new "Developed Recreation" with no explanation. RGSC at 6 and 7.

Response: I find that the Responsible Official chose to not amend the Forest Plan, but instead applied standards and guidelines for MS 22 lands where applicable.

Land and Resource Management Plans (LRMPs) can be amended for a variety of reason, including changing a land allocation or not applying a standard and guideline in a particular area in order to implement activities outside the scope of the LRMP. FSM 1926.5. For this project, an amendment was proposed in the 2003 DEIS to resolve land allocations that appeared to conflict. That amendment was not proposed in the 2004 FEIS, as in their response to comments on the 2003 DEIS the Forest considered corrections to land allocation boundaries as 'adjustments'. 2004 FEIS at II-3. The Court found no explanation in the record that would resolve this issue and found the Forest violated NFMA because they failed to ensure that the expansion would comply with the LRMP standards and guidelines for restricted watershed (MS 22).

Since the Forest is no longer proposing an amendment, they must apply the standards and guidelines for each applicable land allocation. A review of the geographic information systems (GIS) files shows that the area is allocated to "Administratively Withdrawn" under the NWFP; there are no standards and guidelines specific to administratively withdrawn areas in the NWFP. The GIS files further show that the Forest has classified portions of the permitted area as MS 22 and other portions as MS 4 (developed recreation), in compliance with the 1990 LRMP. There is also land within the project area that is allocated to MS 26, restricted riparian.

Upon review of the FSEIS, I find that standards and guidelines have been applied to each respective land allocation, as appropriate. No standards and guidelines would be exceeded, including standards and guidelines for soil disturbance in MS 22 areas. No change in land allocations within the permitted area is being considered and all relevant standards and guidelines have been applied, and as such, I find that no plan amendment is needed.

Restricted Watershed – Timber Harvest

Appellant Statement #11: Appellant states that the Forest acted arbitrarily and capriciously by failing to consider important aspects of timber harvesting on MS-22 lands. MR; CBD at 9. Appellant states that the ski area expansion meets the forest plan definition of "timber harvest" and in order to comply with standards and guidelines for MS-22 lands, timber harvest must be necessary for watershed protection or enhancement of water quality. Appellant states that the Forest has erred by not explaining that the ski area expansion is necessary for watershed protection or enhancement of water quality. CBD at 9 and 10.

Appellant states that the Forest failed to describe timber harvest on MS-22 lands among those restoration projects listed in the Modified Alternative 2. CBD at 9 and 11.

Response: I find that the Forest did consider the impacts of removing timber to clear the area for ski runs and lifts.

Appellant states that "Timber harvest connected to MASA expansion clearly meets the Forest Plan definition of "timber harvest," which includes the "full spectrum of silvicultural methods, depending on site specific conditions and management. Methods may include clearcutting, shelterwood, seed-tree, group selection and individual tree selection." See 1990 LRMP at 4-11 for this same description of timber harvest. A focal point in the definition of timber harvest is the use of the words "silvicultural methods." The Dictionary of Forestry (© 1998 by the Society of American Foresters) defines silviculture as "the art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis." Dictionary of Forestry at 167. This definition centers around establishing and growing trees for public use on a sustainable basis.

For this project, the focus is on clearing trees and vegetation for ski area expansion, not on silviculture for establishing or growing trees on a sustainable basis. 2004 FEIS at II-56 to II-61. Tree clearing does not require a silviculture prescription; for the ski area expansion no silviculture prescription will be prepared, as it is not considered timber harvest meant to grow or control trees on a sustainable basis. Because tree clearing is not a silvicultural activity, it is not considered timber harvest by definition of the Forest Plan, and as such, the standard and guideline under MS 22 that requires a silviculture prescription for timber harvest for watershed protection or enhancement does not apply.

The FEIS outlined that the trees that would be cleared for the ski runs and lifts would potentially be disposed of by a settlement agreement. 2004 FEIS at II-61. Authority for a timber settlement agreement is found at "36 CFR 223.12: Permission to cut, damage, or destroy trees without advertisement." Under 36 CFR 223.12, "Permission may be granted to cut, damage, or destroy trees, portions of trees, or other forest products on National Forest System lands without advertisement when necessary for the occupancy of a right-of-way or other authorized use of National Forest System land." Therefore, based on the above definitions of timber harvest and silviculture, I find that the MS 22 standard and guideline for timber harvest does not apply to the activity of clearing trees for ski area expansion. See response to Appellant Statement #7 for information regarding how the project protects and maintains water quality.

Riparian Reserves/ACS

Appellant Statement #12 Appellant states that the Forest failed to meet mitigation term #8 established in the 1991 Master Plan ROD, which states "development will not occur in wetlands or riparian area unless there are no alternative sites available" as determined by a Forest Service hydrologist. Appellant states that no review has been done. EN at 2 and 3. Appellant states that alternative sites are available. EN at 2.

Response: While the supplemental analysis did not require further analysis of the location of the proposed action, I find that the Responsible Official adequately addressed the locality of all proposed actions in relation to wetlands and/or riparian areas. Those activities that would occur in riparian areas

have been minimized to the extent possible to protect resources, while still meeting the purpose and need. FSEIS at II-38.

The regulation at 36 CFR 1502.14(f) requires the agency to include appropriate mitigation measures in their description of alternatives. Riparian activities include 14.82 acres of vegetation clearing (tree falling and vegetation cutting) and 1.8 acres of grading (tree and vegetation removal and moving soil), resulting in a reduction in riparian reserve forested cover of 3.9%. FSEIS at II-38, Table FSEIS II-4. Required mitigation measures have been identified to reduce the potential impacts associated with any activities that occur in riparian reserves. 2004 ROD, Attachment B. In addition, a hydrologist did review the proposed activities and contribute to preparation of the DSEIS and FSEIS. In the response to comments section of the FSEIS, the Forest documented that "Physical resource scientists (including hydrologists, soils scientists, geologists and geotechnical engineers) have been continually involved with the design and evaluation of ski area expansion, and were involved with the analysis documented in the DSEIS. Specific review and evaluation of the supplemental analysis by a hydrologist for this mitigation will be documented." FSEIS at B-18. The list of preparers for the FSEIS documents a Forest Service hydrologist as a primary contributor for the FSEIS, and the cumulative watershed effects analysis in the 2004 FEIS was also prepared and reviewed by a hydrologist, thus further complying with this standard and guideline. FSEIS at IV-1; 2004 FEIS at Appendix C.

Appellant Statement #13: Appellant states that the Forest violated the 1994 NWFP ROD (B-11) by proposing permanent removal of forest and modification of topography in violation of the aquatic conservation strategy. OW at 5. Appellant states that the 2003 DEIS found that Ashland Creek will be degraded with regards to 6 of the 9 ACS objectives, but that in the DSEIS, the Forest no longer shows Ashland Creek as degraded, with no explanation. RGSC at 12. Appellant states that the DSEIS contains no new information on ACS objectives. CBD at 16. Appellant states that the 2004 FEIS failed to establish a natural range of variability and as such, there is no explanation of how the ski area expansion will "maintain or restore" watershed conditions. CBD at 19.

Response: I find the Responsible Official determined that the proposed vegetation management and grading activities do not violate the intent, objectives, or standards and guidelines of the ACS.

The regulation at 40 CFR 1502.16 requires the agency to discuss the direct, indirect, and cumulative effects (40 CFR 1508.7) of the proposed project. A review of the 2003 DEIS shows that the Forest documented the condition of Ashland Creek in Appendix C. The Forest documented the watershed condition rating as "moderate" both pre- and post-project and the channel condition rating as in "fair" condition. In terms of cumulative effects, the overall condition rating was deemed "fair" for both pre- and post-implementation. 2003 DEIS Appendix C at 3 and 4. The FEIS used a more updated analysis tool, the Equivalent Roaded Area, to determine the thresholds of concern for the watersheds, thus, the terminologies between the 2003 DEIS and the 2004 FEIS did not exactly match. Regardless, the DEIS, FEIS and FSEIS accurately documented the condition of the watershed as in moderate or fair condition.

The 2004 FEIS at IV-106 discusses consistency with the watershed analyses for the project area and states that for Bear Creek, which includes the Ashland Creek and Neil Creek subwatersheds, the desired condition for aquatic systems is that the sediment regime is more consistent with the historic range of variability. The 2004 FEIS discloses that the stringent mitigation measures and restoration projects would prevent or minimize additional sediment, thus maintaining or improving conditions at the watershed scale. 2004 FEIS at IV-106. The SROD discloses consistency of the decision with ACS objectives at SROD-9 to 11, including references to previous consistency disclosures in the 2004 ROD.

The SROD also discusses consistency of applicable riparian reserve standards and guidelines, including RM-1, RM-2 and other general riparian management and watershed and habitat restoration standards and guidelines. The Responsible Official determined that proposed actions are compliant with all applicable ACS components and riparian reserve standards and guidelines. SROD at 9 and 12. This determination is supported by the following:

- The 2004 FEIS identified and incorporated all applicable riparian reserve standards and guidelines for all action alternatives (FEIS IV-101 to IV-106);
- The SROD at page 9 reiterates the standards and guidelines that were applied, in particular RM-1, RM-2, general riparian management standards and guidelines, and watershed and habitat restoration standards and guidelines; application of these standards and guidelines, and associated restoration activities that further contribute to this project not preventing attainment of the ACS;
- The 2004 ROD Attachment B identifies and provides required mitigation measures sufficient to meet the overall ACS objective of not retarding or preventing attainment of ACS objectives.

Thus, by implementing the required mitigation measures (ROD Attachment B), the vegetation management and grading elements do not limit or prevent the attainment of ACS Objectives 1 through 9.

Appellant Statement #14: Appellants state that the Forest failed to disclose the impacts to the ACS with regards to the new riparian vegetation impacts revealed in the DSEIS, which documents that an additional 10 acres of riparian reserves will be cleared of vegetation and 0.5 acres of riparian reserves will be graded in order to build the ski runs, doubling the impacts described in the 2004 FEIS. OW at 5; CBD at 12.

Response: I find that the Responsible Official adequately responded to and provided sufficient information on impacts to the ACS objectives at both the site-specific and watershed levels, including the additional 10 acres of riparian reserves disclosed in the FSEIS at II-38.

The regulation at 40 CFR 1502.16 requires the agency to discuss the direct, indirect, and cumulative effects (40 CFR 1508.7) of the proposed project. The SROD discusses the increase in riparian reserve acres associated with incorporation of LHZ 2 as riparian reserves (as required by the Court), including disclosures on overall consistency with ACS objectives 1-9 associated with proposed vegetation clearing and grading in these areas. SROD at 10 to 11. The disclosures in the SROD also reference the 2004 ROD locations of ACS consistency disclosures for each of the nine ACS objectives. Additional disclosures on impacts to ACS are provided in the FSEIS, Appendix A, 2007 New Information Review at pages 7-9. By aggregating all of the information from the 2004 FEIS, the 2004 ROD, the new information sections in the FSEIS and the disclosure in the FSEIS, I find that the Forest adequately disclosed impacts to riparian reserves and that the objectives of the ACS were met, and that the additional acres were a result of the court-ordered inclusion of LHZ 2 areas as riparian reserves. FSEIS at II-38.

Appellant Statement #15: Appellant states that the EIS used a flawed definition of site-scale riparian impacts. OW at 5; CBD at 8. Appellant states that the EIS site-scale is 1,065 acres (bigger than the SUP area of 960 acres) and that the site scale should only be just the site of the impacts themselves. Appellant states that reliance on the larger scale masks potentially significant site-scale impacts. OW at 5.

Response: While the supplemental analysis did not require modification to the scale used for analysis of effects, I find that the Responsible Official adequately defined and used the appropriate scales necessary to disclose the effects of all existing and proposed action.

The regulation at 40 CFR 1502.16 requires the agency to discuss the direct, indirect, and cumulative effects (40 CFR 1508.7) of the proposed project. The scale of the disclosure is generally prescribed by the resource and the extent of the project activities, and varies by project. As described in the 2004 FEIS at III-40 to III-41 the analysis used a "site scale" and a "watershed scale." The site scale analysis area included the SUP area, as well as a delineated area adjacent to the SUP. The additional area was included to provide the basis of analysis of watershed conditions that may be affected by proposed expansion activities and delineates the existing condition of watershed resources within the site scale analysis area, which may have been affected by historical and/or ongoing process or activities. FSEIS at II-28. Spatial boundaries define the affected area for each resource indicator, so the boundary is generally physically or biologically dependent. Forest Service Handbook (FSH) 1909.15, 10, 15.2a. Specific watershed effects are disclosed in the FEIS at IV-74 to IV-97. Additionally, impacts are disclosed at the scale that the impact will occur, as requested by the appellant in the 2004 FEIS, which contains a detailed description of individual activities and the potential for erosion or sedimentation to occur based on the described activity. 2004 FEIS at IV-29 to IV-58. Thus, I find that the Forest did apply appropriate scales to analyze effects to riparian areas, soils, and the watershed.

Appellant Statement #16 Appellant states that the Forest failed to comply with the riparian reserve and ACS requirements of designating riparian reserve boundaries in all watersheds. RGSC at 7.

Response: I find the Responsible Official complied with the riparian reserve and ACS requirements of designating riparian reserve boundaries for the project. The 2004 FEIS contains a thorough discussion of riparian reserves and an entire appendix dedicated to describing and mapping the boundaries and buffers for wetlands and streams, and includes rationale for riparian reserve widths. 2004 FEIS at IV-100 to IV-101; 2004 FEIS Appendix E at 12-14; and map of Riparian Reserves at Appendix E. In compliance with the Court's order, the supplemental analysis revised the riparian reserve delineation to include LHZ 2 areas. SROD at 4 and 8; FSEIS at II-35 to II-42. Thus, given the riparian reserves described in the FEIS and the FSEIS, I find that the project meets the ACS requirement to delineate riparian reserve boundaries.

Court-Ordered Deficiencies and Implementation

Appellant Statement #17: Appellants state that the Forest failed to correct court-ordered deficiencies prior to starting the project and that the project will be implemented prior to the Court ruling on the FSEIS and SROD. GN; JN; GM; GN. Appellants state that the Forest intends to allow the proponent to cut 70+ acres of virgin growth forest prior to the court's ruling on the issue. JN; GM; GN; AW; AP at 1.

Response: I find that the Responsible Official did respond to court-ordered deficiencies as disclosed in the FSEIS and SROD. In particular, the FSEIS and SROD disclosed additional information and analysis of the selected alternative on the fisher, restricted riparian and watershed terrain and riparian reserves as directed by the Court. FSEIS I-5 to I-6.

The notice, comment, and appeal regulations at 36 CFR 215.9(b) require that implementation of project activities may occur on, but not before, 15 business days after disposition of all appeals, meaning that

no aspects of the project may be implemented (including cutting trees) until 15 business days after all appeals have been decided upon.

Upon completion of the appeals process, if the appeal deciding officer upholds the SROD and FSEIS, the United States Department of Justice will make the necessary filings to notify the Court that the injunction should be lifted. Furthermore, the Responsible Official disclosed that several state and local agencies have regulatory responsibilities for many activities and actions that the Mt. Ashland Association must comply with before implementation may begin. SROD at 2. Regardless, given that the court-ordered deficiencies are addressed in the FSEIS and SROD, no implementation of activities described in the ROD or SROD have occurred, and additional compliance with state and local agencies is required before implementation, I find that the appellants claim is unfounded and that tree cutting has not yet occurred.

These issues are beyond the scope of the remedy required by the court-ordered injunction.

Economics

Appellant Statement #18: Appellants state that the pre-2004 economic data on skiing demand needs to be updated with current market conditions, market competition, and economic conditions, which may result in this expansion project becoming a tax burden. EN at 4; KM; CH. Appellant states that the general downward trend in ski area visitation all across the west needs to be analyzed. RGSC at 11. Appellants state that the Forest's entire economic analysis is flawed because the Forest uses a National Environmental Policy Act (NEPA) analysis that has a baseline of 89,000 visitors a year; however, for the past 4 years Mt. Ashland visitation has been only 72,000 visitors a year and that by ignoring reduced visitation, revenues, and whether or not the Mt. Ashland Association can even afford the expansion, the analysis is incomplete and the ability to meet the purpose and need is questionable. RGSC at 10 and 11; FD at 2; AP at 1; KM.

Response: Economic information related to skiing demand is outside the scope of the supplement ordered by the Court. Regardless, I find that the Responsible Official did consider the current economic conditions as evidenced by the "New Information Review" in 2010. FSEIS Appendix A - 2010 New Information Review at 12-13.

The FSH at 1909.15, 18.1 describes how the agency reviews new information. In the 2010 "New Information Review", the Forest discloses the downward trend in ski area visitation at Mt. Ashland and concludes that the reduction in skier visits at Mt. Ashland was due to the weak economy and a reduced operating season. FSEIS Appendix A – 2010 New Information Review at 13. The conclusions stated in the new information reviews completed in 2007, 2009 and 2010 are not significantly different from the information presented in the 2004 FEIS on pages IV-212 to IV-213. The response to comments also addressed the issue of economics and reiterates and reviews relevant economic information and discusses the steps that the Mt. Ashland Association will need to take prior to implementation of the project. FSEIS at Appendix B-25, B-26, B-28 and B-29. Based on the response to comments and consideration of new information, I find the Forest did consider and evaluate updated economic information as part of their decision on the ski area expansion.

NEPA Purpose and Need/Alternatives

Appellant Statement #19: Appellant states that the Forest will not meet the purpose and need because lift 15 will not be built in phase one. Appellant states that the Forest's goal is to provide more novice and intermediate runs, but without lift 15, only medium to high intermediate runs will be accessed in the expansion area. RGSC at 13.

Response: Implementation of lift 15 is outside the scope of the court-ordered supplement. Regardless, I find that the Responsible Official's decision is consistent with the project's objective of providing a balance of terrain for different ability levels as indicated in the 2004 ROD at 10, 12, and 13 and in the comparison of alternatives. 2004 FEIS at II-113. In addition, the 2007 "New Information Review" of the FSEIS (Appendix A at 6) discloses that intermediate skiers could access intermediate runs via the Windsor Lift.

The regulations at 40 CFR 1501.2(c), 40 CFR 1502.14, and the FSH 1909.15 Chapter 10, 14 provide agency guidance for what constitutes a reasonable range of alternatives.

Chapter II of the 2004 FEIS discloses changes in acres of accessible terrain including novice and intermediate terrain, demonstrating that all action alternatives will increase novice and intermediate terrain opportunities. FEIS at II-113. Additionally, the 2004 ROD discloses improvements in terrain available, including novice and intermediate opportunities enhanced by new ski runs and changes in available terrain associated with the decision. 2004 ROD at 10, 12 and 13. These disclosures reveal that all action alternatives, and the subsequent decision, are responsive to the project's purpose to provide additional novice to intermediate level terrain (2004 FEIS at I-9) and fulfills the requirements of regulation and policy for what constitutes a reasonable range of alternatives.

Appellant Statement #20: Appellant states that the Forest acted with bias by scoping a narrow purpose in the DSEIS to retroactively justify the decision the Forest made in the 2004 ROD approving the Modified Alternative 2. CBD at 24. Appellant states that Forest failed to consider the full range of reasonable alternatives to the meet the forest plan requirements that it violated in the 2004 ROD. CBD at 24 and 25.

Response: Consideration of additional alternatives is outside the scope of the court-ordered supplement. The purpose of the supplement was to analyze and correct specific NEPA and NFMA violations identified by the Court as they pertained to the 2004 ROD selecting Modified Alternative 2 (i.e., Alternatives 2 and 6). FSEIS at I-8. Because the Modified Alternative 2 was the only alternative relevant to the Court's decision, I find that the FSEIS has adequately addressed the requirements stated in the Court's opinion.

As stated in the SROD at 2 and 12, the Responsible Official concluded that the information provided in the supplemental analysis did not trigger the need to modify the decision made in the 2004 ROD. While the supplemental information was purposefully focused on the Modified Alternative 2 as directed by the Court, the FSEIS as well as the FEIS and ROD did consider, evaluate and disclose the effects of all of the alternatives consistent with direction found at 40 CFR 1501.2(c), 40 CFR 1502.14(a) and 40 CFR 1502.14(c).

Appellant Statement #21: Appellant states that the DSEIS is inadequate because it failed to consider alternatives outside of the scope of the 1991 Master Plan record of decision. Appellant states that the nineteen year old Master Plan decision needs to be revaluated under current land management planning restrictions and alternatives that avoid the Ashland Creek Municipal Watershed need to be considered. EN at 2. Appellants also state that the Forest ignored the community alternative that was suggested in 2004. GB; JN; PH; CL; EC; CR; AW; AP at 2; RB at 2.

Response: Consideration of additional alternatives is outside the scope of the court-ordered supplement. As determined in the Court's opinion, the purpose of the supplement was to analyze and correct specific NEPA and NFMA violations pertaining to the Modified Alternative 2. Therefore, there was no requirement to include additional analysis of alternatives outside the scope of the Court's opinion.

The regulations at 40 CFR 1501.2(c), 40 CFR 1502.14(a), and the FSH at 1909.15 Chapter 10, 14 provide agency guidance as to what constitutes a reasonable range of alternatives and discusses how alternatives are considered, but eliminated from detailed study.

The 2004 FEIS tiers to the 1991 Master Plan, which programmatically approved the ski area expansion, but did not specify exact locations for future development. FEIS at I-6 to I-8. The 2004 FEIS analyzed the site-specific proposed action in compliance with NEPA including consideration of current policies and regulations, such as the amendment of the Rogue River LRMP by the Northwest Forest Plan and any updates to the Endangered Species Act. FSEIS at B-23. Thus, I find that the Responsible Official considered current planning direction, in both the 2004 decision and also in the 2011 decision.

The 2004 FEIS did not revisit the programmatic decision for expansion that was made in the 1991 Master Plan. FEIS at I-6. The 2004 FEIS analyzed options for authorizing expansion actions within the SUP area, tiering to the 1991 decision. Since reevaluating the 1991 Master Plan was outside the scope of the 2004 FEIS, only alternatives which occurred within the existing SUP area were considered in detail. 2004 FEIS at II-1 to II-121. However, multiple alternatives were considered, but eliminated from detailed study, including a community alternative and an alternative that avoided the Ashland Creek Municipal Watershed by developing the south face of Mt. Ashland. 2004 FEIS Appendix D. Thus, I find that an adequate range of alternatives was considered and that the Court did not order the Forest to revisit the 1991 or 2004 decisions regarding expansion of the ski area.

Appellant Statement #22: Appellants state that the Forest failed to meet the purpose of NEPA to "integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays, and head off potential conflicts." Appellants state that this DSEIS "amounts to a post hoc attempt to comply with law as a result of a court ruling" and that it was designed "merely to paper over a court injunction made necessary by the agency's violations of law" and that the entire NEPA process has been biased to favor expansion since it was initiated, in violation of 40 CFR 1500.1(b). CBD at 25; EN at 3.

Response: This statement is outside the scope of the court-ordered supplement. The purpose of the supplement was to analyze and correct specific NEPA and NFMA violations identified by the Court. As stated in the FSEIS at I-8, the supplement is needed to address the appropriateness of the previous decision and to be responsive to the Court's opinion. The FSEIS is not meant to be a standalone document (40 CFR 1502.9(c)) but serves as a supplement to the 2004 FEIS that meets the intent of 40 CFR 1501.2 to "integrate the NEPA process with other planning at the earliest possible time to insure

that planning and decisions reflect environmental values, to avoid delays, and head off potential conflicts." In addition, the underlying need of the 2004 FEIS was to respond to a proposal by the Mt. Ashland Association to expand its facilities within the special use area. The Forest analyzed an alternative that would not expand the ski area (no action) in the 2004 FEIS, thus eliminating "bias" toward expansion. Thus, I find that the information provided in the FSEIS meets the intent of NEPA by helping the Responsible Official make a decision that is based on understanding of the environmental consequences related to the proposed ski area expansion. 40 CFR 1500.1(c).

Appellant Statement #23: Appellant states that the DSEIS failed to achieve a better action, as required by 40 CFR 1500.1(c), by not considering the additional information relative to the range of alternatives that was presented in the 2004 FEIS. EN at 3. Appellants state that the decision-maker has no access to the new analysis relative to the six alternatives presented in the 2004 FEIS. EN at 3; RGSC at 8.

Response: This statement is outside the scope of the court-ordered supplement. The 2004 FEIS considered, evaluated and disclosed a full range of reasonable alternatives consistent with direction in 40 CFR 1501.2(c) and 40 CFR 1502.14(c). The purpose of the supplement was to analyze and correct specific NEPA and NFMA violations identified by the Court. Because the Responsible Official states in the SROD that his decision is based upon evaluations of all new information, as well as the supplemental information in the FSEIS, I find it to be consistent with 40 CFR 1502.9(c)(ii), which provides direction on documenting new information in an supplemental analysis. FSEIS at I-4 to I-5. While the supplemental information was purposefully focused on the Modified Alternative 2, the analysis did evaluate information on fisher and riparian reserves in the context of all of the alternatives documented in the 2004 FEIS and ROD. FSEIS II-1 to II-42.

Appellant Statement #24: Appellant states that the Forest can approve existing trails within the existing ski area instead of performing the ski expansion. PS.

Response: This statement is outside the scope of the court-ordered supplement and is based on the opinion of the appellant that intermediate and beginner ski needs can be improved within the existing ski area. Regardless, the Responsible Official did consider impacts of continued operation within the existing ski area boundary as part of Alternative 1 (No Action). The 2004 ROD at 36 discloses the Responsible Official's rationale for not selecting Alternative 1. In his 2004 decision he stated that Alternative 1 does not address the purpose and need to balance and diversify guest access, circulation, services, facilities, skier safety, economic viability and the trend of watershed recovery. The Responsible Official did consider an alternative that would keep activities within the existing ski area, but determined that without expansion, no low intermediate terrain would be available, thus limiting overall accessibility and opportunities for novice skiers. 2004 ROD at 36.

Consideration of New Information

Appellant Statement #25: Appellants state that the Forest failed to consider new circumstances, including failure to consider a disturbance following the 2004 FEIS that blew down a large number of Engelmann spruce trees and failure for potential cumulative effects from this project to affect the viability of that stand. EN at 4; KM.

Response: This statement is outside the scope of the court-ordered supplement. Regardless, I find that the Responsible Official did consider new circumstances (in accordance with FSH 1909.15, 18.1)

including recent wind events in his decision on the ski area expansion. Evidence of this consideration is provided in the FSEIS, Appendix A – New Information and Changed Circumstances Evaluations (2010 New Information Review at 9-10). The 2004 FEIS and ROD also discussed a 2002 event that blew down a number of spruce trees (FEIS at IV-115; ROD at 27) and the FSEIS further considered impacts of a more recent 2008 winter storm that blew down several more trees in the spruce grove (Appendix A, 2010 New Information Review at 9-10). Therefore, I find that the FSEIS did meet the intent of 40 CFR 1502.9(c) by detailing new circumstances and information relevant to environmental concerns related to the proposed action and its impacts, including impacts from blowdown events.

Appellant Statement #26: Appellant states the documents are stale and not using the best available information. RGSC at 13.

Response: I find that the Forest used up-to-date information in preparation of the FSEIS.

The regulations at 40 CFR 1500.1 require the agency to use information "of high quality." Evidence of the use of this information is found in the FSEIS, Appendix A – New Information and Changed Circumstances Evaluations. Additional data collection regarding the fisher began in 2010 and continues to be collected for purposes of documenting fisher population. New information reviews on topics including survey and manage species, climate change, Engelmann spruce stand information, fire regime, fuels cumulative effects, ski visitation, harvest plans of other landowners, and the spotted owl recovery plan, were conducted in 2007, 2009, and for most topics, reviewed again in 2010. Thus, I find that the Forest used the best available information to prepare the FSEIS.

Appellant Statement #27: Appellant states that the Mt. Ashland Association has made it clear that it intends to change a double chair to a triple chair and replace the Ariel lift, although these actions are not considered in the Master Plan, making it incomplete. Appellant states that the Mt. Ashland Association intends to complete other improvements on the mountain that are not analyzed in the DSEIS. RGSC at 12.

Response: This statement is outside the scope of the court-ordered supplement. However, I find that the Forest has addressed this comment previously, both in the consideration of new information and in response to comments. In the response to comments, the Forest responded to this assertion by stating "This topic was discussed in DSEIS, New Information Review, September 2009 and July, 2007. It was determined that these actions are not necessarily being proposed. Replacement of an existing facility, with a newer version or upgrade of the same facility within the same environmental footprint, does not create environmental impacts that warrant assessment in an environmental impact statement. Such reconstruction is generally categorically excluded from documentation in an Environmental Assessment or an Environmental Impact Statement." FSEIS at B-30. Thus, I find that this statement was adequately addressed in accordance with FSH 1909.15, 18.1.

Appellant Statement #28: Appellants state that the Forest has refused to analyze the Total Maximum Daily Loads (TMDLs) for Ashland Creek. Appellants state that the WEPP model is inherently unreliable and inaccurate and that those inaccuracies must be disclosed in light of the new TMDLs. RGSC at 12; FD at 2.

Response: This statement is outside the scope of the court-ordered supplement. However, I find that the Forest has addressed this statement previously, both in consideration of new information (in

accordance with FSH 1909.15, 18.1) and in response to comments. In the response to comments, the Forest responded by stating "This topic was discussed in DSEIS, New Information Review, September 22, 2009 and July 2, 2007. TMDLs are actually thresholds for which proposed actions would not be allowed to exceed. Ski area expansion would be in compliance with these thresholds; the amount of sediment delivery was predicted and documented in the 2004 FEIS and the now "in place" TMDLS would not be exceeded." The new TMDL that was issued by the State of Oregon was for sediment in the Ashland watershed and was based on the analysis included in the EIS and does not contradict what is in the FEIS. FSEIS at Appendix A, 2009 New Information Review at 6.

Information regarding the WEPP model is outside the scope of the court-ordered supplement and was directly addressed by the Court. In their opinion, they found that the FEIS adequately disclosed the shortcomings in the Water Erosion Prediction Project (WEPP) model. *ONRC v. Goodman*, 505 F.3d at 897 (9th Cir. 2007). Thus, I find that this statement was adequately addressed.

Appellant Statement #31: Appellants state that the Forest relies on proposed mitigation measures to reduce, but not prevent direct effects to Riparian Reserves in violation of ACS standard and guideline WR-3, which prohibits the Forest from using mitigation or planned restoration to prevent habitat degradation within riparian reserves. CBD at 15; RGSC at 13.

Response: This statement is outside the scope of the court-ordered supplement. However, I find the Responsible Official identified the necessary mitigation measures and project design features for the proposed actions as required by the Council on Environmental Quality (CEQ) to minimize the effects to resources. SROD at 9-12.

The regulations at 36 CFR 1502.14(f) require the agency to include appropriate mitigation measures in their description of alternatives. Mitigation, as defined by CEQ, includes: (a) Avoiding the impact altogether by not taking a certain action or parts of an action; (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (e) Compensating for the impact by replacing or providing substitute resources or environments. 40 CFR 1508.20.

In addition to the mitigation proposed to reduce the effects of the actions that would occur for ski area expansion, the FEIS contains watershed restoration projects which are not defined as mitigation for the project, but instead addresses long-term restoration of the watershed. The proposed watershed restoration activities are not intended to be a substitute for preventing habitat degradation but instead are designed to remedy and improve existing conditions as stated on page 11 of the 2004 ROD. Thus, I find the Responsible Official's inclusion of watershed restoration activities in this project is consistent with WR-3.

Appellant Statement #32: Appellant states that the new analysis in the FSEIS does not explain how 39 acres of MS-4 changed to MS-22. CBD at 7.

Response: This statement is outside the scope of the court-ordered supplement. See response to Appellant Statement #10 for information on plan amendments.

Climate Change

Appellant Statement #33: Appellants state that the proposed trails expansion at a lower elevation is not a rational decision due to the climate change and less snow at lower elevations. AW; GB; GN; CH; RB; JN; GM; JM; EC. Appellant states that the Forest only reviewed one study on climate change and should have used new information regarding climate change to assess the impact on the proposed project. RGSC at 8. Appellant states that the agency has ignored its own policy and direction on climate change by refusing to review, analyze and disclose literature that predicts changes in southern Oregon due to climate change. RGSC at 9 and 10.

Response: This statement is outside the scope of the court-ordered supplement. Regardless, I find that the Responsible Official evaluated and considered impacts of climate change as part of his decision on the ski area expansion.

The regulation at 40 CFR 1502.15(d) directs the agency to consider the environmental effects of the alternatives, including the proposed action, while the FSH at 1909.15, 18.1 guides the agency in consideration of new information. Agency direction for consideration of climate change impacts on project level NEPA analysis and documentation was released in the form of Regional Interim Guidance in April 2008 and more specific national direction in January 2009. The essence of the guidance is for projects to consider, as appropriate, the effect of climate change on a proposed project and conversely, the effect of a proposed project on climate change. The assessment of the ski area expansion and associated decision followed this direction including evaluations of the effects of climate change on the project (FSEIS, Appendix A, September 2009 New Information Review at 8-9; December 2010 New Information Review at 3-9) and possible effects of the project on climate change. FEIS at IV-108 to IV-111, Table IV-15.

Specifically, the SROD and FSEIS included consideration of assessments of global warming scenarios published by the National Center for Conservation Science and Policy. FSEIS, Appendix A, September 2009 New Information Review at 8-9. The Responsible Official also considered other recent papers and science regarding effects of climate change including *Technical Memorandum No. 6: Effects of Climate Change on Ashland Creek, Oregon* (FSEIS, Appendix A, December 2010 New Information Review at 7-8) and *Oregon Climate Assessment Report* (FSEIS, Appendix A, December 2010 New Information Review at 8-9). Thus, I find that the Responsible Official considered appropriate information regarding climate change prior to making a decision.

Appellant Statement #34: Appellant states that the project will break water tables of the nearby creeks, resulting in all passing cloud systems going higher over the region or not forming at all, thus producing a desert effect. TS at 2. Appellant states that the Responsible Official disregarded the demonstration project on riparian resource restoration that he has previously submitted to the Forest. TS at 1.

Response: This statement is outside the scope of the court-ordered supplement. Regardless, I find the Responsible Official evaluated and considered impacts of climate change as part of his decision on the ski area expansion including assessments of multiple studies and new information. Appellant's demonstration project is also outside the scope of this project. See response to Appellant Statement #33 for specific information regarding climate change.

Roadless/Roads

Appellant Statement #35: Appellant states that the Forest calls the R-18 Skiway a trail instead of a road to evade the prohibition on construction of roads within the inventoried roadless area (IRA). CBD at 14. Appellants state that the R-18 Skiway is designed to be a road (40 feet wide route with an outslope of 5-10%) and that the Forest failed to disclose the difference between construction of a road and a trail. CBD at 13 and 14; OW at 5; RGSC at 11; GN. Appellants state that the Forest Service erred in complying with the Roadless Rule, which is now in full force and that the impacts to the IRA are too great. RGSC at 12; JM; GN; AP at 2.

Response: This statement is outside the scope of the court-ordered supplement. Regardless, I find the Responsible Official clearly described the R-18 skiway as a ski run, disclosed specific actions necessary to establish the run, and described the intended purpose of the run as a recreation path with potential use for emergency egress and administrative maintenance access. 2004 ROD at 4; FSEIS at B-24.

The regulation at 40 CFR 1502.15(d) directs the agency to consider the environmental effects of the alternatives, including the proposed action. The FEIS describes R-18 as a skiway run in Alternatives 2 and 3 (FEIS at II-70 and II-78, and FEIS at IV-56), and maps of Alternatives 2 and 3 display R-18 as a new or proposed run (FEIS at II-72 and II-76). The 2004 ROD in describing the selection of Modified Alternative 2 discloses R-18 as a ski run (ROD at 4) that would also be authorized for emergency egress and administrative access with groomers and snowmobiles during the winter and all terrain vehicles (ATVs) during summer months. The FSEIS at B-25 discloses that the skiway run is a path for recreation and maintenance and not a travelway for motor vehicles or otherwise an addition or improvement to the Forest road system during or after construction (36 CFR 294.21). Thus, I find that the FEIS clearly describes the extent and type of activities proposed for development of the skiway run in the IRA at FEIS IV-56.

I also find that the impacts to the IRA were adequately discussed. In the response to comments, the Forest states that "The McDonald Peak Inventoried Roadless Area was discussed and analyzed as a Significant Issue in the 2004 FEIS." The response also states that "In addition[al] *(sic)*, roadless areas and climate change was further considered in the New Information Review of September 22, 2009." FSEIS at B-23. An additional response to comments addressed roadless impacts at FSEIS B-24, documenting that "This comment is considered "out of scope" because analysis, authority, approval and compliance with the Roadless Rule was previously determined in the expansion project Record of Decision that included the referenced Skiway and ski run components, and was not challenged in the subsequent litigation regarding the ROD." FSEIS at B-24.

The FSEIS further summarizes the concern regarding impacts to the IRA by stating "Ski area expansion does not involve the construction/reconstruction of roads within the Roadless Area. It does involve the cutting of trees, potential administrative sale and removal of timber incidental to the implementation of an existing special use authorization (Ski Area Permit). On August 3, 2009, the Forest Service received re-delegation of authority from the Secretary to authorize: "b) Approval of any timber cutting, sale, or removal in inventoried roadless areas incidental to the implementation of an existing special use authorization. Road construction/reconstruction is not authorized through this re-delegation without further project-specific review. The local line officer is delegated authority to make these decisions." (New Information Review of September 22, 2009, page 3). This policy was also reiterated by the Secretary of Agriculture in a more recent memorandum on May 28, 2010."

Therefore, I find that the ski area expansion and impacts to the IRA were adequately disclosed and that the Forest documented the existing authority for the Forest to authorize activities in the IRA.

Appellant Statement #36: Appellant states that the Forest failed to ensure that "R-18 Skiway road" complies with road management standards and guidelines for riparian reserves, in particular, RF-2(a). CBD at 13 and 14.

Response: This statement is outside the scope of the court-ordered supplement. I find the Responsible Official applied appropriate standards and guidelines and associated mitigation measures to the R-18 skiway run. The regulation at 40 CFR 1502.14(h) requires the agency to describe means to mitigate adverse environmental impacts. In the FEIS, R-18 is clearly described and disclosed as a run and not a road (FEIS at II-70, II-72, II-76 and II-78, and IV-56; ROD at 4; and FSEIS at B-25), and as such road management standards and guidelines are not applicable. The 2004 ROD does disclose and incorporate specific required mitigation measures in addition to standard erosion control measures to limit impacts to soil, water and riparian conditions. 2004 ROD Attachment B-6, B-7, and B-8.

Impact on Wildlife Habitat – Other Species

Appellant Statement #37: Appellant states that the expansion proposal will degrade habitat for a broad range of endangered, threatened, and at risk species. KM; GM; NC; LW; FD; RB.

Response: This statement is outside the scope of the court-ordered supplement and is general in nature. The regulation at 40 CFR 1502.15(d) directs the agency to consider the environmental effects of the alternatives, including the proposed action. I find that the Responsible Official's decision is consistent with the provisions of the NFMA and the Endangered Species Act (ESA). SROD at 12; 2004 ROD at 44. A biological opinion dated June 5, 1999 (ref: 1-7-98-F-414) was submitted to the Forest Service from the U.S. Fish and Wildlife Service (USFWS), which concluded a no jeopardy finding on the northern spotted owl and spotted owl designated critical habitat from activities proposed in the ski area expansion project. The USFWS also concluded that no other listed species and avian species covered under the Migratory Bird Treaty Act would be subject to take from proposed ski area expansion activities. The effects to terrestrial wildlife habitat and species for other species of concern (2004 FEIS at IV-141 through IV-160) are summarized in the 2004 FEIS on Tables IV-24 and IV-25. 2004 FEIS at IV-146 and IV-147. For other species, the effects determination concluded that the proposed actions would not lead to Federal listing, although some habitat loss would occur and some terrestrial species may avoid the project area as chronic human disturbance would occur within the expansion area. 2004 FEIS at IV-272.

Appellant Statement #38: Appellant states that the Forest Service has not complied with survey and manage requirements. RGSC at 12.

Response: This statement is outside the scope of the court-ordered supplement. However, I find that the project did comply with the requirements of the survey and manage program. The 2004 FEIS described the affected environment and potential effects to survey and manage species, including the survey work that was conducted for the project. 2004 FEIS IV-131 to IV-133. As documented in the response to comments, the FSEIS included a review of new information. FSEIS at Appendix B-22, B-29 and B-31. As documented by the Forest, only category A and C species require pre-disturbance surveys and there is no reasonable likelihood of these species occurring in the permit area, either because habitat is lacking or the project area is outside of their range, thus pre-disturbance surveys were not

required. As documented by the Forest, surveys for lichens, bryophytes, and fungi were conducted in order to protect these species; one bryophyte and three lichen were found. FSEIS at B-31. Therefore, I find that the Forest has complied with the requirements of the survey and manage program.

Appellant Statement #39: Appellant states that the latest analysis sharing documents between 2004 and 2011 makes it impossible to read and understand. RGSC at 14.

Response: This statement is outside the scope of the court-ordered supplement. However, I find that the Forest complied with the regulation at 40 CFR 1502.9(c) in preparing the supplement, which requires the agency to prepare, circulate, and file the supplement in the same fashion (exclusive of scoping) as a draft and final statement. By choosing to focus on the information ordered by the Court, the agency also complies with the CEQ regulations at 40 CFR 1500.4 to reduce excessive paperwork by filing a focused statement.