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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

GREATER HELLS CANYON COUNCIL, an Oregon non-profit corporation and OREGON WILD, an Oregon nonprofit corporation,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE, a federal agency,

Defendant.

Case No. 2:26-cv-00673-HL

STATE OF OREGON'S AMICUS BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

The State of Oregon, through the Oregon Department of Fish and Wildlife ("ODFW"), submits the following amicus brief to provide the Court with its unique perspective and expertise on the U.S. Forest Service's ("Forest Service") decision to approve the Ellis Integrated Vegetation Management Project ("Ellis Project" or "Project"). Since at least 2012, ODFW has worked and collaborated with the Forest Service on the Ellis Project to improve elk habitat. This goal was to be achieved by conducting needed vegetation management while also closing roads. The Forest Service, however, changed the Ellis Project at the last minute, notably without the requisite analyses, by retaining vegetation management, but largely eliminating road closure from its approval. This exacerbates the very harm the Project was intended to alleviate. The Ellis Project now decreases secure elk habitat, which will encourage elk to migrate onto adjoining private lands, thereby harming ODFW's ability to manage elk for the citizens of the State. That is why ODFW is compelled to share its views and expertise with the Court.

Changing the Ellis Project also comes at a time when the Forest Service is rolling back regulations that aid ODFW in managing wildlife on National Forests. The Forest Service recently proposed rescinding the 2001 Roadless Rule, 66 Fed. Reg. 3244 (Jan. 12, 2001), which currently prohibits road building and timber harvest on roughly forty-five million acres of National Forests. 91 Fed. Reg. 53827 (Aug. 20, 2026). If finalized, this rescission would allow the Forest Service to build new roads in areas where road building is currently prohibited. For the Umatilla National Forest ("Umatilla Forest"), this means roughly 122,693 acres would be open to potential road building, which would significantly diminish secure elk habitat. Similarly, the Forest Service also recently proposed changing its Travel Management Rule, 36 C.F.R. pt. 212. 91 Fed. Reg. 54686 (Aug. 24, 2026). This proposal would increase travel throughout National Forests and inverts the existing presumption that roads are closed unless affirmatively opened. If finalized, many roads that are currently closed may be opened to travel in the future.

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While the State of Oregon opposes these proposals, and has submitted comments in opposition, it respectfully submits this amicus brief to ensure the Court's awareness that the sudden modification to the Ellis Project is not occurring in a vacuum. There is a sea change underway in Forest Service management, and the modified Ellis Project is but one part of this change. The Forest Service's recent actions and proposals are cumulatively detrimental to overall wildlife management and more specifically to ODFW's ability to manage elk in the Umatilla Forest.

ODFW supports Plaintiffs' motion for summary judgment. The Forest Service's sudden reversal on the Ellis Project plainly violates the Administrative Procedure Act ("APA"), National Environmental Policy Act ("NEPA"), and the National Forest Management Act ("NFMA"). To be clear, ODFW supports vegetation management as part of the Ellis Project, as it always has, but the Forest Service should be required to reexamine its decision to eliminate road closures. The change to the nature of the Ellis Project will have profound and adverse effects on secure elk habitat, warranting a narrowly tailored remedy from this Court. The Court should find for the Plaintiffs and order supplemental briefing on the issue of remedy.

BACKGROUND

"It is the policy of the State of Oregon that wildlife shall be managed to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state." Or. Rev. Stat. § 496.012. Consistent with this statutory mandate, ODFW is charged with, among other things, managing fish and wildlife in a manner that maintains all species at optimum levels, managing public land and water to enhance the production and public enjoyment of wildlife, and making decisions that benefit the wildlife resources of the State. *See* Or. Rev. Stat. §496.012(1), (2), (7).

I. FACTUAL BACKGROUND

ODFW has worked diligently with the Confederated Tribes of the Umatilla Indian Reservation ("CTUIR") and the Forest Service to develop projects within the Blue Mountains

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and the Umatilla Forest for roughly 40 years. These collective efforts work to increase overall forest health and improve wildlife habitat. ODFW also manages the recreational take of harvestable fish and wildlife in the Umatilla Forest and administers the Oregon State Wildlife Action Plan, which identifies strategy species, habitats of concern, and areas of conservation opportunities throughout Oregon. That is, while the Forest Service manages land within the Umatilla Forest, ODFW manages most of the wildlife species that inhabit those lands. And, although ODFW, CTUIR, and the Forest Service have different statutory and regulatory goals and duties, and are at odds over the current Ellis Project, there is great commonality between these entities as they must work together to ensure comprehensive management of these lands and wildlife.

A. ODFW's Elk Management

ODFW's management of elk is guided by the public trust doctrine and the North American Model of Wildlife Management, with a primary responsibility to provide recreational access to elk.[1] Primary recreational pursuits include both hunting and wildlife viewing opportunities, especially on public lands. Under this guidance, ODFW seeks opportunities to enhance and maintain elk populations on public lands to ensure accessibility to the public.

Management of elk populations throughout the State is guided by the 2003 Elk Management Plan. *See* Or. Dep't of Fish and Wildlife, Oregon's Elk Management Plan (2003).[2] This plan addresses the conflict between open road density and human access in relation to elk distribution and habitat use. Under the plan, ODFW is directed to work with the Forest Service and other land managers to reduce disturbances to elk through targeted road closures either

[1] https://www.fws.gov/story/2022-04/north-american-model-wildlife-conservation-wildlife-everyone

[2] Or. Dep't of Fish and Wildlife, Oregon's Elk Management Plan (2003), https://www.dfw.state.or.us/wildlife/management_plans/docs/ElkPlanfinal.pdf [https://perma.cc/3L76-BWAT]

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permanently or seasonally, especially in areas used for elk calving, wintering, or high disturbance areas. *Id.* at 29.

ODFW initially engaged on the Ellis Project due to increasing concerns and conflicts on private agricultural lands adjacent to the Project area. AR 05739-40. ("The Ellis project has the opportunity to help reduce this elk distribution shift by creating more favorable forage through thinning and controlled burns as well as reducing road densities and improving elk security."). Elk damage continues to play a negative role in private landowner operations, generally coinciding with the onset of the hunting season and continuing throughout the winter months. As elk migrate from public lands to private lands, they can damage fences and crops, among other issues. Based on that management challenge, ODFW has consistently engaged with federal land managers to work toward improved elk security. "Elk security" refers to areas more than half a mile from open roads and at least 250 acres in size. AR 10008–09; *see also* AR 05848 (Forest Service power point on elk security). These are the areas where elk are less likely to be impacted by vehicle use and more likely to escape harvest during hunting seasons. If an elk has access to secure habitat, it is less likely to migrate onto adjoining private land thereby reducing conflict with private landowners. AR 05740 ("The juxtaposition of the thinning, burning and road closures needs to be planned so that the elk have the best opportunity to fully utilize the resources available in the project area without leaving the elk security areas.").

Research on the effects of roads and trails on hunted elk populations demonstrates that during both hunting and non-hunting periods, elk avoid areas 0.5-1.0 miles from roads and trails open to access, particularly motorized routes. AR 11034. Elk avoidance leads to decreased use of areas near roads and trails, even those with highest forage quality. Roads also increase vulnerability to hunter harvest. AR 08145 ("Elk avoid open roads especially during hunting seasons and may move to areas of lower quality forage with a higher canopy cover. (Spitz et al

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2019, Smith et al 2022).”). Limited forage quality and extensive open roads, ultimately lead to distributional shifts of elk from public lands to private lands.

B. The Ellis Integrated Vegetation Project

In 2012, ODFW began collaborating with the Forest Service on the Ellis Project. Throughout the planning process, ODFW’s primary objective was to provide technical expertise and resource management input aimed at improving overall habitat quality, ecological function, and wildlife values for a diversity of species within the Project area.

ODFW staff participated in multiple field reviews and maintained ongoing coordination with Forest Service staff to evaluate existing habitat conditions, identify opportunities for habitat enhancement, and discuss management actions that would provide the greatest overall benefit to wildlife resources. Throughout this process, ODFW provided recommendations and technical input regarding potential vegetation management treatments and strategies, with an emphasis on achieving meaningful and sustainable habitat improvements across the Project area.

The stated purpose and need of the Ellis Project was to “increas[e] forest health and vigor; enhance[e] unique plant communities; improv[e] wildlife habitat; maintain[] and continu[e] public and traditional land uses; and protect[] values at risk and increase[e] public and firefighter safety in the event of a wildfire.” AR 09904. ODFW fully supported this articulation. The objectives of improving forest health and vigor while enhancing unique plant communities were projected to have a net benefit of increasing and enhancing forage availability for ungulate species, especially deer and elk. Improving wildlife habitat, coupled the forage enhancement with targeted security increases across the landscape, specifically for elk, fosters continuing public and traditional land uses, like wildlife recreation for the citizens of Oregon and the reserved treaty rights of our tribal partners.

Upon the release of the Draft Environmental Impact Statement (“DEIS”), ODFW submitted formal comments highlighting concerns regarding the lack of specifics on vegetation

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treatments and the impact on our ability to provide more detailed comments on how those treatments would affect deer and elk forage, while specifically noting that planned treatments would have a beneficial effect. AR 08144–47. ODFW also advocated for full analysis of proposed road closures, while recommending barriers on proposed closed roads. *Id.* One administrative benefit to barriers over decommissioning is that it allows road infrastructure to remain available for emergency response while still providing the needed security for elk on the forest. ODFW's ultimate recommendation was for the Forest Service to pursue Alternative 5 (road closure and treatment options), while incorporating Alternative 4 fuel break options. AR 08146. ("Providing elk security levels above 30% for the entire project area creates a minimum level of elk security in the area to maintain elk on public lands longer so they are available to the public during hunting seasons. Alternative five is the only alternative that provides that level of elk security."). This recommendation was directly correlated with the greatest potential outcome in both security and forage enhancement for elk in the project area. The Forest Service did not choose this alternative.

Instead, in a Draft Record of Decision, the Forest Service chose to modify Alternative 2 that largely retained vegetation management without any road closures; in essence, this approved all of the timber harvest and thinning, but did not change the landscape for road density. Upon release of the draft Record of Decision, ODFW filed a formal objection. AR 11031–33 ("ODFW is concerned that the selection of Alternative 2, modified to include Alternative 1 (No Action) for road management actions, will not effectively improve or maintain elk habitat distribution within the project area, resulting in decreased hunting opportunities and satisfaction on public lands, while simultaneously increasing elk-related conflicts on adjacent private lands."). In the objection, ODFW reiterated its support for vegetation treatments and noted its concern for elk security. Through the objection, ODFW urged the Forest Service to incorporate some level of motorized access management so that there was some benefit to the ongoing private land

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conflicts. The Forest Service Final Record of Decision effectively ignored ODFW's concerns and objection. AR 12002–45.

ARGUMENT

The Forest Service's abrupt change to the Ellis Project without any meaningful analysis, violates the APA, NEPA, and NFMA. Plaintiffs' arguments in this respect are well taken, and there is no need to belabor those points here. Instead, ODFW provides a more targeted critique, which, should the Court find for Plaintiffs, inform a remand and narrowly tailored permanent injunctive relief.

To justify its change in position, the Forest Service contends that "[r]oad closures were removed from this decision because the science used to develop roads management for the action alternatives was misapplied to the Ellis project (Hillis et al 1991)" and "the Minimum Road Density Analysis completed in 2015 determined the road density within the Ellis Project currently meets or exceeds Forest Plan desired conditions." AR 10174. While ODFW believes that both contentions are factually incorrect, the Forest Service's new justifications are not sufficient to support its abrupt reversal. Accordingly, the Forest Service should be required to reexamine its decision to eliminate road closures and meaningfully address secure elk habitat on remand.

I. THE ELLIS PROJECT IS UNLAWFUL.

A. The Forest Service's Rationale Attempting to Justify Modification of Alternative 2 is Unreasonable.

Following sustained objections to the Draft Record of Decision, the Forest Service was required to provide further explanation as to why it had eliminated road closures from modified Alternative 2. It began by arguing that a study, Hillis et al., 1991, had been misapplied throughout the Draft and Final Environmental Impact Statements. It then asserted that hunting pressure, rather than roads, was more influential for secure elk habitat. And finally, it conceded

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that "the following changes were needed to balance current national direction and concerns identified throughout the project process." AR 12004. All three contentions are flawed.

The Forest Service argues that the study, Hillis et al., 1991 was misapplied because the study was conducted in dense forest cover, whereas the Ellis Project is located in a drier, less dense forest. In the Forest Service's words:

> The guidelines in Hillis et al. (1991) were developed for an area with much denser forest cover than a typical dry forest, and therefore elk closer to open roads could be obscured from sight by hiding cover, unlike in a more open, dry forest area. Hillis stated these guidelines should not be extrapolated to dry forests directly, inferring that without consideration of extending the distance for closed roads to elk security areas, the intended elk security may not be achieved, as elk will no longer be obscured from sight at the distances in which the guidelines were developed.

AR 12006. While it is true that areas of the Ellis Project are located in drier habitat, the rationale for eliminating road closures does not follow. In dense cover, elk may be less disturbed by a road because they are "obscured from sight by hiding cover." *Id.* But in a drier climate with less dense cover, elk are not obscured to the same extent. Research (and logic) dictates that in a drier climate, more road closures would be beneficial to improving elk habitat, not less. AR 18811-24 (Rowland et al., 2000). For instance, if there is less hiding cover, elk are less obscured, which means they would tend avoid roads more. The obvious implication is that road density should go down, not up, especially if the goal is to address secure elk habitat.

In fact, the Forest Service consistently noted the need for managing open road density (AR 04996, 05000, 05109, 05131, 07136). Even the clarification the Forest Service was required to provide supports the conclusion that, if the desired outcome is to keep elk on the Umatilla Forest rather than private lands, road closures are far more effective. AR 12041 ("While much of the science used by Hillis et al. is still valid today, for example elk security areas require cover and strategic road management . . . ."). And on balance, the clarification does not even truly address the criticisms the Reviewing Official noted with the Draft Record of

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Decision. *Id.*; AR 10138; AR 12006-07. The new rationale largely supports the original Alternative 2. AR 12004. To be sure, the Forest Service is free to disagree with the conclusions in Hillis et al., 1991, but it cannot cite and rely on it for a specific proposition and then directly contradict itself. That is the epitome of arbitrary and capricious.

The second attempted justification involves a new rationale that hunters, instead of roads, are responsible for decreasing secure elk habitat. As the Forest Service opines: "It has been determined that a critical factor affecting elk population and habitat use is hunters and hunting seasons (length of season, location and date, and number of hunting tags distributed). Hunting pressure and disturbance are the strongest predictors of elk habitat use (Ranglack et al. 2016)." AR 12006. There are at least two problems with this new rationale.

First, the rationale is entirely new. Had this rationale been raised at any time over the last fourteen years, ODFW could have had a discussion with the Forest Service about season length, location and date, the number of tags, or any other hunting related question the Forest Service may have believed affects habitat use. But that did not happen. More importantly, if the Forest Service truly believes that managing hunters, rather than roads, will fulfill the purpose and need of the project, it is certainly free to have that point of view. But it cannot conduct an entire NEPA process examining road closures and simply change its mind as to the mechanism. ODFW is mindful of the Supreme Court's recent instruction in *Seven Cnty. v. Eagle Cnty*, 605 U.S. 168, 186 (2025), but this is not some line drawing over indirect effects, but rather wholesale abandonment of one aspect of the purpose and need without any underlying analysis. The Forest Service needed to do more here.

Second, the only study the Forest Service cites for its change of heart does not bear weight. The Forest Service contends that Ranglack et al., 2016, entitled "*Security Areas for Maintaining Elk on Publicly Accessible Lands During Archery and Rifle Hunting Seasons in Southwestern Montana*" stands for the proposition that hunting pressure is the "strongest

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predictors of elk habitat use." AR 12006. Even a cursory review of the study reveals that this is factually inaccurate. While hunting pressure is a factor in habitat preference, the study demonstrates that there are a number of factors including accessibility, motorized routes, and canopy cover that dictate habitat use by elk. *See* AR 32275 ("our results suggest that elk habitat management during the hunting seasons should focus on accessibility of lands for public hunting, motorized routes, and canopy cover."). In fact, the study's last recommendation focused solely on canopy cover and road density. AR 32279 ("We recommend that security areas be defined as having ≥13% canopy cover that are ≥1.71 miles from a motorized route during the archery season, with no minimum block size requirement, and as having ≥9% canopy cover that are ≥0.95 miles from a motorized route, that are at least 5,000 acres during the rifle season."). The conclusion the Forest Service draws from this study is not supported.

The results and recommendations in Ranglack et al., 2016 are not surprising. Hunters use roads. And the more roads, the more hunting pressure. AR11032 ("Management of motorized access plays a crucial role not only in elk distribution but also in achieving harvest objectives and supporting desired hunting opportunities."). If the Forest Service wanted to reduce hunting pressure, closing roads was the logical solution; not eliminating that aspect of the Project. *See* AR 11580 (research supports "the notion that elk are more vulnerable to hunting pressure when open road densities are higher, and that roads open to motorized use is a consistent predictor of elk distribution and use of public lands."). Indeed, building 19 miles of new roads certainly does not achieve the stated objective. And minor adjustments to seasonal road closures are no substitute -- they are still open roads at some times of the year.

The fact is the Project, as approved, will reduce the overall habitat effectiveness of this area for elk, as reductions in vegetation along roadways will increase the distance from roads that is deemed effective elk habitat. The Forest Service's newfound focus on hunting pressure does

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not change this reality. And the shift borders on pretextual. As the Supreme Court succinctly held in similar circumstances:

> The reasoned explanation requirement of administrative law, after all, is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public. Accepting contrived reasons would defeat the purpose of the enterprise. If judicial review is to be more than an empty ritual, it must demand something better than the explanation offered for the action taken in this case.

Dep't of Com. v. New York, 588 U.S. 752, 785 (2019).

Finally, perhaps in a moment of candor, the Final Record of Decision relies on balancing the "current national direction" as a rationale for modifying Alternative 2. AR 12004. This "national direction" with respect to elk habitat is never meaningfully explained. It is not even disclosed. Passing reference to opaque "national direction" is not a sufficient explanation under the APA. Relying on it is certainly a factor that Congress did not intend the Forest Service to consider. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983) (explaining an action is arbitrary and capricious if "the agency has relied on factors which Congress has not intended it to consider").

ODFW recognizes that the Forest Service may have new policies, but the rationale it provides for modified Alternative 2 is not reasonable. Had the Forest Service truly engaged the science and its prior analyses, the decision to largely eliminate road closures would have been significantly different. The Forest Service should be required to truly engage with this science on remand.

B. The Ellis Project Does Not Comply with the Umatilla National Forest Plan.

The Umatilla National Forest Plan ("Forest Plan") requires the Forest Service to: "Provide and manage big game (elk and deer) habitat and its components (cover, forage, and roads) to assist in meeting state wildlife agency population management objectives." AR 02045. To achieve this requirement, proposed projects and management decisions are modeled to

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evaluate the effects on specific landscapes and the respective impacts to elk habitat. AR 02378–02390. This model is known as the Habitat Effectiveness Index ("HEI"). AR 12043 (Thomas et al., 1988).

HEI considers multiple variables to determine an area's overall effectiveness as habitat for elk. The specific components assessed in HEI include forage availability, thermal cover, hiding or security areas, and areas of low disturbance from roads, trails, or other human activities (road density). After these factors are evaluated, the model produces a HEI score. The Forest Plan has HEI scores for various areas within the Umatilla Forest.

The Ellis Project was modeled to evaluate the effects on elk habitat and was scored using HEI. To do this, the Project was split into seven separate units. AR 15376–15382. Based on an initial model run, approximately 60% of the Project area dis not currently meet the HEI baseline standard. But when the original Alternative 2 was modeled, it would have increased the HEI value for 6 of the 7 Areas and 93% of the overall landscape would have met the HEI baseline. That is, Alternative 2 moved these areas in the right direction to meet the HEI standards and would have been a significant benefit for elk habitat and consistent with the Forest Plan.

The Forest Service, however, did not approve Alternative 2, but rather modified the Ellis Project by largely retaining the originally proposed vegetative management and eliminating road closures. This had the effect of decreasing the HEI score. In the Final Record of Decision, the Forest Service provides an updated table that removes open road densities as an indicator and provides HEI scores for each of the seven Areas. There are two related problems here.

First, the Forest Service explicitly recognizes that open road densities are an important indicator for calculating HEI. AR 12043 ("Open road density is one of several important components in calculating HEI (Table 2, HEI section)."). Yet, the Forest Service removed this indicator when providing the table on HEI compliance. AR 12044. ("The following table was corrected to remove the open road density indicator and measure to clarify only findings related

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to the HEI model and the outputs that are used to predict the influence of forest management on elk and other big game species."). The decision to omit the open road density indicator is entirely unexplained. The only possible explanation is that eliminating road closures from Alternative 2 decreased the open road density indicator giving rise to the question of whether the Ellis Project complies with the Forest Plan. Hiding data is not reasonable decision-making.

Second, Area 1 is not consistent with the Forest Plan standard. Table B-1 in the Final Record of Decision indicates that the Forest Plan standard for Area 1 is 70%. *Id*. The approved Ellis Project, however, does not meet this standard and only achieves a HEI score of 59%. *Id.* The Forest Service attempts to explain this discrepancy, but the explanation is unconvincing. It argues that the forage will increase but cover will be reduced, which can in some instances benefit elk. *Id*. But the combination of reducing cover and eliminating road closures exacerbates the harm to secure elk habitat. This is because elk will be more exposed after cover is reduced. AR 18811-24.

The elimination of the road density indicator and explicit failure of Area 1 to meet the HEI Forest Plan standard is interrelated. ODFW does not contest that vegetation management can be beneficial for elk by increasing forage, but it also comes at a cost by creating new roads and reducing cover. That is why the original Alternative 2 was a balance between those competing interests. But when the Forest Service eliminated road closures it upset that balance. And the HEI score shows it. To be sure, the Forest Service can rely on qualitative analyses to explain an HEI inconsistency, but there must be something more than conclusory statements and the omission of data, especially in the face of a qualitative discrepancy, to justify that departure from the Forest Plan. ODFW simply cannot tell what the Forest Service has done here, and that alone is a violation of the Forest Plan. *Native Ecosystems Council v. U.S. Forest Serv., an agency of U.S. Dep't of Agric.,* 418 F.3d 953, 962 (9th Cir. 2005) ("We are unable to determine from the record that the agency is complying with the forest plan standard."). The Forest Service

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should be required to produce the open road density indicators and provide a sufficient HEI score explanation on remand.

II. THE CUMULATIVE EFFECT OF THE FOREST SERVICE'S RECENT DECISIONS UNDERMINE SECURE ELK HABITAT

ODFW recognizes that the merits of the Ellis Project must rise or fall upon review of the administrative record. But the decision to largely eliminate road closures is not an isolated example of the Forest Service's attempts to reduce and diminish secure elk habitat. ODFW writes to ensure that the Court is aware of the cumulative effects of on-going Forest Service decision-making as it relates to secure elk habitat.

On August 20, 2026, the Forest Service issued a Proposed Rule to rescind the 2001 Roadless Rule. 91 Fed. Reg. 53827. If adopted, the Proposed Rule would open nearly forty-five million acres of formerly protected National Forests to potential new roadbuilding, road reconstruction, and logging, as well as other industrial uses such as mining and oil and gas development. In Oregon there are approximately two million acres of inventoried roadless areas, and roughly 122,693 acres alone in the Umatilla Forest. This means that if the Proposed Rule is finalized by the Forest Service, which it almost certainly will be, and upheld by the courts, all of these areas will one day be open to road building and timber harvest, further diminishing secure elk habitat.

Relatedly, on August 24, 2026, the Forest Service issued a Notice of Intent to prepare an Environmental Impact Statement for its proposed revisions to its Travel Management Rule. 91 Fed. Reg. 54686. Among other things, the Notice of Intent proposes to reverse the presumption that roads are closed unless affirmatively opened in National Forests. The Notice of Intent provides that the revisions would "establish a presumption that existing roads, trails . . . and other access routes and points on NFS lands are open to appropriate public use unless closure or restriction is required by applicable law, valid existing rights, or another governing instrument, or is supported by specific, documented and justifiable reasons based on science-based resource

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conditions, public safety, conflicts among uses, or maintenance and administrative capacity." *Id.* at 54689.

The Forest Service's existing Travel Management Rule, 36 C.F.R. pt. 212, provides a framework for local land managers to determine which roads, trails, and other areas are open to motor vehicles. These regulations provide guardrails to ensure that the Forest Service considers and minimizes the impacts of motor vehicle use on natural resources and other shared uses of the land, including non-motorized forms of recreation, while also providing the flexibility to open certain roads for certain uses, like recreation and hunting access. The proposed revisions would significantly change the Forest Service's regulation of travel, particularly off-highway vehicle use. Although the proposal is only prospective, it appears that after the first year, the Forest Service would need to justify the closure of every road and trail with "reasons based on science-based resource conditions, public safety, conflicts among uses, or maintenance and administrative capacity." Notice of Intent, 91 Fed. Reg. at 54689. It is highly doubtful that the Forest Service has the capacity to perform this task, and there may be substantial openings of closed roads and trails after this annual review.

ODFW acknowledges that the merits of the Ellis Project must be evaluated based on the administrative record before the Court. But the abrupt change and elimination of road closures appears part of a broader strategy by the Forest Service to increase road building and travel within areas that were previously reserved for other uses like secure elk habitat. The cumulative effect of all these decisions, should they be finalized and upheld by the courts, would have significant adverse effects on ODFW's ability to manage elk on National Forests throughout the State. These effects would be particularly profound on the Umatilla Forest. ODFW raises this so that the Court is aware of the entirety of the Forest Service's actions. The change in the Ellis Project is just one part of this broader shift in Forest Service management.

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CONCLUSION

ODFW continues to support the proposed vegetation management identified in the Ellis Project. Improvements in both the quantity and quality of available forage can provide direct benefits to elk, particularly in areas where adequate security habitat is maintained in proximity to treated areas. But vegetation management must be balanced with road closures to ensure secure elk habitat. This balance is critical so that elk remain on the Umatilla Forest and do not migrate to adjoining private lands. The Forest Service's decision fails to achieve this balance.

Whether couched as "national direction" or a policy change, the Forest Service's departure from science-based, collaborative consensus in favor of an abrupt, unilateral reversal is not sound decision-making. This is evident not only in the Ellis Project decision, but in the proposed rescission of the 2001 Roadless Rule and modification to the Travel Management Rule. It is true that the Forest Service can change its rules and policies, but it must do so consistent with all applicable laws, including the APA, NEPA, and NFMA. And here that plainly was not done. The Ellis Project, as approved, is unlawful and this harms ODFW interests, making it more difficult to manage elk for the citizens of this State. The Court should find for the Plaintiffs and order briefing on remedy so that it may fashion a narrowly tailored remedy while the Forest Service better addresses road closures during a remand.

DATED October 19, 2026.

Respectfully submitted,

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