

Appendix E – Response to Comments

Alternative Development – 100

1. I have questions concerning parcel FU26. ... Why is this piece being carved off and deleted from the Forest Service: ... I cannot find anywhere in the book where a need is listed not described as to why the Forest should delete this parcel. It is contiguous with other Forest Service grounds. It is utilized by a great number of the public for hunting, mushrooming, and recreating purposes. It has good public access from the east and the south. I do not understand why you would want to carve it off. (2/1)

Response: *Parcel FU26 has been identified as having high recreational values under the social and economic issue discussion. This parcel has a management area goal to provide non-motorized recreation opportunities in an area that is predominately natural or natural appearing (MA A1). It also has a goal to provide high levels of potential habitat effectiveness for big game and other wildlife species (MA C4). The Rocky Mountain Elk discussion revealed this parcel has important elk habitat. FU26 was also mentioned as being strategically located to allow for future fuels reduction.*

While this parcel has value as a part of the National Forest System, the lands that would be acquired in the Preferred Alternative have similar values. FU26 has been assigned to Management Area 1A {non-motorized recreation (42 acres)} and Management Area C4 {Wildlife Habitat (147 acres)} in the Umatilla National Forest Land and Resource Management Plan. The loss of these acres with these management goals and objectives would be balanced in the overall Preferred Alternative by a net gain of approximately 143 acres entering Federal ownership to be managed as non-motorized recreation and a net gain of approximately 515 acres entering Federal ownership with a management emphasis of providing quality habitat for game. The quality habitat for game gain represents the net change in acres on the three forests in MA's that have wildlife as a primary management goal (Malheur 4A; Umatilla C3, C4 & E2; Wallowa-Whitman 1W & 3).

Lands that are currently in Federal ownership are the assets that would be used in order to acquire desirable lands within the proclaimed boundaries of the three National Forests. These lands help to achieve the overall goal of consolidating National Forest ownership. The exchange of lands would be on an equal value basis. Exchange of lands, rather than purchase, allows for the acquisition of a much larger number of inholdings. Exchange also addresses both local government and public concerns related to large increases in Federal ownership and the resulting impacts to the local tax base and essential public services supported by the tax base.

2. Hamilton mountain is a logical area to eliminate from the exchange because the DEIS clearly states that losing the Designated Old Growth would be a significant negative environmental impact, and it cannot be adequately mitigated. (14/1)

Response: *Correct, the FEIS discusses the effects of conveying the Hamilton Ridge parcels on pages 207-213. With the Preferred Alternative, as with all land exchanges, there must be somewhat of a trade off in benefits to the public and private interests. To accomplish an acquisition of land by exchange, there also must be an equal value of public land conveyed out of Federal ownership. It is the Line Officer's decision to determine that a greater public interest is served by the Preferred Alternative.*

Section 9 of the Act of December 13, 1975 (P.L. 94-199), Section 6 of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287), Section 5(c) the Wilderness Act of September 3, 1964 (P.L. 88-577), and Section 5 (a)(2) of the Endangered Species Act of December 28, 1972 (P.L. 93-205) all directly or indirectly instruct the Secretary of Agriculture to acquire, by donation, purchase, or exchange, those lands that are available on a willing seller basis within the boundaries of the Hells Canyon National Recreation Area, Wild and

Scenic Rivers, Wilderness Areas, or lands that provide critical habitat for threatened and endangered species. Lands within Congressionally designated areas have the highest priority for acquisition in the three Forest's Land and Resource Management Plans. Lands that preserve habitat for T&E species are also high priority for acquisition. To acquire these highly desirable lands, other lands that have not been congressionally designated may provide the assets necessary to complete an exchange on a willing seller basis. The Preferred Alternative would result in a net increase of 7,442 acres within HCNRA, 2,128 acres within boundaries of W&S Rivers, 243 acres within Wilderness, and 45 miles of anadromous fisheries.

3. ... the Forest Service may not convey into private ownership Parcels FU3E and FU4. We believe these parcels should be conveyed. We point out if these parcels are not conveyed that mutual attempts by the Forest Service and Pendleton Ranches at blocking up land ownerships in the Butcher Creek area will no occur, and may in turn cause Pendleton Ranches to rethink areas important to it on Horseshoe Ridge and at Butcher Point that are significant to its existing operation which in turn will interrupt land blocking by the government in that area. If FU3E and FU4 are not included within the trade, the effect upon Pendleton Ranches is to drive a wedge into its resultant land ownership. (17/1)

Response: *Parcels FU3E and FU4 have been dropped from the Preferred Alternative in response to concerns raised by the CTUIR. Their concerns centered on the net loss of open and unclaimed lands within their ceded boundary and traditional uses of these specific lands. In response to these concerns, the parcels were dropped from further consideration. The Forest Service understands that there may be consequences to dropping these parcels. Consequences may include; 1) not realizing to the fullest extent efficiencies related to conveyance of land parcels lacking access, 2) difficulty of managing isolated parcels, and 3) a lost opportunity to acquire lands desirable for inclusion in the National Forest System.*

4. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where as it fails to consider reasonable alternatives. The DEIS consideration of alternatives only addresses different methods of acquisition of the lands. A reasonable range of alternatives would also consider different levels of exchange, such as different combinations of lands to be disposed of or acquired. (18/1)

Response: *In the DEIS three action alternatives were evaluated in detail along with the No Action Alternative. The Proposed Exchange and Deed Restriction alternatives considered significantly different levels of exchange. NEPA regulations 40 C.F.R. Part 1502.14 states the environmental impacts of the proposal and the alternatives are to be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public. Other significantly different levels of exchange (conveyed and acquired parcels) were not acceptable to the Forest Service or the facilitator, therefore other exchange alternatives that sharply define the issues and provide a clear basis for choice were not feasible. Minor changes to the Proposed Exchange Alternative would not be sensitive to the issues and provide a clear basis for choice. Also refer to Alternatives Considered but Eliminated from Detailed Study (FEIS pages 31- 32).*

The alternatives evaluated in detail do not prejudice the decision.

5. Attached as Exhibit A to this letter is a letter we received from ODFW indicating that these ODFW lands in the Murderer's Creek Management Area have not been approved by the Fish and Wildlife Commission for exchange. The lands also apparently have not been approved for sale to the Forest Service. Thus including these state lands in the EIS is an illegal alternative under the National Environmental Policy Act ("NEPA"). (19/3)

Response: *The Forest Service understands the Oregon Department of Fish and Wildlife, with the support of the facilitator in this assembled Proposed Land Exchange, is considering exchanging the State Murderer's Creek parcels. The State parcels are included in the FEIS analysis in compliance with NEPA.*

It is the responsibility of the State of Oregon to comply with any relevant state statutes and rules governing its participation in the Proposed Land Exchange. The Department of Justice and Oregon Department of Fish and Wildlife letters submitted by the respondent indicates the State will comply with all laws and rules.

6. The Forest Service failed to consider an adequate range of alternatives for the disposition of the state-owned Map 26 Parcels. The Stouts had offered to purchase some of these parcels for an amount greater than a previous appraisal and are willing to purchase the Map 26 Parcels for the appraised value plus 15 percent. This is a reasonable alternative, given that the purpose and need of the project is to contribute to the economic stability of privately owned ranches and that the Stouts own ranch land in the vicinity, hold grazing rights for the property, and use the buildings on Parcel PM26. Failure to consider this reasonable alternative violated NEPA. (19/7)

Response: *Any private offer to purchase the Map 26 State parcels or any other private parcels considered in the Proposed Exchange is beyond the scope of the DEIS.*

7. ... the CTUIR requested that parcels FU4 and FU3E be dropped and the FS identified that parcels FU4 and FU3E would be removed due to acreage imbalance. These two parcels are still included and it was not explained why they were not dropped. ... If the FS does not remove them from the sale, they must consider the alternative suggested by the CTUIR regarding adjusting the eastern boundary lines on FU3A, FU3B and FU3C so the Meacham Creek floodplain to a point upslope of the Union Pacific Railroad right of way does not leave federal ownership. (20/16)

Response: *Parcels FU3E and FU4, as well as FU21, have been dropped from the Preferred Alternative to address the imbalance of acres within the ceded boundary of the CTUIR. The Forest Service has also adjusted the boundary along Meacham Creek so that the resulting post-exchange boundary would be on the western right-of-way line of the Union Pacific Railroad. Additionally, the wetland area at the confluence of Meacham and Butcher Creek will be retained in Federal ownership as part of the Preferred Alternative.*

8. One particular parcel we had identified in previous communications to be altered was FU21. A 1/8th section portion of parcel FU21 should be dropped, the section containing the springs for cultural resource significance. (20/17)

Response: *FU21 has been dropped from the Preferred Alternative in the Land Exchange.*

9. Forest Service parcels that should not be traded away: FU 21 - contains irreplaceable and important LOS habitat and elk winter range (23/1)

Response: *FU21 has been dropped from the Preferred Alternative in the Land Exchange.*

10. Forest Service parcels that should not be traded away unless equal ecosystem value lands can be acquired: FM 16A, FM 18, FM 19 - designated LOS habitat, need LOS elsewhere to replace these parcels FM 7, FM 8 - 1 1/2 mile of excellent riparian area on Hall Cr that contributes to anadromous spawning stream and some quality LOS habitat, need commensurate riparian and LOS values elsewhere to replace these parcels (23/2)

Response: *Old growth habitat comparable to that contained in parcels FM16A, FM18, and FM19 would not be acquired under the Preferred Alternative, nor would comparable riparian habitat be acquired to mitigate the conveyance of FM7 and FM8 that could specifically benefit Mid-Columbia steelhead and westslope cutthroat trout. The effects of conveying these parcels are discussed in the FEIS on pages 170-213 and in the Fisheries and Wildlife report in the Project Record.*

With this exchange, as with all land exchanges, there must be somewhat of a trade off in benefits to the public and private interests. To accomplish an acquisition of land by exchange, there also must be an

equal value of public land conveyed out of Federal ownership. It is the Line Officer's decision to determine that a greater public interest is served by the Preferred Alternative.

Section 9 of the Act of December 13, 1975 (P.L. 94-199), Section 6 of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287), Section 5(c) the Wilderness Act of September 3, 1964 (P.L. 88-577), and Section 5 (a)(2) of the Endangered Species Act of December 28, 1972 (P.L. 93-205) all directly or indirectly instruct the Secretary of Agriculture to acquire, by donation, purchase, or exchange, those lands that are available on a willing seller basis within the boundaries of the Hells Canyon National Recreation Area, Wild and Scenic Rivers, Wilderness Areas, or lands that provide critical habitat for threatened and endangered species. Lands within Congressionally designated areas have the highest priority for acquisition in the three Forest's Land and Resource Management Plans. Lands that preserve habitat for T&E species are also high priority for acquisition. To acquire these highly desirable lands, other lands that have not been congressionally designated may provide the assets necessary to complete an exchange on a willing seller basis. The Preferred Alternative would result in a net increase of 7,442 acres within HCNRA, 2,128 acres within boundaries of W&S Rivers, 243 acres within Wilderness, and a net increase 45 miles of anadromous fisheries.

Roads/Transportation – 201

1. The EIS should discuss options for obtaining the necessary resources for maintaining the 60 miles of roads on these conveyed lands. Options might include deed requirements, federally provided resources (i.e. equipment, personnel, money), or road maintenance bond requirements from recipients of the conveyed lands. (22/4)

Response: *Maintenance of roads leaving Federal jurisdiction was not identified as a key issue in the FEIS analysis. Deed requirements considered in the Deed Restriction Alternative were developed in response to key issues. Deed restrictions are generally considered only when needed to protect the public interest or to satisfy a requirement of law.*

The 60 miles of conveyed roads are no longer needed to provide access to surrounding National Forest System lands. The roads will become private roads and the Forest Service has no authority to expend Federal funds on private roads no longer serving Federal lands. These private roads will be maintained in accordance with Oregon State Forest Practices Act standards and guidelines.

Fish/Fisheries – 400

1. The DEIS should include a wide range of alternatives including not only a no-action alternative, but also something in-between that and the proposed action. An example would be development of an option that leaves larger riparian buffers than those in the proposed action and deletes logging on steeper grades. (10/4)

Response: *Chapter 2 of the FEIS describes five alternatives that were evaluated in detail. They include the Proposed Exchange, No Action, Purchase, Deed Restriction and Preferred Alternative alternatives. The Deed Restriction Alternative requires specific deed restrictions on all conveyed parcels containing riparian habitat (FEIS Pages 21-27). Any requirements above and beyond the Forest Plans or the Oregon Forest Practices Act would be outside of the scope of this analysis.*

2. The analysis of effects must be also be analyzed for consistency with legal mandates, rebuilding efforts, regional goals and policies, and the legal mandates contained in PACFISH and the Biological Opinions on that management strategy. (10/6)

Response: *The effects analysis included possible conflicts between the alternatives evaluated in detail and the objectives of Federal, regional, State and local land use plans, existing biological opinions, policies and legal controls for the project area. The Biological Assessment was completed for the*

Preferred Alternative and is included in the Final EIS. The Preferred Alternative complies with PACFISH, INFISH and existing Biological Opinions.

3. A detailed monitoring plan should be developed and presented as part of the environmental analyses. The monitoring plan should include detailed pre-activity inventories and post-activity monitoring of the following fish habitat and land use parameters. (10/7)

Response: *All three forests within the project area have approved Forest Plans. Each Forest Plan, as amended has an ongoing monitoring and evaluation program. Monitoring is the means of measuring and evaluating the effectiveness of Forest Plan implementation. The effects resulting from implementation of the Forest Plan landownership adjustment direction for each forest would be monitored as part of the yearly monitoring and evaluation program.*

4. We have concerns about some steelhead and salmon producing streams leaving public ownership and would like some assurances that no degradation of this important habitat occurs. (12/4)

Response: *The Preferred Alternative would convey 7.29 miles of steelhead habitat and .08 miles of Spring Chinook salmon habitat. On private and state lands, the Oregon Forest Practices Act is used to regulate timber harvest and associated activities near channels. The Oregon Forest Practices Act and the Oregon Administrative Rules (OAR); Water Protection Rules identify protections for riparian areas, wetlands, and water quality. Rules related to management of roads and harvest near channels are available in the PR.*

The Preferred Alternative represents the greatest potential benefit to steelhead and Chinook salmon based on the amount of habitat that would be acquired. Although some detrimental effects would likely result from roads and logging on conveyed parcels, the majority of these effects would be upslope and pose indirect effects. These effects are discussed on pages 177-178 and 180-182 of the FEIS and in the Biological Assessment Appendix F.

5. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where as if fails to adequately disclose environmental impacts regarding fish habitat. The DEIS merely analyzes impacts on fish habitat based on the amount of habitat miles. ... This is not appropriate since different streams and their habitats have varying importance based on the overall health of their systems and the quality of the habitat. Merely providing additional miles of a stream that does not have much of a fishery is totally different than adding just a few miles to a very important fishery stream. Also, the conveyance of 12% of Upper Deer Creek which has quality habitat cannot be compared to the 1.4% to be obtained which has been cut over to come to a meaningless total of 10.6%. (18/7)

Response: *The objective of the fisheries section is to describe the various fisheries within the analysis areas and disclose the potential effects to these resources by alternative. The analysis areas used includes individual exchange parcels, 47 watersheds (5th field HUC), and subwatersheds with the highest concentration of exchange parcels. The analysis area includes portions of 13 subbasins, across four river basins. Of the 47 fifth level HUCs involved in the Preferred Alternative, six accounts for 50% of the exchange acres, and twelve account for 75% of the exchange acres. This indicates that many watersheds involve extremely minor acreages that would not represent measurable changes to fisheries resources. However, there are fifteen subwatersheds (sixth level HUC) that involve at least 5% of their area in the Preferred Alternative. These subwatersheds warranted closer examination. The same approach in determining effects was taken in the Hydrology, Wetland and Floodplains section. This section has additional information about these fifteen subwatersheds.*

The affected fish habitat environment is adequately described in the Vegetation, Hydrology, Wetland and Floodplains, Water Rights, Soils, Range and Transportation sections. The fisheries section does not repeat this information but refers the reader to these sections as deemed appropriate. Potential effects to

steelhead, Chinook salmon, cutthroat trout, and bull trout focuses on four primary areas of management: grazing by livestock, logging, roads, and water rights. The mechanisms involved in these activities that could affect fisheries are described and referenced in the Environmental Consequences narratives. Alternatives are compared by the miles of fish habitat being conveyed and acquired rather than repeat specific effects of each management activity or mechanism. Therefore, gain/loss in stream miles of habitat by alternative along with professional judgments related to the four primary areas of management were considered measurement indicators for comparing relative effects.

6. It is also not clear whether the information and analysis in the DEIS is consistent. For example, compare the different numbers at pages 70 and 163 regarding fishery habitat on the Lower NF John Day River. (18/19)

Response: *Table 27 on page 70 of the DEIS displays miles of stream by watershed and stream category in the Proposed Exchange. This table shows conveyed and acquired miles by fish bearing, perennial and intermittent streams. Table 63 on page 163 displays FS miles of steelhead habitat (conveyed and acquired) by 5th Level HUC on proposed land exchange parcels. The numbers are not comparable since table 27 refers to fish bearing and table 63 refers to steelhead habitat.*

7. Page 272 contains the statement, “All action alternatives would ... increase fisheries production.” The DNR believes that the FS cannot guarantee that simply because it owns the land surrounding the streams the fish population will improve. Specific activities to improve the habitat may be necessary. (20/15)

Response: *Page 171 of the FEIS states in reference to the effect that livestock grazing poses to fisheries habitat “These activities near streams can lead to degraded water quality, sediment and nutrient input to streams, and damage to stream banks that cumulatively decrease fish production and survival.” Another reference to fish production on the same page states “these effects can result in direct mortality of eggs and reduced production of fish from the affected spawning cycle(s).*

Fish habitat is discussed for all the listed species that exist within the geographic scope of this project in terms of miles of habitat that would be acquired and conveyed, and the net change for each species. However, the quality of the exchanged habitat is not discussed in detail, and “high quality fisheries habitat” is not referred to. Some discussion on the quality of habitat being exchanged is provided in the Biological Assessment (FEIS Appendix F).

PACFISH and INFISH are interim aquatic conservations strategies and have been incorporated into the Forest Plans for the Malheur, Umatilla, and Wallowa-Whitman National Forests, which are parties to the Preferred Alternative. Interim aquatic conservation strategies were adopted to protect Federally listed fish species and to maintain, restore, and preserve management options for the future. The protections afforded by PACFISH/INFISH are greater than what would be provided on private lands. This fact is discussed in multiple locations in the FEIS.

8. Fish Issues Regarding Blue Mt Land Exchange – Bear Creek T12S R33E, Sections 4, 8, 9, 17, 18, 19, and 30 Bear Creek contains the most at risk westslope cutthroat (sensitive species) population within the John Day River basin because of limited distribution, isolation, reduced productivity, and population size. Phil Howell and Al Hemmingsen’s assessment indicated this population is on a downward trend. (24/3)

Response: *The comment is correct. According to the Oregon Native Fish Status Report, the westslope cutthroat trout population in Bear Creek is one of the most at risk in the John Day River basin. Of the six criteria used to assess the 17 populations in the John Day River basin, Bear Creek and Belshaw Creek fail four of the criteria. “Distribution”, “abundance”, “productivity”, and “hybridization” are the criteria ranked as “fail” for the Bear Creek population, while “reproductive independence” and “existence” are the two criteria ranked “pass”. A section on westslope cutthroat trout has been added to the FEIS (refer to FEIS, pages 188-190).*

9. Fish Issues Regarding Blue Mt Land Exchange – Bear Creek T12S R33E, Sections 4, 8, 9, 17, 18, 19, and 30 Bear Creek also is used by Mid-Columbia ESU steelhead for spawning and rearing. In recent years, an extensive network of beaver dams has confined steelhead access to the lower 2 miles of the stream. However, the beaver dams are temporary structures that periodically wash out and during high water events adult steelhead are able to swim around the edges of or over the dams. (24/4)

Response: *The Biological Assessment Appendix F states: “Strawberry Creek (1707020108) includes conveyance of 3.64 miles of steelhead habitat in the Mid-Columbia ESU on Bear and Hall Creek; tributaries to the John Day River approximately five miles northwest of Prairie City. Steelhead redd surveys by ODFW in Bear Creek indicate a low but stable spawning population up until approximately six years ago when a downward trend began. No redds have been detected in the Bear Creek index area in five of the last six years. This apparent downward trend does not reflect a similar trend in the balance of the Upper Main John Day River basin, indicating possible site specific changes in spawning within the Bear Creek system. In fact, the development of beaver dams in the lower reaches of Bear Creek may have impeded upstream migration of spawning steelhead resulting in these recent declines. Year to year differences in survey conditions that effect detection rates of redds, or steelhead spawning outside of the index survey area can not be ruled out in explaining this recent downward trend. Bear and Hall Creeks are in relatively poor condition due to the presence of roads within riparian areas, culverts that are barriers to fish passage, and detrimental effects to riparian vegetation and stream banks from cattle grazing. In 2002 a fish passage device was installed on lower Bear Creek to address a partial barrier posed by an irrigation ditch. Despite the multitude of factors affecting this system, water temperature remains low and capable of supporting the native salmonids that inhabit this system. The coolest water appears to originate from the upper reaches of these creeks within Forest Service lands (Allan Miller 2005). Cool water temperatures are promising from the standpoint of potential to restore fish habitat quality in this system. The problems that exist in these creeks on Forest Service lands appear to have persisted for several decades and there is no evidence that active restoration has been attempted. Riparian fencing is apparent on the lower private reaches of Bear Creek, and they appear to be a combination of exclosures and riparian pastures. If parcels FM4, FM6, FM7 and FM8 are conveyed to private ownership the likelihood of fish habitat restoration occurring is much lower than if they remain under Forest Service management. Additionally, with accelerated logging of the uplands, less road maintenance, and no grazing standards, the rate at which riparian conditions are degraded is likely to increase when FM4, FM6, FM7 and FM 8 are conveyed. It is not possible to predict with any certainty whether changes in ownership of these Bear Creek and Hall Creek parcels will eventually result in the local extirpation of steelhead.” The fact that beaver dams may have temporarily impeded fish passage in recent years has no bearing on how fisheries habitat was assessed or considered in this FEIS.*

10. Fish Issues Regarding Blue Mt Land Exchange – Bear Creek T12S R33E, Sections 4, 8, 9, 17, 18, 19, and 30 Increased frequency and intensity of timber harvest and increased sediment loads associated ground disturbance will likely result in additional negative impacts to westslope cutthroat trout and steelhead habitat (24/5)

Response: *FEIS page 82 states: “The Bear Creek subwatershed would convey 20.2% of its total acres, and no acres would be acquired.These three sixth level HUC subwatersheds represent the greatest potential for negative effects to steelhead from the Proposed Land Exchange. The Potential for negative effects comes from appreciable percentages of subwatersheds being conveyed to private owners that would likely implement less protective management standards.” FEIS page 172 describes the potential effects from future logging on exchanged parcels and states: “FS stream and wetland protection measures are more protective of water and fisheries resources than the state of Oregon standards. The state regulations allow for the removal of shade producing trees, removal of future large woody material for streams, and a narrower buffer of vegetation to filter sediment from runoff”.*

The effects of upland logging are difficult to assess in terms of actual effects to fish populations, but it is reasonable to assume an increased likelihood of negative effects with increased acres of logging. It is also reasonable to assume that PACFISH/INFISH stream buffers include a greater margin of protection than the narrower buffers afforded by the Oregon Forest Practices Act. Therefore, logging on FS lands would pose less of a risk to fisheries than logging on private lands.

11. ... Bear Creek parcels FM4 through FM10, which contain habitat for westslope cutthroat trout. ... The EIS does not specifically address westslope cutthroat habitat or effects to this species, even though the Forest Service recognizes it as a sensitive species. (25/1)

Response: *A discussion of effects to westslope cutthroat trout is contained in the Effects to Fisheries and Wildlife report (Refer to FEIS pages 188-190).*

Heritage – 600

1. CTUIR specific and fundamental concerns that we believe need to be resolved before a final EIS and ROD are issued are specific parcels of federal lands proposed to go into private ownership contain known or suspected cultural resources or sites of critical import to CTUIR and protected by applicable federal laws. These lands have been identified by CTUIR but they remain in the DEIS for exchange. (20/6)

Response: *Through several conversations and meetings with tribal members and staff, the Forest Service dropped Parcels FU3E, FU4, and FU21 to remove lands of concern for the CTUIR from the Preferred Alternative. There are no parcels in the Preferred Alternative that are eligible for the National Register.*

2. It would be helpful to define the term “heritage resources.” ...In the Laws and Regulations Applying to the Analysis section, there is an indication that the criteria used to evaluate the eligibility of cultural resources will be listed, but they are not. (20/8)

Response: *Heritage resources refer to historic property or historic resource. Heritage resource means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register of Historic Places, including artifacts, records, and material remains related to such a property or resource.*

The criteria listed in 36 CFR 60.4 is as follows: “The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, building, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and (a) that are associated with events that have made a significant contribution to the broad patterns of our history, or (b) that are associated with the lives of persons significant in our past; or (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master; or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or (d) that have yielded, or may be likely to yield, information important in prehistory or history.” Criteria considerations are also listed in 36 CFR 60.4.

3. If the FS has not considered TCPs under the NHPA then the FS has not adequately taken into account the effects their undertaking will have on historic properties because they have not considered all types of historic properties. (20/9)

Response: *Since the DEIS was released for public comment, the Forest Service has worked with the CTUIR to identify parcels that contain areas of concern. As a result, the Preferred Alternative does not contain areas of concern for conveyance.*

4. More detail would be helpful, such as a range of transect intervals, for each forest. Such information as what percentage of lands overall were surveyed would help CTUIR understand the project as a whole. (20/10)

Response: *During its meetings with CTUIR since the DEIS was released, the Forest Service has further described its surveying protocol for the parcels to be conveyed.*

5. The Affected Environment section concludes with the statement “there are no sites eligible for the National Register [sic] of Historic Places on Federal parcels currently considered for conveyance in the Proposed Land Exchange.” The DNR does not agree. A report completed by Guy Marden in 2005 identified the presence of a lithic scatter evaluated to meet eligibility criteria for the National Register of Historic Places within a particular parcel. He further states, “The area which contains the lithic scatter will be dropped for the land exchange.” Map 11 shows the parcel continues to contain the lithic scatter. Because the FS has repeatedly assured the CRPP that all parcels with eligible cultural resources have been dropped from consideration in the proposed exchange, other cultural resource reports have not been reviewed in sufficient detail to determine whether there are other sites eligible for the National Register that will be adversely affected by this undertaking. We find this extremely disturbing. We received a map dated 12/3/04 which identified parcels FW4, FW1G, FW18, FU19A and FU20C as being dropped for cultural concerns, yet only FW4 and FW1G have been dropped. (20/11)

Response: *FW18 (Portions that contained sites), FU19A, and FU20C are not included in the Preferred Alternative.*

6. The Environmental Consequences of Alternative 1 are listed as no effect because it indicates that an appropriate inventory has been conducted, and those parcels with heritage resources have been dropped. ... an appropriate inventory has not been conducted; an entire class of cultural resources was not considered, TCPs. Also, if heritage resources is defined in the same way that the National Historic Preservation Act defines, historical properties, those parcels with heritage resources have not been dropped. If it is defined more broadly to include other cultural resources not eligible for inclusion in the National Register of Historic Places, those parcels have also not been dropped. Therefore, the conclusion that the undertaking will have no effect on cultural resources is simply wrong. (20/12)

Response: *With the assistance of CTUIR members and staff, the Forest Service was able to identify areas of concern. The Preferred Alternative would not convey any of those areas.*

Easements – 700

1. Parcel FM3 would be transferred out of Federal ownership. Idaho Power's existing rights associated with this parcel should be secured through a perpetual easement prior to the transfer of ownership. (4/1)

Response: *Idaho Power Company rights would be protected as part of conveyance of property (FEIS Table 95).*

2. Idaho Power currently holds perpetual easements to parcels PW25B, PW25C, PW25D, PW25E, PW27A, and PW27C. The Forest Service acknowledges that "these parcels would be acquired subject to the terms and conditions of these easements, all of which are acceptable to the US." However, the mechanism for authorizing ongoing operation and maintenance activities is not directly addressed. Based on discussions with Alicia Glassford, with the Wallowa-Valley Ranger District, it is Idaho Power's understanding that the SUP for the Hells Canyon transmission lines that is currently in the process of being permitted, and includes the transmission line across these parcels, will authorize O&M of the line on these parcels. If that is not the case, then the Forest Service and Idaho Power needs to have further discussions. (4/2)

Response: *Your understanding is correct. It is the intent of both parties to manage the entire transmission line in accordance with the provisions in the Operation and Maintenance plan that is being developed as part of the permitting process for the line across lands currently under NF management.*

3. The DEIS has a section entitled “Federal Parcel Land Use Considerations by Alternative,” and mentions that a “conveyance document would reserve easement to the U.S. “on certain roads across

parcels FM17 and FM21. ... It is not clear whether the conveyance document would reserve easements to the U.S. on those parcels and not the others. It is also not clear whether the easements would be reserved only to the U.S. or whether it would also include the public and private landowners in the area. The DEIS at page 302 discusses access only in terms of the Forest Service being able to access public lands. It states that such access would include public access “as appropriate.” There is no definition as to what the DEIS considers to be “appropriate.” (18/18)

Response: *Reservations of roads across Federal lands to be conveyed include full rights of access for the United States and the public. Reservations of roads on Federal parcels would occur only if needed (following the exchange) to provide continued access to adjacent lands remaining in Federal ownership. If a road would not provide access to Federal lands after the exchange occurs, no reservation would be needed or desired. The Forest Service has no authority to maintain roads for private uses.*

Reserved roads would remain on the Forest Service road system following conveyance of title and would continue to be managed pursuant to regulations found in 36 CFR 212. Use of these roads by the general public or private landowners in the area would not change. Private landowners would continue to use these roads as a member of the general public without authorization. Use by private landowners in a manner that would be different than that of the general public would continue to be authorized by either a special use permit (36 CFR251, Subpart D) or a road use permit.

Most lands to be acquired in the Preferred Alternative block up Federal ownership in a specific area and solve existing or potential access issues. Legal access exists from surrounding NFS lands. If the current owner of the lands to be acquired has access that allows use by the public, it will be acquired. Where management direction does not allow motorized public access on certain roads, administrative access may be acquired that does not include public access.

Special Uses – 702

1. Although alternative 4 would include “Deed Restrictions” on lands conveyed to private parties, DEIS p. 142-43, such restrictions, however, would not be as stringent as federal laws and regulations and do not address whether the USFS will have sufficient resources to monitor and enforce such standards.(10/3)

Response: *The development of the Deed Restriction alternative is addressed in the FEIS on pages 21-28. Deed restrictions on parcels proposed for conveyance were developed in response to four significant issues. These issues are 1) the exercise of American Indian treaty rights and cultural uses, 2) water quality, 3) fisheries and, 4) old growth associated species. The restrictions to be included in the deed would require the private recipient of these lands, and their successors in interest, to manage the lands in accordance with Forest Service management standards and guidelines relating to these four key issues, as outlined in the three Forest Plans (as amended by PACFISH/INFISH screens)*

The FEIS addresses on page 317 the estimated annual costs to the Forest Service to monitor compliance with the deed restrictions.

2. We recommend there be no special language that might require grazing to continue on public acquired parcels. (12/2)

Response: *It is assumed you are referring to the non-Federal parcels that would be acquired in the exchange. There is no language in the FEIS nor is there any agreement as part of the exchange that requires grazing to be authorized or grazing to be continued on the lands to be acquired.*

Livestock use on NFS lands is only authorized through a grazing or livestock use permit [26 CFR 222.3(a)]. Allotments are designated on NFS lands and other offered lands with the owners consent to form logical grazing management units [36 CFR 222.2(a)]. The FS has designated grazing allotments within the project area on all three forests and has permitted livestock with management prescribed

through grazing permits, forest plan direction, as amended, allotment management plans (AMP), and annual operating instructions. These policies would continue if the Preferred Alternative were implemented. Table 54 in the FEIS identifies only the parcels and parcel acres to acquire outside of allotments in the Proposed Exchange that are either currently being grazed or are intended to be grazed. Table 55 describes the anticipated management implications to acquired parcels within existing allotments.

3. The Map 26 Parcels should continue to be used for grazing and transfer of ownership to the Forest Service will threaten their continued use for grazing. ... When the land was acquired from the Pine Tree Lumber Company in 1972, the terms of the acquisition were that grazing would continue on the lands. Specifically the grant to the state Department of Fish and Wildlife Service provided that “the grantor [and] its successors and assigns, shall not unreasonably interfere with the use thereof for agricultural or ranching purposes by the grantee, its successors and assigns.” Acquisition of the Pine Tree/State lands by the Forest Service is not consistent with the original term of the grant of the lands and is unreasonable interference with grazing. ... The EIS completely ignores the threat to continued grazing if the Forest Service acquires these lands and does not disclose the deed restriction. This omission violates NEPA because the EIS fails to disclose important information related to the “purpose and need” of the EIS which is to “contribute to the economic stability of privately owned ... ranch(es).” DEIS at 3. See DEIS at 28 Discussion of Alternative 2 where the grazing rights issue is not even mentioned. (19/4)

Response: *The deed language that you are referring to is part of the reservation of mineral interests on these lands. This reserved mineral interest originated in a deed from Stewart Livestock Company to Pine Tree Lumber Company in 1959. The reservation in total reads as follows: “Further reserving unto the Grantor, its successors and assigns, an undivided one half interest in all minerals on, under, and to be produced from the land herein conveyed and to the extent not heretofore reserved, together with the right to use the surface to prospect for, mine or produce the same, and together with reasonable right of way for ingress and egress; provided that in the use of the surface the said grantor, its successors and assigns, shall not unreasonably interfere with the use thereof for agricultural or ranching purposes by the grantee, its successors and assigns, and shall avoid using or traversing irrigated corp. lands whenever possible. Reserving to the grantor, its successors and assigns, the right to share equally any rental paid under lease or other arrangement creating the right in any person or persons to prospect for, explore for, mine, or produce metals, whether or not such rental is paid for the privilege of delaying prospecting, mining, or production of minerals from the land, and whether or not the grantor, its successors and assigns, is a party to the transaction.” This language has been reviewed by our legal counsel and they have advised that the interpretation that this language creates a requirement for continued grazing on the land is incorrect. They have interpreted the language to protect the Forest Service, as successor in interest to the grantee, from unreasonable interference (by the owner of the reserved mining interest) with the Forest Service’s use of the lands for grazing or other management activities. Other issues relating to this mineral reservation are discussed on pages 56-67 of the FEIS.*

It is the intent of the Forest Service that there would be no change in the management of the Murderer’s Creek Allotment following the exchange. Grazing would not be continued on PM22 until a NEPA decision is made analyzing the effects to the land from this use. See Table 59, page 145 in FEIS.

Minerals – 900

1. We recommend that all mineral rights be acquired by the government for public acquired parcels. (12/3)

Response: *The agreement the Forest Service has with Clearwater Land Exchange-Oregon, (the facilitator), states that the Forest Service will not accept any parcels that do not have the mineral estates intact. The exception to that clause is the State of Oregon parcels.*

The State of Oregon, Murderers Creek parcels would have 50% outstanding mineral rights. The State parcels would be the only parcels in the Preferred Alternative with outstanding mineral rights. Case law has established that the mineral estate is dominant over the surface estate, that is, the owner of the private minerals has the right to use as much of the surface as is reasonably necessary to access and develop the mineral estate. Reasonable access to private minerals must be allowed. The Blue Mountain Land Exchange facilitator has control over an undivided 50% mineral interest in the Murderer's Creek parcels, and has said that they would donate these minerals to the United States. These minerals would then take on Week's Act status allowing mineral development under the Mineral Leasing Laws and regulations. Should the outstanding mineral rights owner propose development, the FEIS determined it is reasonable to conclude that adequate protection would be in place to ensure wise use of these parcels if the facilitator donates the other half interest in the mineral estate to the United States (Letter to Regional Forester/Split Mineral Estate/Murderer's Creek Parcels in project record).

Miscellaneous Comments – 1000

1. The state parcels are referred to as “private lands” on the table in Appendix A entitled “Private Lands to be Acquired” and on the maps in Appendix B. The Map 26 Parcels are not private lands so there is no strong need for the Forest Service to acquire the lands. (19/1)

Response: *Thank you for your comment. The FEIS will correct this error. The maps included in the FEIS, have State lands identified by color coding, see map 1, 25 and 26. Within the text of the FEIS, when a specific State parcel is referred to or listed, it will be identified with the words “State of Oregon”.*

2. The EIS fails to disclose that there are state law requirements regarding the sale and exchange of the Map 26 Parcels and fails to discuss these requirements and whether they have been met. (19/2)

Response: *It is the responsibility of the State of Oregon to comply with any relevant state statutes and rules governing its participation in the Preferred Alternative. Refer to category alternative Development – 100 #5.*

3. The EIS cryptically states that the structures on Parcel PM26 would be “retained for their historical values” but would not be “maintained or upgraded for other uses.” DEIS at 258. So to the extent that the Forest Service will not maintain the parcels for grazing use, that is inconsistent with the purpose and need to support the economic stability of ranches. To the extent that the structures will be maintained, that cost has been ignored in the EIS ... (19/6)

Response: *As stated in the FEIS (page 145, Table 59), grazing would continue on parcel PM26 following acquisition of the property by the United States. The parcel would be acquired with the structures intact, the facilities being retained for their historic value. The cost for planned management of the site following acquisition of this facility is shown in Table 100 (FEIS, page 257). The estimated costs to the government for acquisition of a site with structures (i.e., abatement of hazards, decommissioning) is estimated at \$10,000 per site. If the structures on this parcel are needed by the grazing permittee in conjunction with the grazing activities, this use could be permitted as part of the grazing permit. Any maintenance costs would be the responsibility of the permittee.*

4. The EIS fails to identify what parcels the state is acquiring for the exchange of the state-owned parcels. (19/8)

Response: *Clearwater Land Exchange-Oregon, the facilitator, is responsible for disposition of land to achieve the Oregon Department of Fish and Wildlife management goals and objectives. The information requested is beyond the scope of the FEIS.*

5. The EIS states it is likely that acquisition of the Murder's Creek parcels would assist the ODFW in furthering their mission while not adding an extraordinary burden to the United States. DEIS at 57. This

statement is unexplained. To the extent ODFW is exchanging these parcels in the Forest Service, the EIS does not identify which parcels ODFW would acquire. To the extent that ODFW is selling these parcels, the EIS needs to disclose and consider an alternative of private acquisition where there is a pending offer for one of the parcels for greater than 15 percent of the fair market value. In addition, apparently the acquisition of the parcels would add some burden to the United States although the EIS says that the burden would not be “extraordinary”. DIES at 57. Given that the ODFW could obtain more money from other parties and the United States would be burdened by the acquisition, it makes no sense for the Forest Service to acquire the parcels from ODFW. (19/9)

Response: *The Forest Service understands the State Murderers Creek parcels, if included in the Preferred Alternative, would achieve the goals and objectives of the Oregon Department Fish and Wildlife. Refer to the #15 response above and Category Minerals – 900, #1.*

6. The rationale for transferring ownership of the Map 26 Parcels from the ODFW to the Forest Service consists of general unsubstantiated statements in violation of Forest Service acquisition policy NEPA, and the APA. (19/10)

Response: *It is the goal of the Forest Service to acquire any lands within its boundaries when available from a willing landowner. The State of Oregon has made these lands available for possible acquisition by the Forest Service as part of this Preferred Alternative. See No. 18 below for further rationale for acquisition.*

7. Although boundary issues are generally cited as a problem the EIS does not explain what those specific issues are with regard to the Map 26 Parcels. (19/11)

Response: *In this area, State of Oregon parcels are surrounded by National Forest System lands. Boundaries for these parcels have previously been located and posted on the ground. Acquisition of the parcels would eliminate the need and cost to maintain, or possibly re-survey, these boundaries in the future. Federal ownership would allow for consistent management on the broader landscape, without managing around property lines. Acquisition would also facilitate future transportation planning by eliminating the possible need for easement acquisition and allowing roads to be located and constructed based on the lay of the land, without regard for landownership. The FEIS, page 140-149, discusses the improved ease of management for range. Acquisition of the parcels from the State of Oregon, who is willing to convey these lands at this time to another public agency with similar management objectives, would eliminate any possibility of conversion of these lands to private ownership in the future. Conversion to private ownership could be costly in relation to granting of access permits, encroachments, etc., and also may lead to conflicting management objectives. Also, refer to Category Economic- 1600 #3.*

8. ... Alternative 2, the statement is made, “Merchantable stands that would not be acquired in Alternative 1 would be logged ... Federal lands not conveyed would not be logged.” The CTUIR believes this is misleading. The Forest Service has no way to know whether or not private land will be logged or not. (20/3)

Response: *Clearwater Land Exchange-Oregon, the facilitator, requested exchange participant “anticipated management plans” for the next ten years on all parcels in the Proposed Exchange. The management plans in the event No Exchange occurred were submitted for effects analysis. The summary of the submitted information revealed that almost all merchantable stands owned by participants, if not acquired by the FS, would be logged within the ten year analysis period. This information is located in the project record.*

9. The EIS does not discuss the expected duration of the impacts on these acquired clear-cut parcels and what measures will be taken to reduce the magnitude and duration of these impacts. It is recommended that the EIS include a discussion on the actions that can be taken to reduce the impacts from the acquired clear-cut lands and a means of prioritizing the implementation of these measures. (22/5)

Response: Impacts of past, present and future actions is discussed in the Watershed Section of the Cumulative Effects section of the FEIS (pages 341-362). The assigned management areas would offer guidance as to the nature of future actions. For example, when appropriate stocking levels would be brought to Forest Standards, if existing levels are below minimums. This work would be prioritized along with reforestation needs on existing National Forest lands.

The site specific future management actions on the acquired parcels would not only be based on the assigned Forest Plan designations, but also the individual Forest and District prioritization and analysis procedures.

NEPA Process – 1100

1. Each and every alternative proposed under the Exchange should be evaluated for its effects on the resources described above in the comment on existing conditions. These effects must be evaluated both for direct and cumulative effects for each alternative. This must be done using the best available science and the science should be cited for support, with conclusions consistent with the best available science. Effects of different alternatives must be adequately differentiated. In particular, the effects of the Exchange should be discussed in terms of impacts to anadromous fish and hunting and gathering rights. (10/5)

Response: Chapter 3 summarizes the physical, biological, social, and economic environments of the project area and the effects of implementing each alternative on that environment. It also presents the scientific and analytical basis for the comparison of the five alternatives evaluated in detail. Where appropriate, references are cited for support of conclusions consistent with available science. The reference material is located in the Project Record.

A significant issue narrative comparison by alternative is documented on pages 34-46 of the FEIS. Table 20 provides an additional comparison of significant issues by alternative. This information summarizes by alternative the effects on anadromous fish and hunting and gathering. A cumulative effects analysis begins on page 341 of the FEIS.

2. You must explain in the Final EIS how the proposed action will comply with the Malheur National Forest Plan, because it does not appear that it does. (16/2)

Response: The decision to proceed with the exchange of lands as shown in the Preferred Alternative would require a non-significant Forest Plan amendment to re-allocate designated old growth stands on the Malheur National Forest. The decision would be consistent with the amended Forest Plan.

3. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where as if fails to adequately disclose environmental impacts regarding current land allocations of the area applicable to the exchange lands. The DEIS fails to provide adequate information on the current land allocations under the various forest plans for the properties proposed to be traded to private interests. For example, winter range areas on the Malheur National Forest are not properly identified and in particular on the North Finger and the proposed exchange lands on Hamilton Mountain. In addition, there is no identification of what lands are allocated or identified in the respective forest plans as lands to be disposed of during the applicable years of the forest plan. ... The categories of lands to be exchanged must be described and if lands are not identified for exchange in the LRMP, the LRMP would need a plan amendment. (18/3)

Response: Action alternatives evaluated in detail are described by listing each Forest management area (MA) description and providing total acres within each MA that would be conveyed and acquired. Net change in MA acres is also provided. Refer to Table 5, Table 8, Table 12, and Table 14 for all alternatives evaluated in detail, including the Preferred Alternative. In addition, individual MA acres for all parcels to be considered for conveyance and/or acquisition are available, upon request, in the project record.

Wallowa-Whitman, Umatilla, and Malheur Forest Plans, as amended, each provide management direction for consolidation of ownership. These plans identify land exchange as the primary tool for land adjustment. NFS lands and certain lands in other ownerships within and surrounding each Forest have been classified and prioritized for acquisition or conveyance. The intent of this management direction is to eventually achieve the best land ownership pattern for Forest Plan implementation. All lands so classified have been placed in one of five groups defined in Landownership Plans located in each of the Forest Plan appendices. This direction combined with the facilitator identifying opportunities for desirable acquisition provided the basis for identifying the NF parcels to convey and acquire in the Proposed Exchange Alternative.

The lands in the Hamilton Ridge area (FM15, FM16A, FM16B, FM17, FM18, FM19, FM20, and FM21) were identified in the Malheur LRMP as Group 4 Lands. Direction for Group 4 lands reads as follows: "These lands include small isolated tracts of National Forest System lands situated away from contiguous blocks of Federal land and private lands that are managed for intensive uses such as agriculture, residential subdivision, or industrial development. Federal lands in this group will normally be made available for disposal in land exchanges to acquire private lands in Group 1, 2, and 3. Private lands in this groups are generally not available and will normally not be acquired by the Forest Service."

The FEIS discusses effects to summer and winter range for elk in two ways: 1) specific parcel groupings that are important to elk; and 2) broad scale net changes in winter and summer range acreages. The broad scale assessment of winter and summer range is based on ranges defined by elevation and biological potential rather than forest plan allocations. These effects are on pages 192-197 of the FEIS.

4. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where as it fails to adequately disclose environmental impacts regarding impacts on adjacent landowners. Does the Grant County Comprehensive Plan allocate surrounding lands as exclusive farm use of forest use? Also, does the Grant County Comprehensive Plan include a wildlife overlay zone applicable to these lands? ... With regard to the Hamilton Mountain area, the DEIS not only fails to identify adjoining landowners, but fails to acknowledge or identify that the only access for the Hanson to the back part of their ranch is through the Forest Service land to be traded. ... The impact on property rights of adjacent landowners is also not considered, through this has been a basic consideration of past lands exchanges. ... impacts on real estate values. ... there is no analysis of impacts on property values due to conveyance of public lands into private ownership. (18/4)

Response: *We are unaware of any legal requirement or agency policy to analyze economic impacts, if any, to adjacent private lands when considering conveyance of Federal lands.*

We are unaware of any application that Mr. Hanson has made for access across National Forest lands to his property. If such a need exists, it needs to be addressed. ANILCA access rights apply only to owners of land within the boundaries of the National Forest. If there exists access or a right of access to a property over non-National Forest land or over public roads that is adequate or can be made adequate, there is no obligation to grant additional access across National Forest System Lands. (36 CFR 251, Subpart D)

Following conveyance of these lands, management would be in accordance with Oregon State Forest Practices Act. Impacts to adjacent lands as a result of any planned management activity would be addressed in the context of adherence to this State Statute.

The lands surrounding and adjacent to the Hamilton Mountain areas are allocated in the Grant County comprehensive Plan and the Grant County Land Development Code as either Primary Forest use of Multi-Use Range. Big Game Combining Zone is also applicable to these lands.

5. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40

C.F.R. Part 1502 and 1506 where as if fails to adequately disclose environmental impacts regarding adjoining BLM lands. The DEIS does not show or discuss any adjoining BLM lands next to the Hamilton Mountain area Forest Service lands, but the current Malheur National Forest recreation maps shows several small BLM parcels to the south of this area. ... If they have been traded away, such trading should be identified and discussed in the cumulative effects analysis. (18/6)

Response: *The BLM lands to the south of the Hamilton Mountain area were conveyed to private landownership as part of the BLM NOELE exchange in 2000. These lands and others conveyed to private ownership since 1990 are shown in Table 125 of the FEIS. This table also shows the number of private lands entering Federal ownership since 1990.*

6. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where it fails to tier to the existing Malheur Forest Plan. The DEIS fails to specify exactly what areas of its analysis or information are based on or tiered to the various National Forest Plans. This is particularly the case with regard to the Hamilton Mountain area and the Malheur National Forest Plan. (18/11)

Response: *The DEIS tiers to the Record of Decision, Land and Resource Management Plan, as amended and the FEIS, Malheur National Forest – May 25, 1990 as stated on page 7 of the DEIS. Discussions related to the Malheur National Forest in the DEIS, tier to these decision and management plan documents.*

7. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where it fails to provide information on the appraisal work to date. Information on comparisons of values between the private and public lands is necessary for the public to be able to comment on the proposed exchanges. (18/12)

Response: *The appraisal information is exempt from the Freedom of Information Act at this phase of the NEPA process. The appraisal is not completed at this time. The appraisal will be available for public review in accordance with FSM 5412.11 as displayed below*

Unless the responsible official documents a sound legal basis for denial of access, the final approved appraisal report(s) and appraisal review report(s) for Federal and non-Federal lands in land exchange transactions shall be made available, upon written request, to all interested parties when:

1. An environmental assessment or draft environmental impact statement is released for public comment identifying a preferred alternative, and the appraisal report(s) have been reviewed and approved for agency use, or;

2. The National Environmental Policy Act (42 U.S.C. 4321) decision to approve an exchange is made, and public notice given.

8. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where it fails to consider cumulative effects, including of the recent Triangle Land Exchange. There is no information provided about the Triangle Land Exchange or identification of what areas were exchanged and whether they have any relevance to the current proposed exchange. (18/13)

Response: *Several land exchanges and land adjustments are documented under Cumulative Effects heading in the FEIS (page 341). Table 129 documents lands leaving and entering Federal jurisdiction by County. The FS and/or Clearwater Land Exchange-Oregon have specific information on what parcels were conveyed and acquired in the Triangle Land Exchange. This information is available upon request. Areas exchanged under the Triangle Land Exchange were considered in the cumulative effects analysis. As stated on Page 341 of the FEIS, a cumulative effect occurs where the incremental effect of the proposal*

is added to other past, present, and reasonably foreseeable future actions. If the proposal would have no measurable effect, then there would be no cumulative effect. Therefore, the effects of the Triangle Land Exchange were only considered where an overlap with the effects of the Proposed Exchange would occur.

Exchange. Refer to category Alternative Development- 100 #5.

9. The disposition of the Map 26 Parcels is not consistent with the purpose and need for the action. Because these are state lands, the “need: to shift them to Forest Service ownership is minimal. ... The federal acquisition of Parcel PM26 with its ranch operation buildings, the failure to consider an alternative that would return the Map 26 Parcels to the tax roles since they are now apparently considered surplus by the state of Oregon, and placing these lands in federal ownership which threatens continued grazing fails to meet the purpose and need of the action. (19/5)

Response: *As discussed in the FEIS, the exchange parcels include 13 state-managed parcels with a total combined area of 2,758 acres. Based on the tax rates for surrounding private lands, returning these lands to private ownership would generate less than \$1,000 in annual property taxes.*

The potential effects of the Preferred Alternative on grazing are addressed in the range section in the FEIS. The 13 state-managed parcels include 7 parcels on the Malheur National Forest that are part of the Murderers Creek allotment and 5 parcels on the Umatilla National Forest that are part of the Eden Allotment. As stated in the FEIS, there would be no change in current management or stocking for these allotments under any of the proposed alternatives. Grazing would not be continued on PM22 until a NEPA decision is made analyzing the effects to the land from this use.

Refer to Category Special Uses – 702, #3; Alternative Development – 100, #6; and Miscellaneous Comments – 1000, #19 for additional information related to the above comment.

10. Here, to the extent the Forest Service perceives a need to exchange land to provide resource benefits and increased management efficiency, it has failed to assess and disclose to the public whether past exchanges have accomplished those objectives. Thus, the Forest Service has violated NEPA ... (19/15)

Response: *The Wallowa-Whitman, Umatilla, and Malheur Forest Plans, as amended, each provide management direction for consolidation of ownership. These plans identify land exchange as the primary tool for land adjustment. Each previous land exchange has complied with NEPA requirements and achieved the stated purpose and need. The decisions associate with the previous land exchanges have documented the exchanges were in the best interest of the public. The previous land exchange NEPA documents are available for review upon request.*

11. CTUIR is concerned the purpose is misconstrued in the document and results in an inability to accurately assess benefits and costs of the alternatives. ... The CTUIR would like clarification as to which is actually the purpose of the proposed land exchange. (20/1)

Response: *The Forest Service purpose of this Proposed Land Exchange is provided on Page 3 of the FEIS, which is to reduce costs of both Federal and private management and for additional Federal jurisdiction within Congressionally Designated Areas or other parcels, such as wetlands, floodplains, and riparian areas that provide fisheries habitat.*

Public Involvement – 1101

1. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where as if fails to provide important information necessary for meaningful public comment. The fundamental problem with the failure of the DEIS to address and consider missing information and analysis is that the public has not been afforded the opportunity to read, understand and meaningfully comment on the DEIS. It is not sufficient for the FEIS to finally address this missing

information and analysis, since no further comment period is allowed to the public. (18/2)

Response: *The comment period on the DEIS was 45 days from the date the notice of availability was published in the Federal Register. The notice was published in the Federal Register on June 10th 2005 and the comment period ended on July 25th 2005. The comment period complies with current management direction.*

Recreation – 1300

1. The Blue Mountain Land Exchange analysis area includes parcels near or including the Nez Perce National Historic Trail in the vicinity of Indian Village Grove to Dug Bar. The acquisition of non-federal land parcels did not even address the issue of acquiring additional lands near or including the Nez Perce National Historic Trail. These lands come with added responsibility and management under the National Trails System Act (NTSA) and the Nez Perce National Historic Trail Comprehensive Management Plan August 5, 1990 and Interpretation Strategy, which addresses trail marking standards and design standards. On S-4 issues the NPNHT should have been identified as a significant issue. (5/1)

Response: *Thank you for the comment. A discussion on the trail was included in the FEIS (page 228).*

2. Alternative 1 would result in more miles of the trail under federal management. The following parcels are those that include the NPNHT PW50, PW21D, PW18, PW16A, PW16C, PW16D, PW15A, PW15B, PW13A, PW12, PW10B, PW7C, PW8A, PW8B, PW8C, PW2A, PW2B and PW2C. These parcels need to be evaluated in detail to regards to the Nez Perce National Historic Trail. (5/2)

Response: *A discussion on the trail was included in the FEIS.*

3. Alternative 3 would result in more miles of the trail under federal management. The following parcels of land would be the only land that would be acquired in which the NPNHT is included PW21D, PW16C, PW16A, PW13A, and PW10B. These parcels need to be evaluated in detail to regards to the Nez Perce National Historic Trail. (5/3)

Response: *A discussion on the trail was included in the FEIS.*

4. Alternative 4 would result in an increased number of miles of the NPNHT under federal management. The following parcels are included in the parcels to be acquired that include the NPNHT PW21D, PW18, PW16A, PW16C, PW16D, PW15A, PW15B, PW13A, PW13B, PW12, PW10B, PW7C, PW8A, PW8B, PW8C, PW2A, PW2B and PW2C. These parcels need to be evaluated in detail to regards to the Nez Perce National Historic Trail. (5/4)

Response: *A discussion on the trail was included in the FEIS.*

5. I am opposed to the loss of valuable accessible land to hunters, and I hope the BMLE will reconsider the exchange of properties FU19, FU20A, FU20B. (9/1)

Response: *It is assumed you are referring to FU19A and FU19B (parcels dropped) when citing FU19. The Federal Parcels you refer to are in the Umatilla Landownership Adjustment Plan group IV. These are lands which include small isolated tracts of national forest that are costly to administer and contain no special resource features. The lands are designated Management Area C3 which is big game winter range. The landownership direction is to generally make these lands available to exchange for private lands. These small isolated parcels are surrounded by or adjacent to a large expanse of private land and difficult to manage.*

FU19A has been dropped from the Preferred Alternative and would be retained in Federal ownership. FU19B, FU20A and FU20B would be conveyed to private as part of the Preferred Alternative. These lands were identified as number 1 priority for availability to exchange for private lands within the forest

boundary in the Umatilla NF Land and Resource Management Plan. These small isolated parcels are difficult and expensive to manage.

The overall exchange increases NF ownership by approximately 14,300 acres, all of which would be available to public hunting. The overall exchange also shows a net increase of approximately 515 acres of land to be managed with emphasis on providing quality habitat for big game.

6. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where as if fails to adequately disclose environmental impacts regarding recreation. The DEIS does acknowledge the loss of hunting opportunities that would occur in the Hamilton Mountain area, but discusses it only in terms of hunting on that site. The larger impacts of the loss of this habitat on the elk population in the area and reduced number of hunting tags are not addressed. Other areas to hunt are mentioned, but with no information on what habitat is there or whether elk use the areas as they are known to use Hamilton Mountain. (18/9)

Response: *Impacts to elk populations from the Preferred Alternative of the Hamilton Ridge parcels would not be enough to result in an overall decrease in tags for that unit (Northside WMU #47) due to the relative minor acreage involved when compared to the size of the entire unit. However, the habitat changes that are likely to result once these parcels are conveyed would change the way elk are distributed in this part of the Northside unit. Elk are likely to spend more time on adjacent private lands which would result in fewer hunting opportunities on public lands. The value of conifer cover on the western extremity of "the North Finger" is very high and is locally important for the distribution of elk and other wildlife. From an appropriate scale to discuss elk populations, the North Finger is unique in its ownership and land type pattern. Conveying the old growth habitat and western extent of public land would have negative effects on recreationists who use the area. It would also have negative effects on elk, pileated woodpeckers, goshawks, and several other species. This impact was disclosed in the FEIS.*

Acquisition of PM 15-20 would provide more access for hunters, but the setting and experience would not compare to what would be lost on Hamilton Ridge. There are many opportunities for the type of hunting experience one can find in the vicinity of PM 15-20, but the walk-in opportunity on Hamilton Ridge is very uncommon in the Northside unit. Elk habitat is available in PM 15-20, but it is of a lower quality than that found on the western end of the North Finger. This reduction in quality is based on changes in ease of access (as it relates to elk security) and changes to current vegetation.

Economic – 1600

1. The DEIS identifies providing more efficient cost-effective management of lands as a purpose of the Blue Mountains Land Exchange proposal. A need to consolidate ownership to reduce management costs is also stated. Given the purpose and need, it was surprising to read the proposed action would cause a more than \$100,00 net increase in annual administrative costs. Despite the \$1.4 million one-time administrative savings, it seems that the proposed action would ultimately cost the Forest Service more money than the no action alternative. Please explain how the proposed action even meets the purpose and need for the project. (16/1)

Response: *It is assumed you meant to say the proposed action would cause more than \$100,000 net increase in annual administrative costs. The significant annual cost would be caused by a net increase of 856 acres of mapped noxious weeds. The increased noxious weed acreage would result in a net increase in annual weed management costs of \$107,000. These costs would likely decrease over time because active management would decrease the number of acres occupied by noxious weeds. Even assuming that these costs would remain constant over the 10 year period of analysis for this project, the Forest Service would still realize an overall saving of approximately \$290,000 over this period (\$1,436,000 [one-time administrative cost savings] - \$1,148,910 [ten years of annual maintenance costs of \$114,891] = \$287,090).*

In addition, there would be future savings that have not been assigned dollar values because they are difficult to accurately quantify. These savings are, however, important to consider. Potential savings that are identified, but not quantified in the EIS include savings associated with eliminated property boundary disputes and reduced encroachments/trespass by adjacent landowners. The Preferred Alternative would likely result in a reduction in the number of requests from private landowners to construct access roads across Federal lands that would be conveyed. If this were to occur, the Preferred Alternative would result in a reduction in costs incurred by the FS to process easement and permit requests or conduct NEPA analyses that might otherwise be needed. These potential savings cannot be estimated because the FS cannot predict future access requests and the costs associated with processing these types of requests can vary considerably. Some cases are resolved relatively quickly, while others involve numerous regulatory or legal issues and can take years to complete at a substantial cost. Finally, the FEIS identified potential cost savings associated with fire suppression and prescribed fuels treatment. All of these future savings that are difficult to quantify would work together in achieving the stated purpose and need.

2. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where it fails to provide any information on whether the proposed exchange meets the FLPMA “equal –value” requirement. Despite the FLPMA provision providing for an “equal-value” requirement, the DEIS fails to provide any information on the respective economic values of the various parcels. This assessment of economic values is needed to understand whether resource intrinsic values and public objectives are served under the FLPMA assessment. (18/15)

Response: *The FEIS Appendix C, Land Exchange Process explains FLPMA’s equal value requirement. The appraisal which is completed in phase two of the land exchange process will identify the economic values of grouped conveyed and acquired parcels. The existing process is currently in phase two. The appraisal would be available for public review in accordance with FSM 5412.11 as displayed below*

Unless the responsible official documents a sound legal basis for denial of access, the final approved appraisal report(s) and appraisal review report(s) for Federal and non-Federal lands in land exchange transactions shall be made available, upon written request, to all interested parties when:

1. An environmental assessment or draft environmental impact statement is released for public comment identifying a preferred alternative, and the appraisal report(s) have been reviewed and approved for agency use, or;

2. The National Environmental Policy Act (42 U.S.C. 4321) decision to approve an exchange is made, and public notice given.

3. The EIS states “there would be a potential for [access and boundary] costs to increase if the State were to sell these parcels to private interests.” DEIS at 57. The EIS does not explain how these costs for the Forest Service would increase or the magnitude of the cost. (19/12)

Response: *The Forest Service purpose of this Preferred Alternative is to provide for more efficient cost effective management of National Forest System lands through consolidation of existing Federal ownership. Boundary survey, marking and maintenance is a significant cost savings if the State parcels are acquired (FEIS, Table 121). Savings that are difficult to quantify include savings associated with eliminated property boundary disputes, reduced encroachments/trespass by adjacent landowners and a reduction in costs incurred by the FS to process easement and permit requests or conduct NEPA analyses that might otherwise be needed. Finally, the FEIS identified potential cost savings associated with fire suppression and prescribed fuels treatment. All of these potential savings that are difficult to quantify would work together in achieving the stated purpose for acquisition of State of Oregon parcels.*

4. The cost of preparing the structure protection plan is not disclosed in the EIS nor is the cost of the long term maintenance of the structures. The point is, the EIS failed to evaluate the high costs of acquisition

against the minimal cost to the Forest Service if these properties were acquired by a private party. (19/13)

Response: *The FEIS, Table 119 discloses a cost of \$10,000 per site for facilities acquisition under the Preferred Alternative. Further evaluation, recording and possible inclusion in National Register of Historic Places is included in that cost. If the facilities on PM26 would be retained for their historical values, this cost also includes management/retention of the site for historical value. Also, the cost of a structure protection plan, if it is determined one is needed, would be included in this estimated cost. The facilities would not be maintained or upgraded for other uses, thereby not taxing limited facilities maintenance funding.*

Social – 1601

1. The DEIS also violates the Federal Land Policy and Management Act of 1976 ... where it fails to adequately analyze the necessary factors in order to determine whether the land exchange is in the public interest. The DEIS fails to adequately analyze the necessary factors in order to determine whether the land exchange is in the public interest. ... This DEIS fails to identify and analyze the needs of local people, and particularly with regard to the Hamilton Mountain area. (18/14)

Response: *The Social and Economic Environment section addresses the potential social and economic effects of the alternatives evaluated in detail. The Recreation section addresses the effects of the proposed Blue Mountain Land Exchange on the existing social character and recreational setting. This section discusses recreational opportunities and experiences affected by all alternatives evaluated in detail. The following discussion discloses the Proposed Exchange effects on Hamilton Ridge (FEIS page 227): “The parcels in the Hamilton Ridge area, FM15 (325 acres), FM16A (246 acres), FM16B (82 acres), FM17 (596 acres), FM18 (480 acres), FM19 (309 acres) and FM20 (41 acres) are popular among residents of Monument, Hamilton, and Long Creek for firewood gathering and big-game hunting. Recreation activities would no longer be available to the public within these areas, primarily affecting residents of Hamilton and Monument. However, public access on routes 4020-201, 4020-204, 4020-205, and 4020-206 would be retained, allowing access to NFS lands through Parcel FM17 to remaining NFS lands. Some acquired parcels on the Malheur National Forest would provide additional opportunities for big game hunting opportunities and firewood gathering for local residents of Fox and Long Creek. Parcels PM15 (80 acres), PM16 (124 acres), PM17 (162 acres), PM18 (481 acres), PM19 (628 acres), and PM20 (483 acres) would provide these types of opportunities to some of the local communities.”*

Timber Production – 1800

1. Under the Exchange, for example, any lands currently managed by private land owners for timber will continue to be so managed when obtained by the USFS. ... CTWA requests, therefore, that the agency consider managing a portion of these lands for fish and wildlife, recreation, wilderness and other aspects that do not emphasize timber harvest as the primary management activity. The DEIS must therefore designate some of these lands as “old growth” management sites and to increase buffer zones and riparian habitat along the lands obtained in the Meacham Creek area. In addition, the DEIS should conduct additional analysis of Old Growth management areas and the number of miles of increased riparian areas that will result from the exchange including those affecting existing or potential bull trout habitat. (10/1)

Response: *Refer to Table 14, Alternative 5- MA Acre Allocation for All Parcels to Convey and Acquire. This table provides information by forest on how the acquired parcels would be managed under the Preferred Alternative. Management area allocation was assigned based upon adjacent Federal land MA allocation, not by how the acquired private lands were previously managed. Management area descriptions provide the multiple-use direction for managing specific areas. Each forest management area is described in terms of management objectives and goals, specific resource priorities, and management direction.*

Analysis of the old growth situation for the Preferred Alternative can be found in Chapter 3 under the Vegetation section (Old Growth) and under the Wildlife section (Old Growth Associated Wildlife Species). A summary of the riparian condition for the Preferred Alternative can be found in the Hydrology, Wetlands, and Floodplains section, direct effects in Table 36 and the following narrative on pages 80-93. Table 74 contains miles of spawning/rearing (SR) and foraging/migratory/over-wintering (FMO) habitat that could be affected by the Preferred Alternative.

Treaty Rights – 1901

1. The Forest Service should consider eliminating the Meacham and Butcher Creek areas from the exchange which include critical tribal hunting, fishing and root gathering sites and pristine habitat largely untouched by human development. (10/2)

Response: *The Forest Service modified the proposed land exchange to address this concern by removing parcels FU3E and FU4 from the Preferred Alternative.*

2. ... Alternative 1, the statement is made, “Access for traditional uses and the exercising of treaty rights would not be adversely impacted.” ... To restrict or deny access to traditional areas is an adverse impact to tribal members, the tribe itself and to tribal culture. (20/2)

Response: *The analysis acknowledges impacts to individual tribal members or families for exercising treaty rights. The CTUIR indicated that the primary use was hunting. The exchange of these lands would cause displacement of these individuals to new areas to continue exercising this treaty right should the Preferred Alternative be selected. Shifting a single family or individual is not an adverse impact considering the membership of the tribe and the fact that more land would be available for more members to exercise treaty rights on Horseshoe Ridge than currently exists in the limited, arduous, access to the upper Meacham/Butcher Creek area.*

When impacts to hunting is being considered it is hard to define what access to traditional areas mean without knowing the tie the particular family has to this area in the distant past. Every hunter, Indian or otherwise, hunts in traditional areas or favorite areas. It is a place where father and sons or daughters share an experience that builds meaning to a landscape or area. Sometimes this experience is shared with the next generation or is lost when time changes and one of them no longer has the interest for the shared experience because family demands change or one of them dies. The memories are still there for the people involved with the particular landscape and can be rekindled by just the sight of landscape. Not being able to share the location of the past does not necessarily mean that the experience is lost. Road closures, for the protection of wildlife, have caused many people to shift to new areas because they lost access to hunting camps. Impacts to the individuals are mixed because of the loss of a site; they can either lose interest in the activity because the site was important to their experience, continue the relationship with each other and the land at a new location with visits to their old area to relive memories, or find access to the old site to difficult so that memories and activities are shifted to the new site.

3. CTUIR specific and fundamental concerns that we believe need to be resolved before a final EIS and ROD are issued are the BMLE, as proposed in the EIS results in a substantial decrease in federal acres of “open and unclaimed” lands, or those lands interpreted by case law to be available for tribal access to exercise their treaty reserved rights to hunt. USFS information provided to CTUIR indicates this loss of acres of accessible lands will exceed 2,100 acres. This number increased from USFS estimates provided in 2004. (20/4)

Response: *The Preferred Alternative and Deeded Access Alternatives both address the loss of lands close to the CTUIR reservation. If all the potential private lands are removed from the exchange, there really is not much difference between these two alternatives, about 300 acres. Over all, there is a net gain in Federal lands however it is at the expense of lands near the CTUIR.*

4. CTUIR specific and fundamental concerns that we believe need to be resolved before a final EIS and ROD are issued are the BMLE, as proposed in the DEIS results in large blocks of lands going out of federal ownership and going into private ownership in the Meacham Creek area adjacent to the reservation of the CTUIR. These lands are used regularly by CTUIR members, in part due to their proximity to the Reservation and they contain important traditional and cultural resources including usual and accustomed fishing sites. (20/5)

Response: *The Preferred Alternative removed the large parcels the Tribe had concerns about from the land exchange. The effects of doing that have been disclosed in the Treaty Rights section of the FEIS.*

5. CTUIR specific and fundamental concerns that we believe need to be resolved before a final EIS and ROD are issued are CTUIR does not have necessary information regarding CTUIR treaty resources such as cultural plants and cultural resources and site information for private lands proposed for acquisition into federal ownership and only received similar information from current federal ownership in early 2005. (20/7)

Response: *The Forest Service analysis is based on similar habitat between parcels conveyed and acquired. Personal observations by walking over the landscape in other areas have indicated culturally important plants are common where they are expected to be found. Parcels containing important locations of plants have been removed in the Preferred Alternative.*

6. The FS should limit itself to describing the impact the proposed alternative would have and not attempt to suggest how and where CTUIR members would go to exercise Treaty rights in response to opportunities lost as a result of an action alternative. (20/13)

Response: *Reference to this was changed in the final specialist report. The report talked about displaced members having to relocate. There is an assumption or guess as to where that location would be. Lands closest to the reservation would likely receive greater use and new lands would likely be explored by tribal members to see what cultural use they would provide.*

7. Page 272 indicates, “hunting and grazing would not be impacted by the action alternatives.” Given that the amount of open and unclaimed lands within proximity to the reservation will be reduced, and the fact that areas traditionally used by tribal members will be closed to them, hunting will be impacted. (20/14)

Response: *The ability to hunt and graze would not be impacted. The amount of lands near the CTUIR reservation would be reduced but that does not affect availability or access. Overall the land exchange increases the amount of land and much of it in the CTUIR’s area of interest. Less land being available may impact the success of hunting close to the reservation, which is why the analysis acknowledges that members may have to travel further to exercise treaty rights. The lands would still be located in their area of interest.*

Vegetation – 2000

1. Additionally, the DEIS violates the National Forest Management Act . . . where it fails to provide for diversity of plant and animal communities. Because of the unique shape of this part of the Malheur National Forest and because of the lack of replacement habitat, the proposed transfer of the Hamilton Mountain area will remove the only habitat in that area of the Malheur National Forest, in violation of NFMA and its implementing rules. (18/17)

Response: *Late and old forest structure is an important issue in regard to the Hamilton Ridge parcels and is discussed in the FEIS on pages 204-213. The uniqueness of land types and the land ownership pattern is specifically recognized for Hamilton Ridge. However, the conclusions reached through the analysis of effects to old growth associated wildlife species does not support a claim that NFMA requirements for maintenance of species diversity would not be met. Local effects are recognized and documented in the FEIS, but broad scale effects to species diversity are not anticipated.*

Old Growth – 2001

1. The two parcels of Government land I am interested in both have decadent old growth timber with virtually no reprod and little grass. The land, without being able to remove both standing and fallen old growth, is virtually useless. The old growth should be removed and the land replanted. It would make more sense, from a realistic standpoint, if alternative #4 required the removal of timber over 2”DBH. (1/1)

Response: *Thank you for your comment.*

2. This letter pertains to parcels on the Malheur National Forest range 28 East, township 10 South parcel FM19, FM16A, FM18, FM16B, FM17, FM15, and FM21. ... I notice in your DEIS for the Blue Mountain Land Exchange for Oregon that if these parcels are exchanged, old growth stands will be created. The alternate old growth stands both have a public road going right through the middle of them. If this happens, we will also be losing approx. 4 miles of public road of which we can now cut firewood. Why not replace these old growth stands in an area that does not have public access, like it is now in parcel 16A, 18, and 19. ? (6/1)

Response: *Each Forest’s land and resource management plan provides the legal authority to change dedicated old growth areas through the Forest Plan amendment process. The requirements to maintain the integrity (habitat quality, patch size, spacing) of the allocated old growth network, in the event of dedicated areas being exchanged, is specified in the Forest Plans. Alternative candidate stands on the Malheur N.F, for old growth replacements were identified. FEIS page 120 documents that the identified replacement stands are unsuitable, but represent the best options for replacement of existing old growth.*

3. We recommend the old growth acres be equalized rather than a 1600 acre deficit for the public. (12/1)

Response: *Thank you for your comments. With this exchange, as with all land exchanges, there must be somewhat of a trade off in benefits to the public and private interests. To accomplish an acquisition of land by exchange, there also must be an equal value of public land conveyed out of Federal ownership. It is the Line Officer’s decision to determine that a greater public interest is served by the Preferred Alternative.*

Section 9 of the Act of December 13, 1975 (P.L. 94-199), Section 6 of the Wild and Scenic Rivers Act (16 U.S.C. 1271-1287), Section 5(c) the Wilderness Act of September 3, 1964 (P.L. 88-577), and Section 5 (a)(2) of the Endangered Species Act of December 28, 1972 (P.L. 93-205) all directly or indirectly instruct the Secretary of Agriculture to acquire, by donation, purchase, or exchange, those lands that are available on a willing seller basis within the boundaries of the Hells Canyon National Recreation Area, Wild and Scenic Rivers, Wilderness Areas, or lands that provide critical habitat for threatened and endangered species. Lands within Congressionally designated areas have the highest priority for acquisition in the Forest Land and Resource Management Plans of all three forests. Lands that preserve habitat for T&E species are also high priority for acquisition. To acquire these highly desirable lands, other lands that have not been congressionally designated may provide the assets necessary to complete an exchange on a willing seller basis. The Preferred Alternative would acquire 7,442 acres within HCNRA, 2,128 acres within boundaries of W&S Rivers, 243 acres within Wilderness, and a net increase 45 miles of anadromous fisheries.

4. Additionally, the DEIS violates the National Forest Management Act ... where it proposes an exchange of an old growth are without providing for a legally sufficient replacement stand. It is not allowable for the DEIS to propose a transfer of an old growth area that is not replaceable under the standards of the Malheur National Forest Plan. The two replacement stands do not meet the minimum standards for old growth structure and won’t for more than 60 years. Even then, they will not meet the minimum size and spacing requirements. (18/16)

Response: A Forest Plan Amendment addresses the net reduction in dedicated old growth habitat and the designation of replacement old growth areas. Quality of the replacement old growth stands are documented on page 120 of the FEIS.

5. The section on old growth (p.322) merely repeats the assessment of current environmental impacts and presents no meaningful cumulative effects analysis. At a minimum, there should be an analysis of what old growth has been lost or gained during the past 15 years since the forest plan was adopted. (18/20)

Response: Information regarding past land exchanges was added to the old growth discussion. The cumulative effects analysis was expanded for all of the wildlife section.

6. The CTWSRO do not support the conveyance and acquisition associated with parcels FM15-FM20 located on Hamilton Ridge in the Lower North Fork of the John Day River Watershed and the Cottonwood Creek Watershed until further analysis is completed concerning the impacts to the old growth network located on these lands. (21/1)

Response: The effects to old growth associated wildlife species is on pages 204-213 of the FEIS and the Hamilton Ridge parcels are specifically addressed.

7. EPA recommends that the EIS evaluate reducing the amount of old growth habitat considered for conveyance in the Malheur NF under the proposed alternative and limit the amount of old growth structure conveyed to that which can be replaced with stands that have equal old growth potential suitable for old growth associated species. In addition, we recommend that old growth habitat on lands conveyed from the Malheur NF be deeded in a manner that does not allow for timber harvest until suitable replacement old growth habitat exists to support old growth associated species on acquired lands. (22/1)

Response: Effects to old growth habitat and associated wildlife species is addressed on FEIS pages 204-213. It was assumed deed covenants on conveyed parcels would decrease the fair market value by approximately fifty percent therefore reducing the potential to acquire private parcels. Table 15 and the discussion on Responsiveness to the Purpose and Need statements mentions the substantial FS costs incurred in monitoring and managing deed restriction compliance. Deed restrictions would not achieve the vast majority of the private entity's desired management goals and objectives and would likely result in lands being withdrawn from the exchange.

8. Wildlife issues ... Hamilton Ridge ...net loss of U.S. Forest Service designated old growth forest. (24/1)

Response: The FEIS page 120 describes the process used to designate replacement dedicated old growth areas and states: "The Malheur NF would convey 423 acres of multi-strata LOS, 385 acres of which is forest plan dedicated old growth. No LOS acres would be acquired on the Malheur".

9. ... the North Finger parcels FM 15-21. ... the loss of 375 acres of the only old growth habitat in the Hamilton Ridge area would contradict the intent of the Forest Plan. (2/5/2)

Response: Effects of a reduction in dedicated old growth habitat on Hamilton Ridge and subsequent identification of replacement areas is addressed in the FEIS on pages 204-213. A forest plan amendment is part of this EIS which will address the relationship of this action to the Malheur LRMP.

Water Quality – 2100

1. The DEIS should, therefore, include a Water Quality Management plan as part of the EA to address any water bodies not in compliance with state standards. (10/13)

Response: Two basins in the Proposed Land Exchange, the Umatilla River Basin and the Upper Grande Ronde Sub-Basin, have completed total maximum daily load (TMDL) and water quality management

plans (WQMPs) which establish water quality goals for streams in the Basins. These documents in the project record lay out steps toward meeting the goals by establishing numeric goals for allowable levels of pollution (loads) by sub-basin within the larger basin. On NFS Lands, the WQMPs rely on current laws, management plans, and Best Management Practices (BMPs) to provide the basis for improving water quality in the forested landscape. They must follow standards and guidelines (S&Gs) listed in PACFISH, the Biological Opinion for PACFISH, the Biological Opinions for the Land and Resource Management Plans, the Wallowa-Whitman and Umatilla National Forest Land and Resource Management Plans, and BMPs.

In other basins WQMPs will be developed as part of TMDL development and the USFS will participate in those processes.

On non-Federal forest lands, OAR Chapter 340, #0028, (e) is in effect to address compliance with state standards. For forest operations on State or private lands, water quality standards are intended to be attained and are implemented through BMPs and other control mechanisms established under the Forest Practices Act (ORS 527.610 to 527.992) and rules there under, administered by the Oregon Department of Forestry. Therefore, forest operations that are in compliance with the Forest Practices Act requirements are (except for the limits set out in ORS 527.770) deemed in compliance with this rule. The Department of Environmental Quality will work with the Oregon Department of Forestry to revise the Forest Practices program to attain water quality standards.

Table 33 identifies watersheds with water quality impaired segments and provides the 303d listing criteria for parcels to convey and acquire in the Preferred Alternative.

2. The Forest Service does not discuss the cumulative effects of past land exchanges and whether this land exchange is necessary to protect lowland and riparian areas as implied in the EIS. (19/14)

Response: *Refer to response #5 above in the old-growth category for a discussion on cumulative effects of past land exchanges. One of the benefits of the Preferred Alternative would be the net gain on NFS lands of wetland and floodplain acres. Wetlands would increase approximately 597 acres and floodplains would increase approximately 186 acres under the Preferred Alternative (FEIS, Table 36).*

3. The EIS states that water temperatures onsite or downstream from the project area would not be affected by harvest near channels on conveyed lands because there is nearly no surface water during the summer months. It is not clear how this conclusion was reached. The OR FPA does not ensure bank stability, site-potential shade, sediment retention, or recruitment of adequate large woody debris, especially for smaller streams. The resultant impacts, both on site and downstream, could include widened channels, decreased pool depth, decreased stream sinuosity, disconnection from the water table and floodplain, and impaired hyporheic flow. The altered stream morphology and function could adversely affect water quality. Additionally, the EIS does not discuss whether water temperatures would increase when water is present in stream channels. The above impacts, along with the effect of riparian habitat removal on winter stream temperatures and anchor ice, should be discussed in the final EIS to provide support for an EIS conclusion that the conveyance of parcels would not result in exceedances of water quality standards. (22/2)

Response: *There is nearly no summer surface water on the conveyed parcels in the Butcher Creek Subwatershed. Reductions in shade by timber harvest near channels would not lead to increases in water temperature on site or downstream. Detrimental increases in water temperature are a summer-time phenomena. Anchor ice is seen primarily in low gradient perennial systems, not in intermittent higher gradient channels.*

Analysis of water quality and channel morphology affects from timber harvest on conveyed lands was based on an assumption that such harvest would be in compliance with the State of Oregon Forest

Practices Act and Rules. The potential for detrimental effects to water quality and channel morphology of harvest on conveyed lands is discussed in the FEIS.

The State of Oregon DEQ has been assigned responsibility to implement the Clean Water Act and to develop Water Quality Standards. The Oregon Revised Statutes state “For forest operations on State or private lands, water quality standards are intended to be attained and are implemented through best management practices and other control mechanisms established under the Forest Practices Act (ORS 527.770)....

4. The EIS should present evidence that clearly demonstrates that timber harvest on conveyed lands will not cause exceedances of water quality standards, that beneficial uses will be fully protected, and that anti-degradation provisions of the CWA will be met. Given the potential for impacts to water quality we recommend that conveyed lands include deed provisions that provide similar protection as PACFISH/INFISH Standards and Guidelines. (22/3)

Response: *Analysis of water quality and channel morphology affects from timber harvest on conveyed lands was based on an assumption that such harvest would be in compliance with the State of Oregon Forest Practices Act and Rules. The potential for detrimental effects to water quality and channel morphology of harvest on conveyed lands is discussed in the FEIS. The State of Oregon DEQ has been assigned responsibility to implement the Clean Water Act and to develop Water Quality Standards. ORS statute states “For forest operations on State or private lands, water quality standards are intended to be attained and are implemented through best management practices and other control mechanisms established under the Forest Practices Act (ORS 527.770).*

Refer to category Old Growth- 2001 #7 for response on deed restrictions.

Water Rights – 2103

1. The DEIS should, however, discuss any contractual or other commitments in relation to the Exchange that would require them to commit water or other resources to land uses in a manner that will impact fish and wildlife species. (10/9)

Response: *Water developments and water rights have the potential to conflict with FS management objectives and policies of other jurisdictions. The FEIS discusses these effects and potential commitments by alternative. The fisheries section also addresses water rights and the relevance of water rights to fisheries.*

2. The DIES should, therefore, discuss ways to transfer water right permits on lands the agency will obtain through the exchange to instream use. To this end, we encourage the agency to request that private land owners cancel any abandoned water rights on private lands before these are exchanged for federal lands or for the USFS to formally abandon such rights once such lands fall under federal ownership. (10/10)

Response: *Legal council of the USFS indicates that Congress has never given the USFS authority to cancel water rights. Opportunities may exist to lease water to the State of Oregon for instream use and will be considered where possible. The FS Manual direction is to maintain water rights.*

3. In addition, CTWA suggests that the USFS incorporate a commitment in the DEIS to transfer existing water rights obtained in the Exchange to instream uses, including which lands contain water rights that would be transferred instream or have been abandoned and what process, such as state permit transfer, cancellation or other measures would be taken. (10/11)

Response: *The USFS can not commit to transfer water to instream uses. The USFS can commit to evaluate the status of water rights post-exchange to determine the potential to transfer water rights to instream use. It is not likely that the USFS would decommission any reservoirs for this purpose.*

4. To better understand water rights issues and potential mechanisms for instream use of such rights related to the Exchange, the DEIS should discuss and attach as an appendix the reports and recommendations by the UNF and WWNF staff on the water rights as they relate to the exchange. (10/12)

Response: *Specific information compiled for each water development, water use, and water right known to exist for each alternative includes: Type of water development, water use or purpose, type of water use authorization, status of water use and implementation cost. The Blue Mountain Land Exchange Water Rights Existing Condition Report along with case files were made for all of the known water rights and water developments. These case files included photocopies of water rights certificates or permits, water right maps, water right plat cards, livestock allotment records, aerial photos, topographic maps, and parcel maps. This information is available for review in the project record.*

Wildlife Species – 2200

1. The CTWAs is particularly concerned about the National Forest Management Act's requirement that the forest lands be managed to maintain viable populations of existing and desired fish and wildlife species. In addition, the DEIS must insure that the wildlife and forest health aspects of the Exchange are not overshadowed by pressure to benefit private interests. (10/8)

Response: *The Fish and Wildlife Sections address the effects to wildlife by alternatives evaluated in detail. Water Quality and Fisheries was considered a significant issue. Chapter 2 has a comparison summary for fisheries and water quality by alternative. The Wildlife section addresses Rocky Mountain Elk, Canada Lynx, Bald Eagle, old growth dependant species and the Regional Forester's sensitive wildlife species. The FEIS has determined the Preferred Alternative with identified mitigation measures is in compliance with National Forest Management Act requirements.*

2. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where as it fails to adequately disclose environmental impacts regarding biological assessment. The DEIS does not address biological assessments by NMFS or the USFWS. In contrast, the Triangle FEIS included the biological assessments of these agencies. (18/8)

Response: *The requirement to conduct a Biological Assessment (BA) comes from the Endangered Species Act of 1973, as amended, not from the National Environmental Policy Act. The BA that addresses the effects of the Preferred Alternative to Federally listed fish and wildlife species was developed concurrently with the FEIS. The BA is under review by NOAA Fisheries and US Fish and Wildlife Service, and will be the subject of a formal consultation with these agencies. The BA will be incorporated as Appendix F to the FEIS.*

3. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where it fails to meet the stated purpose of reducing fragmentation. The proposed transfer of the Hamilton Mountain area does not meet the stated purpose of reducing fragmentation. ... It is apparent from the map at page B-19 that fragmentation will continue in the area because of the transfer to the Forest Service of the private cutover lands in PM23 and 24 and the retention of Forest Service lands next to them. (18/10)

Response: *The lands in the Hamilton Mountain area (as shown on map on B-19) were identified in the Malheur National Forest LRMP as Group 4 lands. Landownership direction for Group 4 lands are as follows: "Federal lands in this group will normally be made available for disposal in land exchanges to acquire private lands in Group 1, 2, and 3."*

Preliminary site specific information on certain lands in the Hamilton Mountain area indicated that they would not likely be eligible for conveyance due to cultural resource concerns. Retention of these lands, and acquisition of parcels PM23 and PM24, creates a larger contiguous block of land that would be more manageable in the future.

Wildlife Habitat – 2201

1. The DEIS does not comply with the National Environmental Policy Act ... and regulations of 40 C.F.R. Part 1502 and 1506 where as if fails to adequately disclose environmental impacts regarding interrelationships of adjoining federal and private lands regarding wildlife habitats. Particularly lacking in the DEIS is information and analysis on the current interaction of private and federal ownerships regarding wildlife on those lands to be transferred out of public ownership. For example, the value of the old growth and elk habitat on Hamilton Mountain is not only due to the old growth and habitat on the federal lands, but also to the adjoining Hanson Ranch property which provides complementary habitat and additional old growth which increases the habitat effectiveness of the federal lands. There is no information or analysis on this factor in the DEIS. (18/5)

Response: *The wildlife habitat values pertinent to the private/public ownership pattern were discussed where appropriate. FEIS pages 191-197 discuss efficiencies of managing elk habitat as it relates to ownership patterns. The context (considering private lands) of old growth habitat on public lands is built into the Blue Mountains scale discussion on FEIS pages 204-213.*

2. The section on fishery and wildlife (p.321) merely repeats the assessment of current environmental impacts and presents no meaningful cumulative effects analysis. At a minimum, there should be an analysis of what fishery and elk habitat has been lost or gained during the past 15 years since the forest Plan was adopted. (18/21)

Response: *Past land transactions when considered over the Blue Mountain province have not measurably changed the mix of elk habitat maintained under Forest Service jurisdiction. For example, when considering allocations that emphasize big-game management, the Blue Mountain forests have acquired 6,034 acres and conveyed 6,030 acres. These totals account for adjustments within Management Areas 3 and 3A on the Wallowa-Whitman National Forest, Management Areas C3, C4 and C8 on the Umatilla National Forest and Management Area 4A on the Malheur National Forest (no land adjustments have occurred within MA 20 or 21 on the Malheur NF or within MA3A, C5, or F4 on the Umatilla NF). Consequently, the effect of these past lands adjustments would not change the direct or indirect effects of the alternatives previously disclosed when considered over the Blue Mountain province.*

Forest Service jurisdiction of fisheries habitat has increased over the last 15 years through past land transactions. The land acquisition transactions have emphasized acquisition of threatened and endangered species habitat from willing sellers, so this trend will likely continue with future adjustments. As an example, the Minam/Big Canyon exchange resulted in a net gain of 2.0 miles of fisheries habitat, the Triangle Exchange resulted in a net gain of 3.59 miles of fisheries habitat. LWCF purchases have also resulted in net gains in fisheries habitat. Examples include parcels along Jim Creek and its tributaries and the Cache Creek, Cougar Bar and Cave Gulch purchases, all of which acquired lands along the Snake River in the northernmost portion of the Hells Canyon National Recreation Area. The effect of these past lands transactions would intensify the beneficial direct and indirect effects on fisheries previously described and moderate the adverse direct and indirect effects on fisheries previously described.

