
Appendix F: Response to Comments “Incorporated” by Reference

SUMMARY:

This appendix summarizes the comments, and agency responses to the comments “incorporated” by reference by two of the commenters (#312 and #370). The comments are from three documents originally submitted in 2006 and 2011 on previous NEPA documents for the Suiattle Road 26 flood repairs and are incorporated by reference in their comments on the 2012 EA. These three documents are:

1. **First Declaration of William M. Lider from the lawsuit by *North Cascades Conservation Council, et al. v. Federal Highway Administration and USFS (2011)*, Civ. Case No. 11-CV-666-TSZ..**
2. **Complaint for Declaratory Relief and Injunctive Relief” from the lawsuit by *North Cascades Conservation Council, et al. v. Federal Highway Administration and USFS (2011)*, Civ. Case No. 11-CV-666-TSZ..**
3. **2006 appeal by North Cascades Conservation Council and Pilchuck Audubon Society of the signed Decision Notice on the USFS 2006 Suiattle Road 26 Repair Environmental Assessment**

The first two documents were submitted in a 2011 lawsuit against the FHWA and the USFS over implementation of the 2010 Contract for Repair of the Suiattle River Road 26 (based on the FHWA 2010 CE), covering flood damage sites at MP 12.6 to MP 14.4. The third document is a 2006 appeal of the signed Decision Notice for the USFS 2006 Environmental Assessment (EA) on the Suiattle Road 26 Repair which covered the initial three damaged sites at MP 14.4, MP 20.9 and MP 22.9.

The analysis in the 2006 and 2010 environmental documents have been replaced by the current analysis in the FHWA 2012 Environmental Assessment and Amended Environmental Assessment for the Suiattle River Road Project. All eight of the damage sites from MP 6.0 to MP 22.09 are now covered in the 2012 EA and A-EA. Therefore some of the comments on the 2006 EA and 2010 CE are moot given the more recent 2012 analysis of the project. Other comments are not applicable to the 2012 EA analysis since the comments were in regards to construction plans for the 2010 repair contract that was voluntarily halted by FHWA in order to pursue the 2012 EA analysis.

Comments in these documents incorporated by reference fall into four categories:

1. COMMENTS ALREADY ADDRESSED IN 2006 EA APPEAL RESPONSE

Comments in the 2006 EA appeal were responded to in the 2006 Regional Forester’s Appeal Decision letter affirming the USF decision on the 2006 EA along with a briefing of the appellants’ concerns and a short description of the findings (filed in Project Record).

2. COMMENTS NOT REQUIRING AGENCY RESPONSE

These incorporated comments had no relationship to the EA such as factual statements of names, addresses, background, and personal information of the Plaintiff or Declarant. This category also includes opinions by the Plaintiff or Declarant about project history, context, and applicable law, regulation, or policy.

3. COMMENTS MADE MOOT BY THE WITHDRAWAL OF THE 2010 ROAD 26 REPAIR CONTRACT AND SUBSEQUENT RELEASE OF THE 2012 EA

These are comments that were pertinent to the 2006 E , 2010 FWHA CE, OR 2010 Repair Contract but which are no longer relevant today. For example, it includes some comments on the FWHA Contract and Categorical Exclusion, which was later withdrawn, and replaced by the EA:

125. “At other areas in the project area, pre-construction activity exceeds the proposed scope of the categorical exclusion.” Response: This comment is moot because FHWA voluntarily halted the 2010 contract work and is pursuing the assessment of the proposed action in an EA.

4. PERTINENT SUBSTANTIVE COMMENTS

These are comments on previous documents that are still pertinent to the EA and A-EA today. Many of these comments merely mirror comments subsequently made to the EA, which receive summary coverage in the following responses.

SECTION 1 – RESPONSE TO “First Declaration of William M. Lider”

Commenter #312 incorporated by reference all comments provided in his 2011 declaration titled “First Declaration of William M. Lider” from *Council, et al. v. Federal Highway Administration and USFS (2011)*, Civ. Case No. 11-CV-666-TSZ. The following summarizes the comments in the declaration with comment number from the declaration followed by agency response.

Comments 1-14: The commenter provides background information establishing Mr. Lider’s standing and interest in the project.

Response: No agency response needed.

Comments 15-20: The commenter questions amount of project scoping.

Response: This comment is made moot by release of 2012 EA. Scoping for the 2012 EA was accomplished as described in the 2012 Suiattle River Road Project EA and Amended EA (A-EA) in Chapter 1 section 1.8, Public Involvement and Tribal Consultation.

Comment 21: The commenter questions 1) the 2010 CE compliance with the National Forest Management Act (NFMA), and 2) the removal of Late Successional Reserve (LSR) trees
Compliance with NFMA:

Response: This comment is made moot by release of 2012 EA. Consistency with the Forest Plan and other relevant documents and Acts is described in the EA and Amended EA (A-EA) in Chapter 1, section 1.2 - Relationship to Forest Plan and Other Documents. The EA and A-EA also list the other relevant laws and direction followed in the EA and A-EA assessment in Appendix B. LSR compliance:

Response: This comment is addressed in present response to comments to the 2012 EA and A-EA. The project is located in “Congressionally Withdrawn Skagit Wild and Scenic River (Matrix)” land allocation, not LSR. See EA page 18 and 19.

Comments 22-26: The commenter questions 1) the 2010 contract award, 2) extension of the ERFO project and 3) justification for betterments:

Contract award Response 1: This comment on contract bidding process is not applicable to the proposed action in the 2012 Suiattle River Road Project EA and is outside the scope of 2012 NEPA analysis.

Suitable justification for a time extension has been requested from WFLHD Response: The EA and A-EA provides a history of efforts by the USFS and FHWA to undertake the repairs in a timely fashion on pages 1 and 2. Road 26 was under contract for repairs in 2006 following the 2003 flood (fiscal year 2004). While the 2006 repair contract was active, the floods of 2006 resulted in loss of access for the contractor, and therefore the USFS contract was terminated. Road repairs following the 2007 event (events are identified by fiscal year) were again under an active repair contract in 2010 until litigation was

brought by North Cascades Conservation Council (NCCC), Pilchuck Audubon Society (PAS) and Mr. Lider in 2011 was followed by FHWA termination repair contract. Extensions for emergency relief funds were requested and granted due to the extenuating circumstances explained above.

Betterments justification Response: Road 26 was damaged near Mile Post 13 in floods of 1980, 1990, and 2006. Based on the history of past flood impacts, the relocation had a benefit /cost assessment that was approved in the Damage Survey Report (11/06/07). There are no betterments approved with ERFO funding.

Comments 27- 89: The commenter walked the 2010 Suiattle Road 26 repair alignment with the contract plans for the 2010 Road 26 repair from MP12.6 to MP 14.4. Questions were raised on the design elements of the plans meeting State of Washington and Forest Plan responsibilities to various resources. Numerous comments were related to implementation of the FHWA 2011 contract and would be outside the scope of the 2012 EA analysis.

Comments 29-32: The commenter is concerned with 1) adequate staking of the project and 2) trees have been cut down near Mile Post 14.4 where clearing limits staking is inadequate and 3) high visibility fencing was not installed as required by the contract drawings.

1. Inadequate staking Response: The surveying and staking of MP 12.6 – MP 13.8 was planned to be done on 5/15/2011 or soon thereafter, until the construction work was stopped after the 2011 litigation. This would have included the slope stakes, clearing limits stakes, and reference point stakes.

2. MP 14.4 clearing outside staking Response: All the clearing at MP 14.4 was within the staked clearing limits as per the 2006 Suiattle Road 26 Repair EA and 2010 CE which were in effect at the time of tree felling. This comment is currently outside the scope of NEPA analysis of the proposed action in the 2012 Suiattle River Road Project EA and A-EA

3. High visibility fencing not installed Response: This comment relates to contract implementation and is currently outside the scope of NEPA analysis of the proposed action in the 2012 Suiattle River Road Project EA and A-EA

Comments 33- 45: The commenter questions the adequacy of the culvert design, especially in relation to fish passage.

Fish passage is not adequate Response: The EA on page 80 explains that the tributary streams where crossed at the proposed repair sites (#1 to#5) are not fish bearing streams. The EA further discussed the proposed repairs to fish habitat in the proposed action on page 81. Culvert replacements at site #1 to site #5 would be over 200 feet from the Suiattle River in non-fish bearing streams. Therefore, no fish passage culverts are needed in the current alignment of the proposed reroute from MP 12.7 to MP 13.8. Non-fishing bearing streams did not have culverts designed for fish passage.

Comment: Some tributaries that historically were fish bearing may have had fish access blocked by the original Road 26 construction or by its culverts not designed for fish passage.

Response: The EA on page 86 in the Fisheries Section describes how the Aquatic Conservation Strategy Objectives are met with the proposed action. The removal and restoration of old Road 26 located in MP 12.7 to 13.8 would occur after the proposed relocation of Road 26 upslope as described in Alternative B and C. This would allow for aquatic connectivity as described in ACS Objective 2 (page 86) and would restore the timing, variability and duration of flood plain inundation (ASC Objective 7), see page 87 in the EA. However, such aquatic connectivity would not result in any of the relevant stream reaches at the proposed road repair sites that presently are not fish bearing becoming fish bearing.

Comment: The culvert outlet at Huckleberry Creek at Mile Post 14.4 has excessive drop.

Response: A different culvert in Huckleberry Creek would not restore fish passage because the creek has a natural “excessive” bank drop from the terrace to the river at Mile Post 14.4. The EA on page 97 describes the tributary channel as perched high above the Suiattle River on the outside of a meander bend. It is the steep stream junction itself, not the culvert that causes the absence of fish.

Comments 46-54: The commenter questions the 1) amount of clearing, 2) removal of large diameter trees, and 3) lack of features on plans- Ordinary High Water Mark and wetland buffers, Clearing and tree removal

Response: Ground disturbing impacts were assessed for the area of potential effects and are described in the 2012 EA and A-EA in various sections of Chapter 3 – Environmental Consequences.

3. Lack of features Response: Comments on the specific road design plans pertain to project implementation that which would follow the environmental analysis and decision, and are outside the scope of the Environmental Assessment of the proposed action. The EA pages on 86 to 88 provided a description of how Alternative B and C meet the Aquatic Conservation Strategy Objectives (ACS objectives). The EA on pages 117 and 118 listed steps to address potential effects to wetlands from the proposed project. The Northwest Forest Plan describes compliance with ACS objectives as maintaining the existing condition or implementing actions to restore conditions – ROD B-10).

Comments 55-78: Commenter lists 2010 project design elements and questions the 2010 project design impacts to fish habitat, concerns with fish passage and not providing monitoring.

Fish passage Response: Comments on the specific road design plans pertain to project implementation which would follow the environmental analysis and decision, and are outside the scope of the Environmental Assessment of the proposed action. Comments are made moot by the withdrawal of the 2010 Road 26 repair contract and subsequent release of the 2012 EA. The EA and A-EA describe the effects of the proposed repairs to fisheries in Section 3.7.2 and 3.7.3. Also see response to comment 33.

Monitoring Response: The EA and A-EA list the management requirements and mitigation measures for the proposed repair in Table 2, with detailed inspections to be part of the monitoring of project activities. See Soil, Water resources, and Fisheries, page 35 of the EA.

Comments 79-86, 88, and 89: Commenter lists 2010 project design elements and questions the 2010 project design 1) impacts to wetlands and 2) sediment control and 3) wetland mitigation is inadequate.

1. Impacts to wetlands Response: The proposed relocation of Road 26 would shift the road out of the active floodplain with consequences to wetlands as described in the EA and A-EA, in section 3.9 Wetlands Environmental effects, pages 116 to 124. The wetland surveys by Herrera (2009 and 2011) display the wetlands and streams in the project area, and clearly show that the relocation route minimizes impacts on wetlands by relocating the road above and out of an extensive wetland.

2. Sediment control Response- Comments are made moot by the withdrawal of the 2010 Road 26 repair contract and subsequent release of the 2012 EA.

3. Wetland mitigation Response - Wetland mitigation is part of the design of the proposed action as described in the EA, pages 116 to 124. Wetland mitigation is supported by the surveys referenced in the EA on proposed action, and on-going consultation with the Corps of Engineers on appropriate ratios for wetland creation or enhancement options. The wetland mitigation plan would be finalized when there is a decision made on the proposed action and final design plans clarify wetland impacts

Comments 87: Commenter lists concerns with 2010 implementation as exceeding a CE authorization of the 2010 contract,

Response- Comments are made moot by the withdrawal of the 2010 Road 26 repair contract and subsequent release of the 2012 EA.

Comment 90-94: Commenter lists personal harm from the project which diminishes his experience.

Response: Such personal harm comments appear geared to the issue of standing rather than impacts from the project. In any event, this is a road repair and relocation project, which does not cause the “loss of this old growth ecosystem” or harm water quality, results in recreational pursuits by providing access to two campgrounds, seven trailheads, a rental cabin, two lookouts, several boat launching sites, a horse pasture, scenic driving, hunting, fishing, private property, cone and berry collection, and exercise of

Tribal treaty rights. The purpose and need for is described in the EA and A-EA on pages 1 to 3, in Chapter 1, in the Introduction, back ground and need for the proposed action (see Section 1.2)

SECTION 2 – RESPONSE TO “Complaint”

Commenter #370 incorporated by reference all comments provided in the 2011 declaration titled “Complaint for Declaratory Relief and Injunctive Relief” from the lawsuit by North Cascades Conservation Council, et al. v. Federal Highway Administration and USFS (2011), Civ. Case No. 11-CV-666-TSZ. The following summarizes the comments in the complaint with comment number from the complaint followed by agency response.

Comments 1-6: The commenter provides an introduction summary of the civil action, alleging violations of federal law, failure to comply with the USFS Forest Plan, and NEPA and requesting relief.

Response: Comments are made moot by the withdrawal of the 2010 Road 26 repair contract and subsequent release of the 2012 EA.

Comments 7-11: Commenter lists jurisdiction, venue and basis for relief

Response: Comments on basis for relief are made moot by the withdrawal of the 2010 Road 26 repair contract and subsequent release of the 2012 EA. Comments on jurisdiction and venue are not pertinent to the EA or A-EA.

Comments 12-18: Commenter lists parties of civil action

Response: No agency response needed.

Comments 19-73: Commenter lists pertinent Laws and Acts (Summary of facts and laws) including NFMA, the USFS Forest Plan, specifically Late Successional Reserves, Riparian Reserves, Key Watershed, Aquatic conservation Strategy (ACS), Survey and Manage Mitigation measures, NEPA , Wild and Scenic Rivers Act, and safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

Comment 19-28: Commenter lists allegedly pertinent Laws and Acts (Summary of facts and laws) including NFMA, the USFS Forest Plan,

Response: No agency response needed

Comment 29: Commenter lists allegedly pertinent Laws and Acts (Summary of facts and laws) including the USFS Forest Plan, specifically Late Successional Reserves. The Suiattle River Road Project is located in the Mount Baker-Snoqualmie LSR.

Response: This comment is addressed in present response to comments to the 2012 EA and A-EA. The project is located in “congressionally Withdrawn Skagit Wild and Scenic River land designation, not LSR. See EA page 18 and 19.

Comment 30-39: Commenter lists allegedly pertinent Laws and requirements (Summary of facts and laws) including the USFS Forest Plan, specifically Riparian Reserves, Key Watershed, and Aquatic conservation Strategy (ACS).

Response: Comments noted.

Comment 40: The Suiattle River Road Project environmental documentation does not reference the Northwest Forest Plan.

Response: This comment is addressed in present response to comments to the 2012 EA and A-EA. The EA and A-EA describe consistency with the Forest Plan and associated management plans in Chapter 1,

Section 1.3, Relationship to Forest Plan and Other Documents. Consistency with Forest Plan direction is described in the Specialists' Reports, summarized in Chapter 3- Environmental Consequences

Comment 41-43: Commenter lists allegedly pertinent Laws and Acts (Summary of facts and laws) including NEPA,

Response: Comments noted.

Comment 44: The Defendants are required under NEPA to prepare an environmental impact statement (EIS) for any "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

Response: The EA and A-EA will be used to determine whether an EIS is needed for this project.

Comment 45-51: Commenter lists regulations pertaining to CEs, EAs and EISs.

Response: Comments noted.

Comment 52: Defendants utilized a Category (c)(9) CE to document the environmental consequences of the Suiattle River Road Project.

Response: Comment is made moot by the withdrawal of the 2010 Road 26 repair contract and subsequent release of the 2012 EA.

Comment 53-54: Commenter lists regulations pertaining to use of emergency relief funds for federal roads (ERFO).

Response: Comments noted.

Comment 55-57: In evaluating intensity, the NEPA regulations require the Defendants to consider ten "significance factors" in determining whether a federal action may have a significant impact, thus requiring an EIS. 40 C.F.R. § 1508.27(b)(1). The presence of any of these "significance" factors compels an EIS. *Id.*

Response: Comments noted.

Comment 58-65: Commenter lists regulations pertaining to Wild and Scenic Rivers Act.

Response: Comments noted.

Comment 66-73: Commenter lists regulations pertaining to SAFETEA-LU. Subpart B also requires that "Emergency relief projects shall be promptly constructed. Projects not under construction by the end of the second fiscal year following the year in which the disaster occurred will be reevaluated by the Direct Federal Division Engineer and will be withdrawn from the approved program of projects unless suitable justification is provided by the applicant to warrant retention." 23 C.F.R. § 668.205(e).

Response: The EA and A-EA provides a history of efforts by the USFS and FHWA to undertake the repairs in a timely fashion on pages 1 and 2. Road 26 was under contract for repairs in 2006 following the 2003 flood (fiscal year 2004). While the 2006 repair contract was active, the floods of 2006 resulted in loss of access for the contractor, and therefore the USFS contract was terminated. Road repairs following the 2007 event (events are identified by fiscal year) were again under an active repair contract in 2010 until litigation brought by NCCC, et al. in 2011 resulted in the termination of the FHWA repair contract. Extensions for emergency relief funds were requested and granted by the FHWA due to the extenuating circumstances explained above.

Comment 74-89: Commenter lists information pertaining to the Suiattle River and Watershed.

Response: Comments noted. **Comment 90:** Emergency road repairs that include rip-rap bank protection can negatively impact fish habitat by reducing edge habitat complexity (Beamer and Henderson 1998), and limiting the natural process of channel migration that can create side channels, sloughs, and other important habitats (SRSC and WDFW 2005).

Response: The EA and A-EA in Chapter 2 describe the proposed repair. Note that Alternatives 1, 2 and 3 (Pages 24 and 25 of the EA) were considered and not further analyzed in detail, in part because those alternatives' included fill or riprap within the ordinary high water mark.

Comment 91-93: Commenter lists information pertaining to the Suiattle River and Watershed.

Response: Comments noted.

Comments 94 to 110: Commenter lists information pertaining to the Suiattle River Road Project. The history of Suiattle River Road Project is described.

Response: Comments noted.

Comments 111 to 119: Commenter lists information pertaining to the Suiattle River Road Project. The reconstruction of the Suiattle River Road from MP 12.6 to MP 14.4 is described.

Response: Comments noted.

Comment 120: Commenter lists information pertaining to the Suiattle River Road Project. Unfortunately, conditions on the ground depart substantially from the project design and effects disclosed in the CE.

Response: Comment is moot. The CE has been withdrawn and the proposed repairs are currently being assessed within the EA and the A-EA.

Comments 121 to 123: Commenter lists information pertaining to the Suiattle River Road Project. The reconstruction of the Suiattle River Road from MP 12.6 to MP 14.4 is described.

Response: Comment noted.

Comment 124: Commenter lists information pertaining to the Suiattle River Road Project. None of the culverts on this project have been designed for fish passage.

Response: The EA on page 80 explains that the tributary streams where crossed at the proposed repair sites (#1 to#5) are not fish bearing streams. The EA further discussed the proposed repairs to fish habitat in the EA on pages 81 in which culvert replacements at site #1 to site #5 would be over 200 feet from the Suiattle in non-fish bearing streams. No fish passage culverts are needed in the current alignment of the proposed reroute from MP 12.7 to MP 13.8. Non-fishing bearing streams did not have culverts designed for fish. Non-fishing bearing streams did not have culverts designed for fish. There would be no point.

Comment 125-126: Commenter lists information pertaining to the Suiattle River Road Project. Project implementation exceeds scope of CE and is clearing width is greater than needed.

Response: Comments are mooted by the withdrawal of the CE.

Comment 127-132: Commenter lists information pertaining to the Suiattle River Road Project. Commenter is concerned with the road project impacts to wetlands, fish passage, and sediment.

Response: The EA and A-EA in Chapter 3 provides the environmental consequences of the proposed action, including hydrology, wetlands and Riparian Reserve effects found in Sections 3.8 to 3.10. The fisheries effects are found in Section 3.7. A more detailed response to similar comments is provided in the Project Record.

Comment 133: Commenter lists lack of public input resulting in less expensive design options not explored.

Response: Comments on lack of public input is moot by the withdrawal of the 2010 Road 26 repair contract and subsequent release of the 2012 EA. The EA and A-ES describes public involvement in Section 1.8 and the alternatives considered in Chapter 2. This included 5 alternatives that were considered, but eliminated from detailed study (Sections 2.1.1 to Section 2.1.5)

Comment 134- 186: Commenter lists Claims for relief based on five counts: Count 1 NFMA violation, Counts 2-4: NEPA Violation, Count 5: SAFETU-LU Violation.

Response: Comments on claims for relief are made moot by the withdrawal of the 2010 Road 26 repair contract and subsequent release of the 2012 EA.

Comment 134-140: Count 1 - Commenter lists NFMA violation, failure to comply with the Mt. Baker-Snoqualmie National Forest Land and Resources Management Plan, as amended by the Northwest Forest Plan.

Response: This comment is not applicable to the proposed action in the 2012 Suiattle River Road Project EA and A-EA. Consistency with the Forest Plan and other relevant documents and Acts is described in the EA and Amended EA (A-EA) in Chapter 1, section 1.2 - Relationship to Forest Plan and Other Documents. The EA and A-EA list the other relevant laws and direction followed in the EA and A-EA assessment in Appendix B. Specialists' reports provide consistency of environmental effects with the Forest Plan in Chapter 3 and the Project Record. Additional responses to specific elements of the Forest plan in this comment are found in a more detailed response to comment in the Project Record

Comment 142- 148: Count 2 - Commenter lists NEPA violation, failure to disclose environmental consequences of the proposed action.

Response: This comment is not applicable to the proposed action in the 2012 Suiattle River Road Project EA and A-EA. The environmental consequences of the proposed action are disclosed in Chapter 3 of the EA and A-EA with the assessment of direct, indirect and cumulative effects. Additional responses to specific elements of the Forest plan in this comment are found in a more detailed response to comment in the Project Record.

Comment 150- 161: Count 3 - Commenter lists NEPA violation, use of a categorical exclusion for the Suiattle River Road Project as arbitrary and capricious.

Response: This comment is moot since FHWA voluntarily halted the 2010 contract work and is pursuing the assessment of the proposed action in an EA.

Comment 163- 175: Count 4 - Commenter lists NEPA violation, that an environmental assessment or environmental impact statement is required.

Response: This comment is moot since FHWA voluntarily halted the 2010 contract work and is pursuing the assessment of the proposed action in an EA.

Comment 177-187: Count 5 - Commenter lists SAFETEA-LU violation, that the emergency relief program and funds are inapplicable to the Suiattle River Road Project.

Response: The EA and A-EA provides a history of efforts by the USFS and FHWA to undertake the emergency repairs in a timely fashion on pages 1 and 2. Road 26 was under contract for repairs in 2006 following the 2003 flood (fiscal year 2004). While the 2006 repair contract was active, the floods of 2006 resulted in loss of access for the contractor, and therefore the USFS contract was terminated. Road repairs following the 2007 event (events are identified by fiscal year) were again under an active repair contract in 2010 until litigation brought by NCCC, et al. in 2011 resulted in the termination of the FHWA repair contract. Extensions for emergency relief funds were requested and granted due to the extenuating circumstances explained above. Additional responses to specific elements of the Forest plan in this comment are found in a more detailed response to comment in the Project Record.

Comments 141, 149,162,176 and 188: Plaintiffs are entitled to reasonable fees, costs and expenses associated with litigation.

Response: Comments on claims for relief are made moot by the withdrawal of the 2010 Road 26 repair contract and subsequent release of the 2012 EA.

SECTION 3 – RESPONSE TO 2006 APPEAL ISSUES

Commenter #370 incorporated by reference all comments provided in the 2006 appeal by North Cascades Conservation Council and Pilchuck Audubon Society of the signed Decision Notice on the USFS 2006 Suiattle Road 26 Repair Environmental Assessment. Appellants: 06-06-035-15 North Cascades Conservation Council and Pilchuck Audubon.

The appeal comments were responded to in the USFS 2006 Regional Forester's Appeal Decision letter affirming the USFS decision on the 2006 EA. This letter includes a short description of the findings and the appeal issues with responses. The FHWA is generally in agreement with the USFS responses to comments in the following Suiattle Road Repair EA Appeal Issues and Responses, Darrington Ranger District, Mt. Baker-Snoqualmie.

Suiattle Road Repair EA
Appeal Issues and Responses
Darrington Ranger District, Mt. Baker-Snoquaimie

Appellants: 06-06-035-15 North Cascades Conservation Council and Pilchuck Audubon Society
(Marc Bardsley)

Appellant Statement 1: The Forest Service failed to assess the implications of a recent General Accounting Office (GAO) study and change its management practices to comply with the recommendations of said report. (p. 7)

RESPONSE: It is unclear which recent GAO study the appellant is referring to; an internet Google search on 6/13/06 did not provide results of a report that “indicates that federal and state land management decisions are limited by the lack of information about the aquatic systems at issue.” Without more specific information on this report, including specifics on how its findings could have helped in the analysis of effects, we are unable to respond further.

Appellant’s Statement 2: The Forest Service violated NFMA by violating the standards and guidelines of the Northwest Forest Plan. (p. 15)

a) The Suiattle Road project is not consistent with the Timber Management Standard, TM-1, of the NWFP. (p. 16)

RESPONSE: While the project would result in the removal of 30-40 trees, it is a road management project (EA, pp. 3, 5) governed by Northwest Forest Plan Standards and Guidelines for Roads Management, not a timber management project. It is clear from the Roads Management Standards and Guidelines that road construction is allowed within Riparian Reserves under certain conditions, if Standards and Guidelines are followed (Northwest Forest Plan page C-32, Standards and Guidelines RF-2 c and g). Standard TM-1 does not apply to a road construction project.

The EA on page 7 states: “all applicable goals, and standards and guidelines apply; refer to the Forest Plan, as amended...” The 1994 ROD, which includes the Northwest Forest Plan Standards and Guidelines for Road Management (cited above), is listed among the Forest Plan amendments applicable to this project (EA, p. 6).

b) The EA expressly concludes that logging 30-40 old growth trees in the Riparian Reserve at site #1 will impair and degrade riparian function, how does the Forest Service justify its FONSI in light of this admission? (p. 19)

RESPONSE: The EA states that, “...the function of the reserves at that site [site #1] would be locally impaired because trees are being removed.” (EA at p. 84) Although the EA states that the trees being removed would probably not have reached the river due to their location on the opposite side of the road from the channel, the Programmatic Biological Assessment for the MSB includes Forest Conservation measures to retain down wood on site within Riparian Reserves should they fall across the road (BA,

1/15/2003 p. 28). The loss of potential sources of down wood will be mitigated by leaving three of the large trees currently in the relocation prism as down wood on site (EA, pp. 27 and 85). The EA concludes that the associated effects to the riparian reserve because of this project would be small since the effects to riparian vegetation would occur on approximately 2% of the riparian reserve acres within the project area (EA, p. 84). The FONSI is based in part on the hydrology effects analysis, which concluded that the effects to riparian function would be minimal.

The theoretical migration of the channel is also shown in the EA to support the statement that “trees removed for the relocation of Site #1 would not affect the amount of large wood recruited into the Suiattle River system” (EA, p. 69). The hydrologic aspects of riparian function would likely improve because of the road re-location. The EA states that the existing road and approach fills currently disrupt the natural hydrologic flow path of the stream (EA, p. 84). The project would reduce the risk of road influence on riparian function by relocating the roadbed further away from the zone of hydrologic influence and allow these acres to rehabilitate over time (EA, p. 84). The new proposed road location is on an existing hillslope approximately 45 horizontal feet and 60 to 70 vertical feet from the existing channel (“Project Consistency Evaluation Form” in the fisheries section) and at the very edge of the theoretical channel migration (EA, p. 69).

All of these factors were considered by the Responsible Official in her FONSI.

c) The Forest Service has violated NWFP direction by increasing the amount of roads in a Key Watershed and will threaten aquatic habitat and species, through the relocation of Suiattle Road. (p. 20)

RESPONSE: The Forest Service has not violated NWFP direction for road management through the relocation of the Suiattle Road. The NWFP acknowledges that the reconstruction of roads located within Riparian Reserves that pose a substantial risk to riparian resources and ecological values can be undertaken to meet Aquatic Conservation Strategy objectives (NWFP RF-3, p. C-32), and that road treatments can range from full decommissioning to simple upgrading in order to protect resource and social values (NWFP, p. B-31).

The Suiattle Road project would treat 400 feet of temporary road by removing approximately 1,500 cubic yards of fill material (EA, p. 24) and re-vegetating the surface as riparian habitat (EA, pp. 27 and 84). The project would create 600 feet of new road on a hillslope approximately 60 to 70 vertical feet above the elevation of the river (“Project Consistency Evaluation Form” in the fisheries section).

See response to Aquatic Habitat under 2(d) and response to Potential Effects to Anadromous Fish Species under 5(g) describing the potential effects that may result from relocating the road. The EA also notes that road densities in the project area are low (EA at p. 51) and that future road decommissioning could occur in the area (EA at p. 53).

d) The Forest Service failed to analyze whether the construction activity at all three sites will adversely affect aquatic habitat and floodplain connectivity. (p. 8)

RESPONSE: Many documents within the project file have analyzed whether the construction activity at all three sites will adversely affect aquatic habitat and floodplain connectivity. The following details our findings:

Aquatic Habitat

There are many areas (tables, sections, supporting documents) within the project file that supports analysis of the potential effects of the alternatives on aquatic habitat (i.e. fish habitat). In the EA, site-specific analysis is located on pages 29, and 53 through 62. On page 29, Table 5 identifies issues and measures by alternative. Issue 4 is entitled "Impact on fish habitat and riparian reserve" and has three quantitative measures associated with it: a) effect determination and sediment produced by repairs, b) distance (feet) of road from bankfull channel, and c) acres of riparian vegetation removed. The table provides a comparison of measures by alternative related to the issue of impact on fish habitat and riparian reserve. Beginning on page 53 and ending on 62 of the EA, the potential environmental consequences of the three alternatives on fisheries (including fish habitat) are described in detail. Analysis of potential effects to fish habitat, critical habitat, and essential fish habitat is described for all three alternatives. Additional information related to potential effects to sedimentation to spawning and rearing habitats, large woody debris, and channel morphology and floodplain is included for the action alternatives (B and C).

The Decision Notice contains information related the potential effects of alternative C on fish habitat on pages 6, 9, 10, and 11. On page 6, the line officer addresses how the decision may affect fish habitat. Pages 9, 10, and 11 reference the biological assessments and consultations with U.S. Fish and Wildlife Service and National Marine Fisheries Service that included detailed analysis on the potential effects of the federal action on listed fish and their habitat.

Additional documents that have detailed site-specific analysis of the potential effects of construction activities at the three sites on aquatic habitat include project consistency evaluation form (8/26/2004), proposed Chinook salmon critical habitat document (2/2/2006), Chinook salmon critical habitat biological assessment addendum (2/16/2006), and biological evaluation (6/17/2004).

Floodplain Connectivity

The relocation of road 26 would remove the road outside of the flood plain to at least 45 horizontal feet and 60 to 70 vertical feet from the existing channel location ("Project Consistency Evaluation Form" in the fisheries section). The removal of fill used for the temporary road and presumably the loss of any fill used for the original road would clearly re-connect the channel with the floodplain (EA, p. 24).

The widened bridge crossings at site #2 and #3 would remove existing fill from within the bankfull channel and create an effective span across the estimated bankfull widths at both sites (EA, p. 25). Total flow capacity would be increased by the new structures to better accommodate large flow events and allow for unimpeded hydrologic function of the river channel at flows below bankfull (EA, p. 76).

- e) There is no analysis of the extent to which the logging at site #1 will impair Aquatic Conservation Strategy (ACS) objectives; instead, there is merely a conclusory assertion that the Suiattle Rd. Repair project is consistent with ACS**

standards and guidelines designed to protect anadromous fish and their aquatic habitat. (p. 6)

RESPONSE: The project file contains an analysis of effects of the alternatives on anadromous fish and their aquatic habitat at the watershed and action area scales. Discussion of the potential effects to fish and their habitat in relation to implementing alternative C, including the removal of approximately one acre of trees from the riparian reserves, is included in the EA (pages 58 through 61) and project consistency evaluation form (8/26/2004).

The 2004 NWFP Amendment ROD that clarifies provisions related to the ACS (p. 7) is clear that the determination of a federal action's consistency with ACS objectives should be viewed at the watershed scale. Activities proposed under this project would maintain all habitat indicators including stream temperature, large woody debris, riparian reserves, and the other eighteen indicators investigated at the scale of the Suiattle River watershed (EA, p. 60, project consistency form pp. 6-10). There would be no measurable direct or indirect effects to fish habitat at the watershed scale and project level activities would maintain habitat overall at the watershed scale (EA, p. 60).

The action area analysis shows that two habitat indicators (sediment and riparian reserves) were determined to have a degrading effect because of implementing the project (project consistency evaluation form, pp. 7 and 9). Sediment will be degraded for a short-term period of less than one year, but will be returned to the current levels in the long-term of greater than one year (project consistency evaluation form, p. 7). Riparian reserves at MP 14.4 will be degraded at the action area scale (project consistency evaluation form, p. 9). However, some trees removed from the proposed road relocation right of way at Site #1 would be left on-site as down wood material, while others would be stockpiled for administrative use such as in-stream restoration (EA, pp. 27, 60, and 85; project consistency evaluation form, p. 7). The EA concludes that the associated effects to the riparian reserve because of this project would be small since the effects to riparian vegetation would occur on approximately 2% of the riparian reserve acres within the project area (EA, p. 84). The Decision Notice affirms that implementing alternative C will contribute to meeting the objectives of the Aquatic Conservation Strategy (p. 10).

Appellant's Statement 3: The Forest Service violated NFMA by not assuring compliance with state water quality standards. (p. 24)

a) The Forest Service failed to supply quantitative and qualitative data on water quality. (p. 7)

RESPONSE: No impaired water listings are found in the Suiattle River watershed on the 1998 Washington Department of Ecology 303(d) list or the 2002-2004 consolidated water quality assessment (EA, p. 70).

Temperature

The Suiattle Watershed Analysis (WA) includes spot temperature data from Forest Service surveys showing water temperatures between 4 and 10 degrees Celsius (Chapter 2, p. 17). However, three spot

temperatures in tributary streams not affected by this project were above 13 degrees Celsius during June and September. The WA states that there is “no evidence that stream temperature standards are violated in the Suiattle River” (Chapter 1, p. 12).

Sediment

Total estimated sediment production for the Suiattle River watershed is summarized in the EA based on conservative figures from past studies. Total sediment production from the three eroded Suiattle sites is estimated to be 0.3 percent of the gross annual sediment production for the watershed (EA, p. 71). The EA also summarizes sediment production of the Downey Creek watershed and estimates the percent contribution of the bridge washout site to the Suiattle River (EA, p. 71). In addition, the EA includes background sediment and turbidity standards for the state of Washington, estimated sediment production from project sites because of the proposed actions, and the potential effects of this contribution on water quality (EA, pp. 77-78).

b) The Forest Service has failed to obtain baseline information for temperature in the water within the watershed and failed to analyze, completely, the project’s affects on water temperature. (p. 7)

RESPONSE: The WA includes spot temperature data from Forest Service surveys showing water temperatures between 4 and 10 degrees Celsius (Chapter 2, p. 17). The Watershed Analysis also states that there is “no evidence that stream temperature standards are violated in the Suiattle River” (Chapter 1, p. 12). Although the WA also acknowledges that there are “some concerns that conditions for bull trout may be impaired in some years” without elaboration, the EA states that trees proposed for removal from Site #1 currently provide “minimal, if any shade, nutrients, and complexity to the Suiattle River” (EA, p. 85). The potential effects of Alternative C on water temperature were assessed at the 5th field and Action Area scales for the project and it was determined that water temperature would be maintained at both the 5th field watershed and action area scales (project consistency evaluation form, p. 7).

Appellant's Statement 4: The Forest Service has failed to address the direct and indirect effects on the wildlife and aquatic resources in these areas related to increased levels of recreational vehicular traffic. (p. 8)

RESPONSE: The EA addresses effects from recreational vehicle traffic, providing data for average recreation use trends prior to the October 2003 flood, and recreation use data post-flood (EA, pp. 42-45). Repair of the damaged sites to restore vehicle access would contribute to restoring recreational use to pre-flood levels and help distribute [flood displaced] recreational use across the District and Forest (EA, p. 46). The expectation is that this project would only result in vehicle traffic levels similar to levels prior to the flood.

Forest Plan goals and objectives are for managing the transportation system at the minimum standard needed to support planned uses and activities, and provide for public safety (USDA Forest Service 1990, p. 407). There is a high need for recreation access for two campgrounds, seven trailheads, two lookouts, and the Suiattle Guard Station cabin rental (Roads Analysis, USDA Forest Service 2003), and Suiattle Watershed Analysis (USDA Forest Service 2004, pp. 3-11).

No direct or indirect effects from recreational vehicle traffic on wildlife resources surfaced through analysis. Specific to threatened species, the EA states that noise disturbance to NSO and Marbled Murrelet is not expected from the ambient noise level of the high use road, and all noise generating activity is greater than 35 yards from the nearest potential nesting habitat (pp. 92 and 93). The Biological Assessment states that there would be no disturbance to nesting spotted owls or marbled murrelets due to noise generating activities (pp. 9-10). The determinations would be "may affect, and likely to adversely effect" these species. The Biological Opinion concurred with these determinations, and concludes that the proposed action is "not likely to jeopardize" the spotted owl or murrelet or to "destroy or adversely modify critical habitat" for these species (p. 81).

The EA states that there will be no change in grizzly bear core area resulting from proposed actions (p. 95). There is no high quality foraging habitats near the proposed project sites. The EA also describes analysis and determinations of no potential effects on bald eagle or other species resulting from restoring recreation access (pp. 95-100).

Regarding direct and indirect effects of recreational vehicle traffic on the aquatic resources, the EA notes that easier poaching (illegal harvest) could occur with restored access, although effects to the total Suiattle population as a result would be difficult to determine (p. 59). The EA also acknowledges that law enforcement for addressing illegal activities would also be easier with restored vehicle access (p. 59). Page 77 of the EA acknowledges that restoring road access past the bridge would return dispersed recreation use along Road 26 to 2003 pre-flood level, characterized by continued compaction and soil disturbance of dispersed sites, with denuded areas near watercourses being a continuing source of fine sediment from surface erosion.

Appellant's Statement 5: The Forest Service violated NFMA and the ESA, by having woefully inadequate assessment of impacts to wildlife. (p.25)

a) The Forest Service has not adequately surveyed for threatened or sensitive species. (p. 25)

RESPONSE: Where suitable habitat for a threatened, endangered, or sensitive species was present, timing restrictions were incorporated to protect the species in Alternatives B and C, and therefore surveys were not conducted (EA, pp. 21 and 27). The U.S. Fish and Wildlife concurred with the Forest's determination of "no effect" on the grizzly bear, Canada lynx and gray wolf, and "not likely to adversely affect" bald eagles in consultation completed in March of 2006 (DN, p. 10).

Threatened and endangered species applicable to the project area are the Northern spotted owl, marbled murrelet, bald eagles, grizzly bear, Canada lynx and gray wolf (endangered). No suitable habitat was found for Canada lynx in the project area (EA, pp. 88 and 95; BA, p. 5). The Biological Assessment (Dec. 1, 2005, p. 9) determination for the Northern spotted owl and its critical habitat is "may affect, likely to adversely affect" due to the loss of one acre of nesting, roosting, foraging habitat for the road relocation at site #1 (MP 14.4). Surveys are not required, and were not completed because the site was assumed occupied and an adverse affect determination was made. Timing restrictions were incorporated into project mitigations in order to protect spotted owls that may be present (EA, pp. 21 and 27). U.S. Fish and Wildlife Service concludes in its Biological Opinion dated March 2006 that the proposed action is "not likely to jeopardize the spotted owl or destroy or adversely modify critical habitat for the spotted owl". There was no suitable spotted owl habitat within 35 yards of sites #2, #3 and the rock site (EA, p. 87).

The determination for the marbled murrelet and its critical habitat is "may affect, likely to adversely affect" due to the loss of one acre of murrelet nesting habitat at the road relocation site #1 (MP 14.4) (BA, p. 10). Surveys are not required, and were not completed because the site was assumed occupied and an adverse affect determination was made. Timing restrictions were incorporated into the project mitigations in order to protect murrelets that may be present (EA, pp. 21 and 27). U.S. Fish and Wildlife Service concludes in its Biological Opinion dated March 2006 that the proposed action is "not likely to jeopardize the marbled murrelet, or destroy or adversely modify critical habitat for the marbled murrelet". There was no suitable murrelet habitat within 35 yards of sites #2, #3 and the rock site (EA, p. 87).

Sensitive species are common loon, peregrine falcon, great gray owl, Townsend's big-eared bat, California wolverine, Larch Mountain salamander, van Dyke's salamander, and Oregon spotted frog. No habitat or known species detections were found in the project area for common loon, peregrine falcon, Larch Mountain salamander, van Dyke's salamander, Oregon spotted frog and great gray owl (EA, pp. 89 and 91; Biological Evaluation (Jan. 26, 2006 p. 1). For the other species, habitats and effects of project implementation are discussed in the EA on pages 89-90 and 95-96.

Management Indicator Species that could potentially be found in the project area are threatened and endangered species, spotted owl, pileated woodpeckers, marten (old growth and mature forest habitat), and woodpeckers (snag and down wood habitat) (EA, p. 90). Habitats and effects of project implementation are discussed in the EA pages 90, 91, and 96-98.

The EA states in a footnote on page 21 that "As part of Alternative B and C, Surveys for Threatened, Endangered, or Sensitive Plants and Animals and Proposed Endangered, Threatened or Sensitive Species or Survey and Manage Species were not conducted. If suitable habitat is present, timing restrictions are incorporated to protect any species that may be present". Previous surveys for wolves are summarized in the Suiattle Watershed Analysis, Appendix B1 page 2. Habitats for these species and effects of project implementation are discussed in the EA (pp. 90, 91, and 98).

Surveys are not required for sensitive species or MIS species (MIS project-level advice, March 8, 2002).

b) The Forest Service does not have Spotted Owl baseline population data (p. 25)

RESPONSE: The project successfully met the ESA Section 7 requirements for formal consultation on the Northern spotted owl. Concurrence with the determination of "may affect, and is likely to adversely affect" the Northern spotted owl is documented in the Biological Opinion (March 2006).

The Biological Opinion for the project (U.S. Fish and Wildlife Service, March 2006) incorporates the range-wide population demographics and habitat information for the Northern spotted owl, and establishes a habitat baseline for spotted owls across their range (pp. 21-30) and in the project or "action" area (p. 31). The effects to this habitat, spotted owls, and to critical habitat are assessed in the Biological Opinion (pp. 33-47). The Biological Opinion concludes that the essential spotted owl behaviors of breeding, feeding, and sheltering will not be significantly disrupted or impaired with implementation of the proposed action (p. 35) and that the proposed action would not diminish the function or limit the conservation role of the Critical Habitat Unit (p. 47) due to the large amount of suitable habitat present in the CHU. Baseline population data is not available in the EA or BE for the project area.

c) This project is likely to directly affect unidentified spotted owls, which have not been identified due to the lack of adequate surveying. (p. 27)

RESPONSE: U.S. Fish and Wildlife Service concludes in its Biological Opinion dated March 2006 that the proposed action is "not likely to jeopardize the spotted owl or destroy or adversely modify critical habitat for the spotted owl".

The EA acknowledges that one acre of low-quality nesting, roosting, foraging habitat would be removed, resulting in a Forest Service determination of "may affect, and likely to adversely affect" spotted owls (EA, p. 92). However, timing restrictions to protect nesting spotted owls that could be present were incorporated into project mitigations (EA, pp. 21 and 27).

d) The EA/DN/FONSI are silent on the potential effects of the road repair project on interspecies competition and how Northern Spotted Owl (NSO) may be affected by it. (p. 28)

RESPONSE: The Biological Opinion (U.S. Fish and Wildlife Service, 2006), which is incorporated by reference into the EA, discusses competition with great-horned owls and barred owls across the range of the Northern spotted owl (pp. 11-14).

The EA describes the spotted owl habitat that would be affected by the road relocation at site #1 as likely being low-quality habitat for owl nesting, due to its current location next to a high-use road which could result in edge-related predation potential and potential mortality for high traffic volume (p. 92).

- e) Given the scarcity of adequate NSO habitat, it is questionable how the loss of 1-acre of critical habitat will not “appreciably diminish the value of critical habitat” as it relates to species recovery. (p. 29)**

RESPONSE: The Biological Opinion (U.S. Fish and Wildlife Service, 2006) assesses the amount of suitable nesting, roosting, foraging habitat in the project area, LSR, and CHU, concluding that the one acre of suitable habitat loss due to the proposed action would affect 0.1% of a theoretical core area, and that "given the high abundance and distribution of suitable spotted owl nesting habitat encompassing site #1, the USFWS concludes that any spotted owl nesting pair response will not be measurably affected" (pp. 31, 32, and 34).

The effects to habitat are addressed in the EA on pages 92 and 93, by comparing the one suitable acre that would be removed for the road relocation to the 285 acres of suitable nesting, roosting, foraging habitat in the stand, and to the LSR, which has about 26,084 acres of suitable habitat.

- f) The Forest Service does not adequately address the effects to the marbled murrelet. (p. 30)**

RESPONSE: Direct and indirect effects to murrelets and Critical Habitat for murrelets are found in the EA (pp. 93-94). Cumulative effects are on pages 99-101. The reroute would affect one acre of mature forest that includes trees with suitable branching structure for murrelet nesting. This number is small compared to the total number of these types of trees in the affected stand and within the CHU, and would not adversely affect the CHU's ability to contribute to the recovery of the marbled murrelet. (EA, p. 94).

The Biological Opinion (USFWS, 2006) discusses threats to murrelets in their terrestrial environment on pages 59-61. Threats to murrelets include habitat loss and fragmentation, predation, disease, genetics, low population numbers and low immigration rates.

The Biological Opinion establishes a 1-mile radius action area and evaluates the effects to murrelets and Critical Habitat from the proposed action (pp. 67-83 and 77-83). The Forest Service concluded that no direct mortality to murrelets was expected (BO, p. 67), habitat loss of one acre would incrementally reduce nesting opportunities (BO, p. 68), but would not permanently displace murrelets from the action area or significantly delay breeding (BO, p. 69). Predator effectiveness would not be expected to increase because of the road shift, since the edge currently exists and there would be no significant increase for edge (BO, p. 70). Only habitat modification rose to the level of an adverse affect to the murrelet (BO, p. 72). The Forest Service concluded that the removal of habitat would not impair the intended function of the CHU and it would continue to serve the intended conservation role for the species (BO, p. 77).

- g) The Forest Service has failed to address the adverse effects that potential future washouts will have on the aquatic habitat due to increased sedimentation. (p. 31)**

RESPONSE: Potential adverse effects due to sedimentation and future road washouts

The EA addresses the potential adverse effects from sedimentation and future road washouts. In the EA on pages 55, 57, and 60, potential effects from sedimentation to spawning and rearing habitats are discussed. Sedimentation would be expected to result from erosion of the damaged fills and from fill-failures at the undersized culverts at Sites #1 and #2 (EA, p. 55). With the implementation of Alternative B, sedimentation would be expected to be short-term and localized, and would not exceed transport capacity of the streams at the sites. Since the fill and riprap would be placed within the bankfull channel width on Downey and Sulphur Creeks, the potential exists with a high likelihood for future inputs of these materials to the streams (future washouts). These inputs would exceed the transport capacity of the streams and would settle out and degrade spawning and rearing fish habitats (EA, p. 57). With the implementation of Alternative C, sediment would be added to all sites in the action area, but would be short-term and localized, not exceeding the transport capacity or the variability of the creeks and river. Conservation measures and timing of activities would minimize sedimentation. Spawning and rearing habitats would not be measurably degraded, and the risk of future road-related sediments would be reduced, incrementally improving the quality of downstream habitats (EA, p. 60).

Potential effects to anadromous fish species

The project record contains numerous accounts of assessing the potential adverse effects to anadromous fish species due to the implementation of the alternatives. Table 11 (EA, p. 47) lists the anadromous fish species and their known or suspected distribution. In the EA on pages 29, 53, 56, and 58 through 63, there is site-specific detailed information related to the potential effects of the three alternatives on anadromous fish species (steelhead, pink salmon, chum salmon, Chinook salmon, Coho salmon, sockeye salmon, and coastal cutthroat trout).

With the implementation of Alternative A, there would be no direct effects to anadromous fish species. Indirect effects to anadromous fish in the form of additional sedimentation in the Suiattle River from Site #1 would be insignificant due to the high background load in the river. With the damaged road fills, gradual inputs of fine sediment mixed with high background levels would not be detectable or show a measurable amount of change in the quantity or quality of fish habitat or to fish behavior (EA, pp. 53-55).

With the implementation of Alternative B, stable to increasing trends for Chinook salmon within the Sauk sub-basin and Suiattle River watershed would be maintained. At the project scale for all anadromous species, there would be no direct effects from activities at Site #1 because activities would be beyond the channel banks of the Suiattle River and the tributary is not fish bearing. Direct effects at Site #2 and Site #3 will be avoided by not working when fish are present. Fill and riprap placed within bankfull channels would replace currently available fish habitat. Due to the bridges being built within the bankfull channel width they would be more susceptible to wash out during large floods. If the bridges or culverts and their associated fill were to washout, the coarse sands and gravels would wash downstream into spawning and rearing areas up to 1.2 miles downstream, and fine sediments could settle up to 12.4 miles downstream. Depending on the timing of the failure, potential effects could occur to multiple life stages of multiple anadromous species (EA, pp. 55-58).

With the implementation of Alternative C, stable to increasing trends for Chinook salmon within the Sauk sub-basin and Suiattle River watershed would be maintained. At the project scale for all anadromous species, there would be no direct effects from activities at Site #1 because activities would be beyond the channel banks of the Suiattle River and the tributary is not fish bearing. Repair of the bridges at Downey and Sulphur Creeks to allow bankfull channel width flows will result in a reduced risk of road fill entering the creeks and failure of the structures. Conservation measures would further minimize any effects (EA, pp. 58-61)

Project activities fall within the scope of the NMFS Biological Opinion (12/15/2003) and Letter of Concurrence (12/29/2003), and the USFWS Programmatic Letter of Concurrence (6/17, 2004) with Level 1 discussion and signatures. Consultation with NMFS and USFWS was completed for Alternative C (project consistency evaluation form, 8/26/2004). For Alternative C, the ESA effects determinations for Chinook salmon, bull trout, Chinook salmon critical habitat, bull trout critical habitat, and essential fish habitat were determined to be not likely to adversely affect (project consistency evaluation form, 8/26/2004).

h) The Forest Service has failed to meet the multiple mandates in NFMA requiring population monitoring and surveying. (p. 32)

RESPONSE: See response to appeal point 5(a) for discussion of which surveys were conducted.

The National Forest Management Act (NFMA) does not require population monitoring and surveying; NFMA only requires that the Forest Service provide for diversity of plant and animal communities. The Forest Service meets NFMA plant and animal diversity requirements by documenting compliance with the MBS Land and Resource Management Plan, which includes the Northwest Forest Plan and other amendments (DN/FONSI p. 10 and EA p. 6).

i) The EA does not discuss fragmentation of habitat or analyze the project's effects on the existing fragmented condition of the MBS Late Successional Reserve (LSR), despite the fact that the issue was brought forth during the public comment period. (p. 12)

RESPONSE: The Biological Opinion discusses habitat fragmentation and the effects of the project on page 46. The BO concluded that the proposed action is not likely to jeopardize the Northern spotted owl or marbled murrelet, or destroy or adversely modify their critical habitat.

This comment is also addressed in the EA in the 30 Day Comment Period and Response Section on page 125.

Fragmentation of the habitat is also discussed in the watershed analysis (2004) for the Suiattle Watershed (pp. 61-62).

Appellant's Statement 6: The Forest Service violated NFMA by not adequately analyzing the project's impacts to soil productivity. (p. 32)

a) The Forest Service violated NFMA by not adequately analyzing the project's impacts to soil productivity. (p. 32)

RESPONSE: The EA acknowledges, "the relocation of the road at Site #1 under Alternative C would be an irretrievable commitment of about one acre of forested area into a road" (EA, p. 109). This equates to approximately 0.2% of the small, unnamed watershed at Site #1 (EA, p. 76) and approximately 2% of the riparian acres identified within the project area (EA, p. 84). Both of these figures are well within the allowable levels of disturbance listed in the Forest Plan for the soil resource (MBS Forest Plan, p. 4-117). This standard also states, "only permanent features of the transportation system will remain in a detrimentally compacted...condition" (MSB Forest Plan, pp. 4-117). At the same time, Alternative C would rehabilitate approximately 400 feet of roadway that is currently dedicated to temporary road by excavating and hauling away 1,500 yards of fill (EA, p. 24) and actively re-vegetate this exposed surface (EA, p. 27).

b) The Forest Service violated NFMA by not adequately analyzing the project's impacts to noxious weeds. (p. 33)

RESPONSE: Discussion of noxious weed populations in the Botany section includes specific references to type (herb Robert), extent (3 acres) and location of populations within the project area (EA, pp. 102-103). Mitigation measures are included to prevent physical relocation of noxious weed seeds and plants because of implementing this project (EA, pp. 26-27, 103). “In addition to treatment of known infestations, measures intended to prevent further infestations and weed spread would be incorporated into the construction contract” (EA, p. 102). In addition, the botany cumulative effects discussion includes information on the status and treatment of other noxious weed populations in the watershed (EA, pp. 103).

Appellant’s Statement 7: The Forest Service violated NEPA by failing to adequately assess the significant new information presented by the 2004 status review of the NSO and Marbled Murrelet, and to observe the appropriate procedures required by law. (p. 34)

RESPONSE: The 2004 status review for the spotted owl (Courtney et al. 2004) is referenced in the EA on page 87 and in the Biological Opinion (pp. 4- 47).

The five-year status review for the marbled murrelet (McShane et al. 2004) is referenced in the Biological Opinion (pp. 52-79). The requirement to use best available science has been met by use of both status reviews and other updated references (EA, Appendix A and BO, pp. 85-103).

Appellant’s Statement 8: The Forest Service has violated the Wild and Scenic Rivers Act by failing to protect and enhance outstanding river values. (p. 35)

RESPONSE: This decision complies with the Wild and Scenic Rivers Act. None of the proposed repairs would affect the free-flowing characteristics of the Suiattle River because they are all outside the bed and bank of the Suiattle River. The selected action will improve aquatic conditions by relocating the road at Site #1 further away from the Suiattle River, and repairs at Downey and Sulphur Bridge approaches will increase the width under the bridge to more than bankfull channel width (EA, p. 38 and pp. 76-77). The effects on water quality and fish would be of short duration and minimal (EA, p. 39, 60-61 (fish), and 77-78 (water quality)). Concerning wildlife, the selected action would convert about one acre of low quality spotted owl habitat and murrelet nesting habitat to road. The loss of these constituent elements will not adversely affect the critical habitat unit’s ability to contribute to the recovery of spotted owls or marbled murrelets (EA, pp. 38 and 91-101). Visual characteristics of the Suiattle River would be retained because all repairs are outside the bed and banks of the Suiattle River: Site #1 is away from the bed and banks of the Suiattle River, and sites #2 and # 3 are screened from view by vegetation and would not look much different than before the flood (EA, pp. 38 and 39).

Appellant’s Statement 9: The Forest Service violated NEPA by failing to prepare an EIS:

- a) The Forest Service failed to assess the effects of potential future washouts on public health and safety because of this action. (p. 36)**

RESPONSE: The EA addressed the effect of future washouts on public health and safety on page 33 (4th paragraph under Alternative A--No Action, Access). The EA also indicates that future washouts would be less likely under the selected action (EA p. 34, Alternative C, Risk of Future Washouts). Also, see response to item “d” below.

- b) The project does not address the Memorandum of Agreement (MOA) signed by the Forest Service and Washington Department of Ecology, to reduce the number of miles of road on Forest Service lands in Washington state. (p. 38)**

RESPONSE: The EA acknowledged the MOA with Washington Department of Ecology on page 11. The intent of the MOA is to reduce the effects roads have on water quality. The Forest Service agreed to road-related actions specified in MOA Attachment A: Road 26 is not included on the MBS National Forest’s list. Further, the agreement in the MOA (Attachment A, first paragraph) states: “Roads that are no longer needed will be decommissioned or converted to other uses” (emphasis added). Road 26 is not a road that is “no longer needed” (see Purpose and Need in the EA on page 3).

- c) The Mt. Baker-Snoqualmie has failed to assess the cumulative impacts of the Suiattle Rd. Repair project. (p 6)**

RESPONSE: The cumulative effects discussions in the EA exhibited consideration of past, present and foreseeable future actions (listed in Appendix C), and evaluated the importance of the effect of the project when added to the effects from past, current and reasonably foreseeable future activities: EA pages 35 (Roads and Access), 39 (Wild and Scenic River), 46 (Recreation), 62 (Fisheries), 79-82 (Hydrology, Water), 85 (Riparian Reserves), 99-100 (Wildlife), and 103 (Botany). When new projects are proposed, they will be analyzed in NEPA documents as appropriate. Cumulative effects that would occur from those projects will be discussed at that time.

- d) The Environmental Assessment (EA) fails to assess the cumulative effects of the proposed action areas, but also adjacent washout sites (p. 10)**

RESPONSE: Cumulative effects analysis requires consideration of past, present, and reasonably foreseeable future actions of the Forest Service, other agencies and individuals (FSH 1909.15, 15.1). While the EA acknowledges that future washouts are likely, they are not actions of the Forest Service, other agencies, or individuals.

- e) The Forest Service’s failure to analyze other road repair projects in one EA is arbitrary and capricious and in violation of the APA. (p. 12)**

RESPONSE: Responsible Officials have discretionary authority regarding the scope of the project (FSH 1909.15, 10.2 and 40 CFR 1508.25). Rationale for limiting the scope of the project is documented in the EA on page 1. The Forest Supervisor and District Rangers found that the flood repair projects resulting from the 2003 flood are similar, but they are not connected actions – repair of any one road system would be independent of use of the other road systems being analyzed, and organizing flood damage projects according to connecting road systems would best address the issues and resource concerns unique to each system.

It is not clear how the failure to comply with these assertions would compel the agency to analyze this project in an environmental impact statement. Further, as documented in the responses at a) through e) above, the decision complies with applicable laws and agreements.