



April 4, 2022

SUBMITTED VIA EMAIL to Jill.DeKoekkoek@odot.oregon.gov

Ms. Jill DeKoekkoek
c/o Oregon Department of Transportation
3500 NW Steward Parkway
Roseburg, OR 97470

Re: Comments on Proposed Land Transfer and Colebrook Quarry Development

Dear Ms. DeKoekkoek,

The Northwest Environmental Defense Center (“NEDC”) and Oregon Coast Alliance (“ORCA”) submit the following comments on the proposed land transfer between the Bureau of Land Management (“BLM”) and Federal Highway Administration (“FHWA”) to support development of Colebrook Quarry near Gold Beach, Oregon.

NEDC is an independent, nonprofit environmental organization established in 1969 by a group of professors, law students, and attorney alumni at Lewis & Clark Law School. The organization’s members include citizens, attorneys, law students, and scientists. NEDC’s mission is to protect the environment and natural resources of the Pacific Northwest by providing legal support to individuals and grassroots organizations with environmental concerns, and by engaging in education, advocacy, and litigation independently and in conjunction with other environmental groups. NEDC’s membership includes individuals who live and recreate in Curry County, in areas impacted by the proposed action. ORCA is an Oregon nonprofit corporation whose mission is to protect coastal natural resources and work with coastal residents and visitors to enhance community livability.

As NEDC and ORCA understand the situation, the BLM and FHWA are proposing a transfer of lands, where FHWA will take control of 40 acres up Hunter Creek Road,

approximately nine miles from Gold Beach. The purpose of this land transfer is for FHWA to develop a new 40-acre quarry, named Colebrook Quarry, to be managed by the Oregon Department of Transportation (“ODOT”). This massive new quarry project would result in mining of at least 300,000 tons of rock from the site over an undetermined number of years, to provide materials for ODOT projects and maintenance use.

Despite the size of the proposed quarry project and the significant environmental impacts such a project will undoubtedly have, FHWA and ODOT plan to avoid any substantive environmental analysis under the National Environmental Protection Act (“NEPA”). Instead, the agencies appear to believe that the proposed land transfer and quarry development is a “Categorical Exclusion” (“CE”) project, for which a more stringent analysis under NEPA is unnecessary.

A CE is clearly inappropriate for the proposed project. Given the serious impacts to the human environment from developing a new quarry of this size in this area, FHWA must at minimum perform an Environmental Assessment (“EA”) to fulfill its obligations under NEPA.

A MORE THOROUGH ENVIRONMENTAL ANALYSIS IS REQUIRED UNDER NEPA FOR THE PROPOSED ACTION

A review of FHWA’s regulations implementing NEPA makes clear that the proposed land transfer and quarry development requires a more detailed and thorough environmental analysis. The large quarry development supported by the agencies’ land transfer simply does not meet the strict regulatory requirements for a CE.

FHWA regulations identify several categories of actions that meet the CE criteria, and thus generally do not require further NEPA analysis. *See* 23 C.F.R. § 771.117(c). It appears FHWA considers the proposed Colebrook Quarry transfer and development to fall under one of these categories, specifically: “Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 **when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.**” 23 CFR 771.117(c)(5) (emphasis added). This regulatory language is clear that an agency land transfer such as this may only qualify for a CE when it is supporting an action that would not itself require NEPA analysis—an action that would not have a significant impact on the human environment.

The present situation simply does not fall under this category of action, and thus does not qualify for CE designation. The action being supported by the land transfer is the development of a new quarry disturbing nearly 40 acres of undeveloped land. Mining activities at the quarry will likely impact forest vegetation, wildlife, soils, hydrogeology, and other environmental characteristics of the site and the surrounding area. Notably, there is old growth forest present on and adjacent to the property, which would undoubtedly be impacted by the proposed activities. In addition, quarry development and mining activities will lead to significant additional sediment load into nearby Hunter Creek—critical habitat for Southern Oregon Northern California Coast coho salmon. And increased heavy vehicle traffic to and from the site will lead to increased noise, dust, and air quality impacts for local residents and others using the area. Because of these and other potential significant environmental impacts—which will continue for an undetermined period of time—the Colebrook Quarry project requires, at minimum, an Environmental Assessment under NEPA.¹ And because the quarry development is subject to additional NEPA analysis, the proposed land transfer does not qualify for a CE pursuant to 23 CFR 771.117(c)(5).²

Even if the proposed land transfer did fit into one of the generic FHWA CE categories, it still would not qualify for a CE because of the “unusual circumstances” involved with the transfer. FHWA NEPA regulations state:

Any action that normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds...

¹ The development of quarries of this size, or smaller, on federal lands are routinely subject to more stringent NEPA analysis. *See, e.g. Bureau of Land Management, Little Wolf Quarry Expansion Project Environmental Assessment, EA # OR-104-07-05, June 9, 2008, available at https://eplanning.blm.gov/public_projects/nepa/67335/82795/98943/Little_Wolf_EA.pdf.*

² Similarly, BLM appears to believe this proposal falls under a specific category of CE under its NEPA guidelines: “Transfer of land or interest in land to or from other Bureaus or Federal Agencies where current management will continue and future changes in management will be subject to the NEPA process.” *See* BLM NEPA Handbook, Appendix 4, CX E.15. As with the FHWA category identified above, the proposed action does not fit into this CE. Most importantly, it is not the case that “current management will continue” at the Colebrook Quarry site, as plans have been developed to radically alter the site—which BLM would be obligated to protect if it remained under BLM ownership—by developing a 40-acre quarry. Further, it is NEDC’s understanding that the agencies do not intend these “future changes in management” to be subject to additional NEPA processes.

23 CFR 771.117(b). As discussed above, it is almost certain that the proposed quarry project supported by the land transfer will have significant environmental impacts. Further, there is “substantial controversy on environmental grounds,” as evidenced by concerns being raised by local residents and advocates related to destruction of old growth forest at the site, increased sedimentation in Hunter Creek, and other impacts to wildlife, vegetation, noise and dust, and other environmental characteristics of the proposed activities.³ Clearly, this land transfer involves “unusual circumstances” as outlined in 23 CFR 771.117(b). As a result, a CE would be inappropriate here even if the proposed transfer did otherwise meet the criteria for the “Transfer of Federal Lands” CE. *See* 23 CFR 771.117(c)(5).

The proposed land transfer simply does not fall into the narrow category of actions for which a CE is lawful and appropriate. At a bare minimum, NEPA requires FHWA to perform an Environmental Assessment to determine whether the environmental impacts from the proposed transfer and resulting quarry operations are significant.

CONCLUSION

The development of Colebrook Quarry is an immense undertaking that will have serious impacts on the area—and its residents and visitors—for decades. It is critical that the agencies involved perform a legally sufficient environmental analysis before the proposed land transfer occurs. As outlined above, this land transfer does not qualify for a CE under FHWA’s NEPA regulations. NEDC and ORCA urge FHWA, BLM, and ODOT to begin the NEPA process anew, and at a minimum perform an Environmental Assessment, with subsequent opportunities for public participation, to determine the significance of potential environmental impacts from any development of Colebrook Quarry.

³ We also note here that the proposed Colebrook Quarry is likely unnecessary to meet project needs. The existing Conn Creek Quarry, located around five miles up Hunter Creek Road, is already providing materials necessary for Highway 101 paving and landslide stabilization.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonah Sandford', written in a cursive style.

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