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PROTECTING NATURAL RESOURCES

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Sent to:
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Subject: **Pier Fire Roadside Hazard Tree Mitigation Project Scoping Comments for Sequoia ForestKeeper & Kern-Kaweah Chapter of the Sierra Club**

Sequoia ForestKeeper (SFK) and the Kern-Kaweah Chapter of the Sierra Club (the Club) thank you for the opportunity to comment.

1. Hazard tree mitigation along roads considered for decommissioning should be dropped

In October, 2014, in its attempts to resolve objections to the Tule River Reservation Protection Project (TRRPP), the Forest Service agreed to begin scoping a project to decommissioning six (6) road segments now included in this proposal, stating that "The project will analyze the impacts of decommissioning spur roads No. 21S12B, 21S25A, 21S25B, 21S25C, and 21S25D in the [Black Mountain] grove that do not lead to private property, as well as approximately the last half mile of Road No. 21S25." Attachment A, p. 1 (Oct. 15, 2014, letter from District Ranger Rick Stevens). Moreover, in his objection decision Forest Supervisor Kevin Elliott stated that "the Forest Service will not implement shaded fuel breaks on any of these road segments pending the completion of the decommissioning project; the shaded fuel breaks will be dropped from the project on any segments selected for decommissioning. I consider this Objection to be resolved by Ranger Stevens' letter, dated October 15, 2014." Attachment B, p. 4.

Steven's letter states that "I anticipate scoping to begin this quarter" and the objection decision states that "[i]t is anticipated that the scoping process for this project will occur in the next several months." *Id.* However, the Forest Service has failed to begin scoping the proposed road decommissioning project for over 3 years now, even as it has implemented most of the TRRPP.

Felling and removing trees as hazards from these road segments is inherently inconsistent with the promises made by the Forest Service in 2014 and effectively amounts to activities similar to implementing shaded fuel breaks along these roads prior to "the completion of the decommissioning project".

The scoping notice does mention these roads, but the course proposed is misplaced:

> Some of these roads were identified in the Tule River Reservation Protection Project as roads that would be evaluated for decommissioning. That evaluation will not be done as part of this proposal; this proposal is specific to addressing the public safety hazard. We anticipate performing a larger Pier Fire Restoration Project, and these roads would be needed in a safe condition to perform that project. Evaluating some of these roads for decommissioning would be done as part of that larger Pier Fire Restoration Project.

Scoping Notice, p. 1. At this point, these roads are not needed for public access, and therefore felling and removing hazard trees is not needed "to address[] the public safety hazard." If or when the Forest Service proposes "a larger Pier Fire Restoration project," it can mitigate any hazards at that time as a part of that project, since it is directly tied to those efforts. As stated, the "safe condition" is needed "to perform that project" and not to avert public hazards. Otherwise, if the larger restoration project depends on activities in this hazard mitigation project, it must be considered together with this project in one NEPA analysis, since the Forest Service has stated that the larger restoration project depends on having implemented the hazard activities.

This is classic segmentation. In the case of the larger restoration project, the hazard activities are *connected actions*, since they are closely related and therefore should be discussed in the same NEPA analysis. Actions are connected if they cannot or will not proceed unless other actions are taken previously or simultaneously, or are interdependent parts of a larger action and depend on the larger action for their justification. 40 C.F.R. § 1508.25(a)(1).

Therefore, the road segments listed above should be removed from the proposal.

2. <u>Concerns regarding loss of occupancy from tree felling and removal in California spotted owl territories are significant</u>

With regard to spotted owls, there are several territories in the proposed project area, yet the scoping letter provides no information or maps about the specific location of these territories relative to proposed logging areas, the recent and historical occupancy of each territory, 2017 occupancy status of each territory, or the lost occupancy that could occur if the proposal is implemented. Our recent analyses indicate a severe adverse impact on spotted owl occupancy with even 5-25% post-fire logging within a 1500-meter radius around nest/roost centroids. *See* Attachment C, pp. 99-102 – CSO Listing Petition to U.S. Fish and Wildlife Service, which includes summaries of these scientific findings; *see also* Attachment D – Letter regarding losses of owl occupancy from even minor post-fire logging (finding that "In territories dominated by high-severity fire but less than 5% post-fire logging, 7 of 10 CSO territories were occupied (70% occupancy), whereas only 3 of 11 (27% occupancy) and 1 of 15 (7% occupancy) CSO territories, dominated by high-severity fire, with 5-25% and >25% post-fire logging, respectively, were occupied."); <u>referenced Scientific Studies are provided in separate e-mail as attachments</u>. Moreover, much of these concerns with loss of occupancy are discussed in a new study by Hanson et al. (2018) (Attachment E).

The California spotted owl is declining in population, is a USFS Sensitive Species, is proposed for listing under the ESA, and has a positive 90-day finding on the listing Petition from the U.S.

Fish and Wildlife Service, which identified logging, including post-fire logging, as a primary threat. In light of this, the Forest Service's proposal to conduct this logging project using a CE would violate NEPA because the potential adverse effect to spotted owls is an extraordinary circumstance.

3. The proposal may adversely and significantly affect Pacific Fishers and American Marten

Cumulatively, the proposed Pier Fire hazard project, in combination with various other projects may adversely and cumulatively affect fishers and marten, and therefore the use of a CE is inappropriate.

Pacific fishers and American marten include fire areas in their range of habitat needs. And because the fire burned in a patchwork of severities, it is likely that the Pier Fire project area still contains low-severity or unburned areas that will likely function as marten and fisher denning habitat. To protect fisher den site buffers from disturbance the Forest Service must implement a LOP from March 1 through June 30 for vegetation treatments (SNFPA ROD, p. 61, S&G # 85). And to protect unknown maternity den sites for American marten from disturbance during vegetation treatments in areas of suitable habitat during the reproductive season, the Forest Service must implement a LOP from May 1 through July 31 (SNFPA ROD, p. 62, S&G #88).

We aver that the proposed roadside hazard logging, as proposed, will significantly and adversely affect all of fishers and marten. This is an extraordinary circumstance, which precludes the use of a CE for the project.

4. The proposal must consider adverse effects on habitat fragmentation and connectivity for Pacific Fishers

On April 12, 2017, the Forest Service acknowledged that the massive die-off of trees in the Greenhorn Mountains and the Cedar Fire were significant enough to determine that these changed circumstances required a supplemental NEPA analysis of the Rancheria Project. The Rancheria Supplemental Information Report (SIR) states:

> The Fisher Conservation Strategy identifies connectivity as "essential to sustaining and recovering the fisher population." The habitat fragmentation and loss of connectivity caused by the effects of the Cedar Fire was not considered in the 2013 Fisher BE. This change in conditions may be significant and alter the conclusions made in the original determination for this project.

Rancheria SIR (Attachment H at Page 11 of 13); Rancheria Revised Fisher BE (Attachment I at Page 15 & 16 of 21).

The loss of habitat connectivity from the Pier Fire, in combination with various other projects and the massive tree die-off could have significant consequences to fishers, because the isolation of fishers towards the southern Greenhorn Mountains may cause a greater risk of extirpation of fisher populations to the south of the Cedar Fire area. Fishers in the Greenhorn Mountains (and the overall Core 2 area) have the highest genetic diversity in the Fisher Assessment Area (Tucker

et al. 2014) and therefore hold an important element in the recovery of fisher populations in the Southern Sierras. However, as Dr. Chad Hanson explains:

> The Forest Service is currently proposing two large, adjacent post-fire logging projects in the Cedar fire area along roads. While, as I discussed in my first declaration, large mixed-intensity fire themselves do not equate to loss of fisher habitat, and fishers actively use areas of unlogged snag forest habitat resulting from higher-intensity fire patches. However, my results in Hanson (2013) indicate that fishers are selecting (showing preferential use) areas of dense forest in both its unburned and burned states. In the former, these areas are dominated by live trees, while in the latter, they are dominated by high levels of snags (standing dead trees), downed logs, native shrubs, and natural regeneration of young conifers and oaks. In both cases, these forests are very dense, and complex—they have high levels of biomass (mostly in live trees in unburned, and mostly in snags and downed logs in burned) and structural complexity. As I discuss in my first declaration, an abundance of snags and downed logs are very important for fishers; this is because these habitat elements enhance the fisher's small mammal prey base, providing more food. However, these characteristics are precisely what post-fire logging removes and eliminates, simply by removing most of the trees, both live and dead. For this reason, I concluded in Hanson (2013) that post-fire logging is likely to have adverse impacts on fishers…
>
> Among the cumulative impacts from proposed post-fire logging in the Cedar fire would be a likely adverse effect on habitat connectivity, leading to a potential severing of the fisher population in the Greenhorn mountains south of the Cedar fire, and fishers in and north of the Frog project area. Given the extremely low current fisher population levels, as I discuss in my first declaration, any sort of loss of connectivity in populations from logging would further threaten overall fisher populations by preventing or restricting gene flow between sub-populations, leading to increased inbreeding and poorer genetic health of the population.

Dr. Hanson Declaration ¶ 16 (Attachment J). The same applies to the Pier Fire. Thus, the Pier Fire hazard tree analyses must consider and analyze fisher habitat connectivity related to various activities, which in combination are likely to be significant, as already acknowledged in the Rancheria SIR. And the added logging here would create areas that fisher generally avoid, would further exacerbate and cause significant effects on fishers by severing connectivity of habitats.

For these reasons, the Forest Service cannot categorically-exclude the project from NEPA and must prepare at least an EA.

5. Prepare a full Environmental Assessment (EA) and consider alternatives

The acreage of disturbance and tree felling and removal, at 1,450 acres, greatly exceeds the 250 acre limit imposed by 36 C.F.R. § 220.6(e)(13) for small timber salvage operations, and so the Forest Service cannot categorically-exclude this project and must prepare a full EA. Even

though the project may be styled as a "road maintenance" project, the environmental effects from tree felling and removal, especially when logging equipment skids or drags logs on fragile soils, is identical to a salvage operation, hence the acreage limitation applies to the Pier Fire hazard project.

Impacts to soils, wildlife habitat, and the public are significant, especially due to the fragile nature of the postfire landscape in the Pier Fire area. Because the impacts from logging in a postfire area could have significant lasting effects, the Forest Service cannot use a CE and should instead prepare, at least, an EA. *See* Attachment F – Beschta et al. (2004) ("Forest ecosystems are especially vulnerable to postfire management practices because such practices may influence forest dynamics and aquatic systems for decades to centuries…. The following practices are generally inconsistent with efforts to restore ecosystem functions after fire:…ground-based postfire logging, removal of large trees, and road construction.").

In the EA, please consider the following alternatives to the proposed action:

a. No action – This alternative would only deal with the imminent hazards of trees as an emergency measure, which would be felled and left.

b. Alternative that reduces treatments by removing various road sections from the proposal – Many of the spur roads should be gated and closed and remain untreated, as an alternative, including:

- 21S04A
- 21S58 (beyond private inholding)
- 21S12B
- 21S25
- 21S25A
- 21S25B
- 21S25C
- 21S25D

c. Fell and leave only – fell and leave all tree boles as large down woody material, and remove or burn only the tops, limbs, and slash to avert fuel loading and fire risk. This alternative is feasible and was studied in detail as Alternative C of the Piute Fire Roadside Hazard Project (See Attachment G, pp. 8-9), and therefore a detailed study of such an alternative is feasible here.

d. Fell only trees within 150 feet from roads – While we remain opposed to any alternative that would fell trees up to 300 feet from the roads, the traditional 150 foot maximum range of treatments from roads should be explored as an alternative.

6. The Forest Service must prepare at least an EA for projects of similar size and scope to the Pier Fire Hazard project

Recognizing the potential for significant effects from logging after a fire, the Forest Service has prepared EAs for similar projects, including a similarly-size post-fire roadside hazard project, for which it considered alternatives to tree removal.

In 2009, the Sequoia prepared an EA for the Piute Fire Roadside Hazard Tree Removal Project. That project is similar to the proposed Spear Creek roadside hazard project, although the treatments along roads were within 200 feet of each side of the road prism. Otherwise the actions are similar to those for Spear Creek, which included:

- Commercial timber sale to remove hazard trees for safety purposes along approximately 32 miles of roads affected by the 2008 Piute Fire,
- Treatment of activity-created slash by lop and scatter, pile and burn, chipping, or a combination of these methods to retain adequate soil cover while reducing hazardous fuel loading

Piute Roadside EA (Attachment G, pp. 4-5). At 35 miles of road treatments, the Pier Fire Project is similar in size and scope when compared to the Piute roadside hazard project, for which the Forest Service prepared an EA. However, with treatments within 300 ft from each side of the road prism, the impacts are likely greater.

Also in 2009, the Sequoia prepared an EA for the Vista postfire and roadside hazard project. *See* Attachment K. There, the fire was only 402 acres and also included a California spotted owl and fisher habitat. Activities included:

- 130 acres of salvage logging
- 90 acres of hand planting
- 143 acres of fuel treatments
- 5 acres of contour felling within riparian conservation areas,
- Roadside hazard removal along 3 miles of road.

Id., pp. 5-6. Here, the project is much larger with approximately 1,450 acres of proposed tree felling and removal.

Finally, agency practice shows that the Sequoia National Forest knows that it should either use CE 13 for hazard projects that utilize a timber sale if the project is under 250 acres, or an EA if it is larger. A recent Decision Memo from the Kern River Ranger District for the "Lucas Creek Project" shows that when the Forest Service needs to conduct a hazard project that includes the salvage of timber through a small timber sale, it must utilize CE 13 (small timber salvage). Lucas Creek DM (Attachment L). Similar to the Pier Fire hazard project, "[t]he intent of the Lucas Creek Project is to remove hazard trees along roads and properties adjoining the Breckenridge Subdivision. The project would also reduce fuels build-up to protect the community and the Lucas Creek upper and middle watershed from high-intensity fire. This will improve forest resilience and health." *Id.*, p. 1. And the agency recognized that it needed to utilize CE 13 because it involves a commercial timber sale. Because the project is limited to 250 acres, application of CE 13 is appropriate there. *Id.*, pp. 1-2.

For those reasons, the Forest Service should, at least, prepare an EA.

7. Cumulative effects must be analyzed

A thorough analysis must consider the many cumulative effects from project activities when combined with past, present, and reasonably foreseeable future actions, including:

- the Tule River Reservation Protection Project,
- activities on the adjacent Tule River Reservation prior to and after the Pier Fire;
- the combined effects from actions related to the ongoing drought-related tree mortality event prior to the fire, such as hazard tree felling; and
- the combined effects from all actions within the Southern Sierra Nevada Fisher Conservation Area on Pacific fishers.

The cumulative effects analysis must consider adverse effects on all resources, but especially on vulnerable sensitive species, such as the Pacific fisher, California spotted owl, and northern goshawk, Townsend's big-eared bats, Pallid bats, Fringed myotis bats, California condors, Relictual (Green Mtn.) slender salamander, as well as habitat for the endangered mountain yellow-legged frog, if its habitat occurs in the project area.

8. Tree removal is not clearly needed for ecological restoration and maintenance or public safety, and leaving greater than the minimum amount of down wood material in the form of logs is acceptable

Leaving felled trees would resolve the safety concerns underlying the project (a downed tree is not going to fall on a passing vehicle or a person walking), and may also avoid much of the safety hazards from the logging activity itself, which is an inherently dangerous profession. Felled trees that may roll onto the road can also be relocated so they do not cause a safety or operational issues.

Leaving the felled trees in the Giant Sequoia National Monument would resolve the conflict of interest in selecting trees as hazards, thereby removing a cloud of suspicion from the Forest Service. And since removal of trees is only allowed for ecological restoration and public safety, there is no need to remove tree boles after they have been felled.

While it may be Forest Service policy to abate hazardous conditions from trees in the Monument, the Forest Service is not obligated to protect people from falling trees along roads. See *Moyer v. Washington State,*106 F.3d 408 *(*9th Cir. 1997). The *Moyer* court specifically held that the Forest Service does not have a duty to avert hazard trees alongside the road, but has discretion to balance safety and wildlife habitat considerations. Similar to safety issues addressed by the National Park Service in adjacent Kings Canyon National Park, the Forest Service has a "choice between the competing policy considerations of maximizing access to and preservation of natural resources versus the need to minimize potential safety hazards." *Valdez v. U.S.*, 56 F. 3d 1177, 1180 (9th Cir. 1995). The Proclamation subordinates recreation to ecological restoration, therefore removing hazard trees cannot be an excuse to cut any trees, and there is a legitimate question of how large a tree can be removed.

The scoping letter implies that felled trees that are over the minimum downed log retention standards in the Monument Plan must be removed, including through commercial logging operations, ostensibly because downed logs above the bare minimum standards would pose a fire hazard to homes. First, this argument does not even apply to most of the roads in the proposal, which are nowhere near homes in the private inholdings. Second, even where the roads are near homes (e.g., within 100 meters or so), the scoping letter provides no citations to any scientific sources to support this claim. In fact, the science does not support the Forest Service's argument here. See, e.g., (a) Meigs et al. (2016) (finding no increase in fire behavior in areas with the highest densities of dead trees within ponderosa pine and mixed-conifer forests (the forest types at issue here), even at 25 years after tree mortality—i.e., after most snags had fallen); (b) Brown et al. (2003) (finding that it is overwhelmingly the small-diameter stems—mostly those under 3 inches in diameter, and secondarily those 3 to 10 inches in diameter—that govern fire intensity and spread, not large downed logs); and (c) Coppoletta et al. (2016), Figure 3 (Forest Service's own research finding that, if high-severity fire areas re-burn after the initial fire, they burn at considerably lower fire severity, not higher (9% high-severity in reburn, versus 21% in initial fire).

The high level of controversy and uncertainty with regard to the Forest Service's argument here, relative to the science, indicates once again the need for an EA or EIS to properly vet this issue scientifically, and to consider a reasonable range of alternatives, including some action alternatives that would allow relatively more removal of logs—especially smaller logs—closest to homes, while allowing more downed logs (not limited to the minimum retention levels) in most of the areas, which are not adjacent to homes.

For Sequoia ForestKeeper and the Kern-Kaweah Chapter of the Sierra Club,

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