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PROTECTING NATURAL RESOURCES

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Submitted via email to Eric LaPrice, cc List, and comments-pacificsouthwest-sequoia@usda.gov; Comment portal no longer available

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Subject: Windy Fire Restoration Project EA Comments for SFK & SC & STF

I spoke to Nancy Kelly, Wildlife Biologist for the Western Divide Ranger District on April 21, 2023, to ask about the CARA comment portal, which was no longer accessible, even though the comment deadline for this project is April 21, 2023, based on the publication in the Porterville recorder. See Exhibit A. FYI, we had the same issue a week ago with the Hume Basin Project comment portal, and Marianne Emmendorfer was able to reopen the portal for our comments. But Nancy told me that she did not think she could reopen the portal nor had authority to reopen it, so I informed her that I would submit these comments by email as we have in the past.

Sequoia ForestKeeper (SFK), the Kern-Kaweah Chapter of the Sierra Club (SC), and the Sequoia Task Force of the Sierra Club (STF) thank you for the opportunity to comment on the subject EA for the proposal. SFK, SC, and STF have been involved in the protection of the Sequoia National Forest and the Giant Sequoia National Monument (GSNM) for many decades and consider the subject proposal, in combination with various other proposal in the same fire and adjacent areas, as a significant major federal action, which will adversely affect Monument objects and values, and the wildlife that depend on the GSNM's forest habitats.

As with the Castle Fire Restoration Project, we are disappointed that the most of the concerns we raised during scoping have not been addressed or explored as viable alternative actions for restoration. We also believe that the proposal to remove thousands of trees, dead and alive, violates the letter and intent of the GSNM Proclamation and GSNM Plan. The felling and removal of so many trees under the guise of "ecological restoration" is clearly inconsistent with the proclamations' strictures for tree removal only if it is "clearly needed" for ecological restoration or maintenance.

Background and Description of Proposal

As discussed in our scoping comments, this action is similar to the Castle Fire Restoration Project in that it seeks to restore/manage areas in a post-fire landscape, which proposes to

include logging/removal of timber from the GSNM. We refer you to our EA comments for the Castle Fire Restoration Project, which we have include as Exhibit B.

Along with the Castle Fire Restoration Project, the Windy Fire Restoration Project represents the first true test of the ecological restoration and protection provisions of the 2012 GSNM Management. The purpose of the Proposed Action is to restore healthy forest conditions, ensure safe access for visitors and firefighters, mitigate risks to sequoia groves, and promote ecological integrity, carbon sequestration, and hydrologic function of meadows. It seeks to prevent high-severity wildfires caused by fallen fire-killed trees, manage unburned areas for forest resilience, and address safety hazards caused by dead or dying trees along Tulare County roads. Approximately 4,278 acres would be primarily treated for fuels reduction, 1,224 acres primarily for hazard tree abatement, 10,517 primarily for reforestation, and 521 acres for meadow restoration. See EA Cover Letter.

COMMENTS

We incorporate our scoping comments into these comments by reference rather than restate them. Where the Forest Service has not adequately addressed the issues we raised in our scoping comments, and even though we may not restate those issues and concerns here, we may raise those issues again in our objection if necessary.

Because the proposed action would result in significant adverse effects on soils, wildlife, recreation, aesthetic resources, and proposes to remove many thousands of trees from the Giant Sequoia National Monument, it is a major federal action and the Forest Service must prepare an Environmental Impact Statement (EIS).

1. The EA does not consider or discuss cumulative effects on resources related to projects and activities that overlap or are adjacent to the Windy Fire Project area.

Although related, the EA does not provide any detail about how it relates to the separate Forest Service plan to fell and remove hazardous trees in and around recreation sites and along roads, aka, the Region 5 Post Disturbance Hazardous Tree Management Project. For the Sequoia National Forest, the region has now issued a final EA and FONSI, as well as a final Decision Notice after we objected to that project. Many of the roads within the Windy Fire Restoration Project overlap the roads proposed for treatments in the R5 project. However, neither this EA nor the EA or DN for the R5 Hazard Project mentions the other project. See Exhibits C (DN), D (EA), and E (maps of roads that overlap Windy Fire Restoration Project Area).

Moreover, there is no discussion about the potential cumulative effects from that overlapping project or the directly-adjacent Castle Fire Restoration project, just to the north of the Windy Fire Restoration Project area. The final analysis must discuss these cumulative effects on all resources, and especially threatened, endangered, and sensitive wildlife species, as well as those that are proposed for listing as threatened, such as the California spotted owl. Without this cumulative effects analysis in the EA, it would not comply with NEPA.

2. There is no "clear need" analysis regarding tree removal to inform tree felling or removal, nor is there any discussion of the GSNM Decision Tree to justify the proposal.

The GSNM Plan requires that any projects that could fell or remove trees be analyzed through the Decision Tree (GSNM Plan, pp. 82-84), considering wildland fire and prescribed fire as the primary options, and then mechanical treatments without removal before the Forest Service should even consider mechanical treatments with tree removal. There is no discussion nor consideration in the EA that the Forest Service has done this analysis. Moreover, the GSNM Plan also requires a "clear need" analysis for any tree felling or removal (GSNM Plan, pp. 80-82), which is also not provided or referenced in the EA. This is inconsistent with the plan standards.

This analysis should have been done prior to and should inform alternative development. As we stated and restate in the next section, the fact that a wildland fire burned through the area (the first option of the Decision Tree), many of the ecological restoration goals for the Monument have already been met.

We refer you to our scoping comments regarding the clear need analysis, and again reiterate that tree removal is not clearly needed to achieve ecological restoration in the Windy Fire area.

3. The Windy Fire achieved much of the ecological restoration prescribed in the GSNM Plan, and the proposal must acknowledge this fact as a premise in any analysis.

Here, to emphasize our point from our scoping comments, when the naturally-ignited Windy Fire started burning in the GSNM, it accomplished one of the primary goals of the Monument Proclamation and GSNM Plan: "ecological restoration" through managed wildfire. *See* GSNM Decision Tree, p. 83; GSNM Tables 10 & 19 (#13 & #9, respectively). The analysis should start with that premise and should seek to ensure that any proposed treatments not undo the ecological restoration goals already achieved by the fire, including areas that burned with moderate to high severity.

We refer you to this same section in our scoping comments for a more detailed discussion, and urge the Forest Service to include a rigorous discussion about the beneficial effects to restoration from the fire as a starting point.

4. There is No analysis of the Windy Fire Project's effects on Pacific fishers or its proposed critical habitat in the EA or the Biological Assessment (BA).

The BA makes a perplexing assertion in it conclusion, stating "The proposed action has the potential to impact the Fisher and federally designated Critical Habitat for the species. A comprehensive review of potential impacts to the Fisher is detailed in the PDF and a determination of ***may affect, not likely to adversely affect*** was made for the species." BA, p. 26 (underline for emphasis). However, we could not find any detailed PDF or any detailed discussion of the potential impacts to the Fisher elsewhere in the record.

In fact, the only species with any analysis in the BA is the California condor. *See* BA, pp. 24-26. We can only surmise that either a large section of the BA was somehow omitted or the separate PDF was omitted from the public website. The EA at PDF, p. 20, mentions a "*Windy Fire Restoration Project Fisher PDF*," but none has been separately provided to the public on the website. Regardless, this information should be included in the BA itself and not in a separate analysis document that may not even exist.

The Biological Evaluation (BE) also refers to a fisher PDF, but there is no analysis regarding the potential impacts to fisher in the BE.

This omission alone justifies the need for a new comment period after the BA has been updated or the fisher PDF has been provided to the public. The EA should also include a more detailed analysis on the effects of the endangered Pacific fisher.

5. <u>The proposed actions will likely harm the California spotted owl, now proposed for listing as threatened under the ESA, which should be analyzed in an updated BA</u>

The BA must also be updated to include a more detailed analysis on the project's effects on the California spotted owl, which has been proposed for listing as threatened throughout its range in the Sierra Nevadas. A half-page effects analysis in the BE, pp. 40-41 is completely insufficient and would not fulfill the Forest Service's duty to confer with the U.S. Fish and Wildlife Service regarding species that are proposed for listing under the Endangered Species Act.

Moreover, the EA should discuss any conference with U.S. Fish and Wildlife Service with regard to the "proposed" status, as required by the ESA Consultation Regulations. *See* 50 CFR § 402.01.

6. <u>The Forest Service must prepare an Environmental Impact Statement (EIS) because the proposal is likely to have significant impacts.</u>

The Forest Service must prepare an EIS because the proposed action could cause significant impacts, including cumulative effects on endangered Pacific fishers, California spotted owls, and it could exacerbate climate change. Together, these factors suggest that the proposed actions will cause significant effects on the environment, requiring preparation of an EIS.

The Windy Fire itself had an effect (negative, and in some areas positive or neutral) on the endangered Pacific fisher and California spotted owl population in the project area. The fire and the proposed action (and any action alternatives) are likely to have significant direct, indirect, and cumulative effects on the fisher and spotted owl populations, as well as the species' ability to disperse or move through a fragmented fire and project area. As we discussed in scoping, the Forest Service found that under similar circumstances, in which the Cedar Fire fragmented the fisher's habitat in the same Greenhorn mountains, the Forest Service found that the changes and the project may constitute significant effects. For these reasons as well as the cumulative effects on these endangered or proposed species, NEPA requires that the Forest Service prepare an EIS.

7. There is no analysis of the Windy Fire Project's release of carbon or greenhouse gases (GHG) into the atmosphere from tree removal and burning activities.

We provided significant comments during scoping as well a recent scientific findings and reports about the need to document the release of GHG that result from project activities. But there is no mention of this type of analysis in either the EA or the Fire, Fuels and Air Quality Report. The only mention in the EA regarding climate change is that there will be effects from a changing climate on the forest, and the only mention in the specialist report about climate change is its brief discussion about climate resilience and the effects from project activities on carbon storage. *See* Fire, Fuels and Air Quality Report, pp. 31-33.

But the Forest Service knows how to do a proper GHG analysis from project activities, In fact, the Hume Lake Ranger District recently did such an analysis, which it demonstrated in the Hume Basin Project EA. There, the analysis includes the amount of carbon released per acre for each of the treatment areas in the three groves or other project areas. *See* Exhibit F (Hume Basin EA), pp. 40-43. Our only criticism of that analysis was that it should have included total tons/acre of carbon released in the tables, as well as the amount of carbon released at year 20. Here is our comment regarding that analysis:

> Thank you for providing a detailed analysis of average carbon releases/sequestration by acres in Tables 17 & 18 of the EA. As we discussed on the phone, however, this only provides a limited picture of the effects on carbon because we do not know in the tables how many acres are being affected. My suggestion is to add two more columns to Table 17, which provide the total acres for each row (additional column), and then the total tons of "Total Stand Carbon" in tons for each row (additional column), which multiplies the average tons/acre by the acres treated.
>
> Moreover, it would also be useful to include additional rows for each of the broad treatment areas, since from a carbon accounting standpoint, the next 20 years are the most crucial if we are going to try avert the worst effects from climate change. So I would suggest adding a row for the year 2041 for each of the area types with associated data.
>
> In other words, it would look something like this (without those numbers filled in):

Year by Action/No Action	Carbon in Trees over 4.5 Inches Diameter (Average tons/acre)	Carbon in Snags (Average tons/acre)	Total Stand Carbon[a] (average tons/acre)	Acres	Total Stand Carbon (average tons/acre x acres)
2021 Plantations	16.2	3.5	32.7	?	
2041 Plantations	?	?	?	?	
2071 Plantations No Action	21.8	6.5	61.9	?	

2071 Plantations Proposed Action	27.8	4.6	62.9	?	
2021 Bearskin Grove	61.1	11.6	130.1	?	
2041 Bearskin Grove	?	?	?	?	
2071 No Action-Bearskin	33.8	16.5	93.3	?	
2071 Proposed Action Bearskin	75.2	5.6	131.6	?	
[continue for each	area type]				
[additional rows	omitted]				

The Forest Service needs to provide an analysis similar to that in the Hume Basin Project EA for the Windy Fire Project to adequately comply with NEPA and the Forest Service's internal requirements for GHG emissions, because consideration of climate change and GHG emissions are required by the Forest Service's Washington Office for all types of projects that could release carbon. *See* https://www.fs.usda.gov/ccrc/topics/introduction-incorporating-climate-change-nepa-process. Please see our scoping comment for more on this, and again review the more recent scientific findings about climate change impacts from fires and tree planting, which are a big part of this project. These issues require a more detailed analysis.

8. There is no support for a 35 inch diameter limit for cutting live trees outside the GSNM, and that limit should be 30 inches, as required by the 2004 Sierra Nevada Forest Plan Amendments.

The EA states: "***Tree Removal*** To meet fuel loading targets and improve tree vigor and stand resiliency, live trees that are less than 20 inches dbh (or less than 35 inches dbh outside of the GSNM) may be felled in unburned stands or areas of dense trees, where the trees are considered to be ladder fuels." p. 7 (underline for emphasis).

We believe the "less than 35 inches dbh outside of the GSNM" figure is in error. Until the new Sequoia Forest Plan is finalized, the current diameter limit for mechanical thinning or other tree cutting of live trees in national forests throughout the Sierra Nevada Mountains is 30 inches. *See* 2004 SNFPA ROD, Appendix A, p. 50 ("For all mechanical thinning treatments, design projects to retain all live conifers 30 inches dbh or larger.")

9. Drop prescribed burning proposals from Giant Sequoia Groves, which would kill naturally-regenerating Sequoia seedlings.

One initial question we posed in the Castle Fire Restoration project applies equally here: "Why would the Forest Service propose prescribed burning in giant sequoia groves, such as Freeman Creek, that burned in the Castle Fire and where millions of seedlings are now growing? Wouldn't broadcast prescribed burning kill most of those seedlings, which are needed for natural recovery?"

Just as there is no justification for mechanically-treating Sequoia groves or removing dead trees from the groves—and the proposal wisely excludes both—there is no justification for the broadcast burning proposed in the groves, especially where literally millions of seedlings are regenerating. During our June 2021 field trip into Freeman Creek Grove, Ara Marderosian of SFK and I documented this vigorous regeneration of seedlings. See https://photos.app.goo.gl/XFbtECp73snjdCzC8. Although we haven't yet been able to visit all the groves in the Windy Fire Area, we suspect similar regeneration of thousands or millions of seedlings.

Some of those millions of seedlings will obviously not survive, but many have and are likely to form dense thickets of larger seedlings/saplings, similar to those in other groves that have recently burned, such as the larger seedlings that regenerated after the Pier Fire in the Black Mountain Grove. See Exhibit G (showing dense thickets of larger seedlings in a large area in that grove).

We strongly urge the Forest Service to drop prescribed or broadcast burning in Sequoia groves from this proposal. These areas are devoid of ground fuels and don't need to be burned again for fuel reduction purposes. See https://photos.app.goo.gl/XFbtECp73snjdCzC8. If burning can be justified in the far off future when sapling survival is no longer at issue, the Forest Service can revisit the issue at that point in a future project.

10. A habitat fragmentation analysis must be done before implementation as part of the EA and before the DN and FONSI are finalized.

Appendix A of the EA includes a list of bullets under "Wildlife and Aquatics," including:

> Habitat fragmentation affecting old forest associated species (particularly fisher and marten) would be assessed prior to implementation, with mitigations to provide shrub cover in the short-term and mature forest in the long-term.

See EA, PDF p. 30 (underline for emphasis). The GSNM plan, pp. 89-90 includes this as a standard. However, NEPA requires this type of assessment as a part of the environment assessment analysis because all relevant information about environmental effects must be available to the public and decision-makers prior to the decision. So we urge you to include the habitat fragmentation analysis as a part of the EA and wildlife reports (BE & BA).

11. Complex Early Seral Forest as Rare and Important Habitat Must be Acknowledged in the Analysis

None of the burn area is deforested, and any such description should be dropped from the EA and specialist reports. Instead, as the most recent Sequoia NF Land and Resources Management Plan describes it, the burned areas are "complex early seral habitat," which is comprised of many legacy structure, including large snags and downed logs (LRMP, p. 47) and which provides essential habitat for certain species, such as black-backed woodpeckers and olive-sided flycatchers. This habitat can be as ecologically-diverse as old-growth forest habitat.

A failure to acknowledge and account for this important habitat type and need to preserve it ignores the best available science and would not meet NEPA requirement for failing to disclose the impacts on this type of important habitat.

12. The Monument Proclamation and Plan Require Ecological Restoration from Logging, Not by Logging using Alternative Measures

The entire premise that logging so many trees, as the Forest Service proposes over the project area, is the antithesis of the intent of the Giant Sequoia National Monument Proclamation. The proclamation states:

> These giant sequoia groves and the surrounding forest provide an excellent opportunity to understand the consequences of different approaches to forest restoration. **These forests need restoration to counteract the effects of a century of fire suppression and logging.**

GSNM Plan, p. 154 (Appx. I). Instead, in order to support its strategy, the Forest Service is proposing to use the same logging in its restoration proposal that it is meant to "counteract." It has therefore failed to apply "different approaches" that are available for ecological restoration. In fact, the proclamation's statement here almost mandates that the Forest Service at least consider an alternative that approaches restoration without logging, which the EA fails to consider. See EA, p. 11 (Alternatives Considered and Eliminated from Detailed Study). This is not only a lost "opportunity," but also violates NEPA and the intent of the Monument Proclamation and Plan.

13. Planting is not necessary for ecological restoration.

Even now—two years after the Windy Fire—it is too early to conclude that planting is necessary for ecological restoration. The exhibit referenced in this section is the same as the one submitted during scoping.

After Hanson and Chi eliminated areas that had previously been logged in the Rim Fire area, they found that post-fire conifer regeneration was abundant, even when some areas were located at a substantial distance from surviving seed trees:

> Post-fire conifer regeneration in the Rim fire was highest near live-tree edges, but we found substantial post-fire conifer regeneration at all distances from surviving conifers. Even in locations farthest into the interior of large high-severity fire patches, >300m from the nearest surviving conifer, density of natural post-fire conifer regeneration was 256 stems/ha, which is in the mid-range of recently-articulated values associated with successful post-fire conifer regeneration (North et al., 2019). We did not find any effect of distance from surviving conifers on the proportion of conifer regeneration comprised by pine species, contrary to Hanson (2018), and our results contradict the hypothesis adopted by USFS (USFS, 2004, 2016) suggesting conifer regeneration that occurs in large high-severity fire patches will be dominated by fir/cedar species. In plots >300m from surviving conifers, over three-quarters had post-fire regeneration that was pine-

> dominated. Our results support the North et al. (2019) conclusion, based on a synthesis of recent scientific findings about post-fire conifer regeneration, recommending that land managers consider high-severity fire areas within 200m of live trees to be capable of natural regeneration, and consequently not in need of human intervention.

Id. at 5 (Exhibit B to our Scoping Comments). From both a short- and long-term perspective, it is best to give the forest sufficient time to recover on its own, and the GSNM Plan requires it.

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

Sincerely,

René Voss – Attorney at Law