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Sent to:
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**cc: Ara Marderosian
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Subject: Cedar Post-Fire Roadside Hazard Tree Salvage 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.

Thank you for your November 30, 2016 response letter to our questions regarding the scope of the proposed actions. These comments are based on that response and the limited information we have received in the original news release, which you asserted started scoping for the project.

Our over-arching concern is not only with the project itself, but also the manner in which the Western Divide Ranger District has “started scoping” for this project on the district, initiated by a vague news release with woefully inadequate information to understand the scope of the project.

While we are encouraged by the November 30 letter that a more thorough environmental analysis will be conducted, the fact that the district will prepare EAs and already has more detailed maps means this information should have been included in the initial release to the public. The Forest Service, in the Sequoia National Forest and Giant Sequoia National Monument, usually knows what the scope of the activities will be when they announce new projects and have the ability to share much more specific information with the public than what was presented in the news release. But instead of releasing this information up front, the district had to field several inquiries from us and others, and even prepared a letter detailing the proposal when this information could have easily been included up front. Moreover, the information in the letter has, so far, only been disseminated to a very limited number of interested parties when it should have been sent out to the public at large, so they can be informed about the scope of the actions.

Another troubling finding is that roadside hazard logging in the Monument portion of the project appears to overlap many of the old White River Project units, which remain permanently enjoined by the U.S. District Court for the Northern District of California. *See Sierra Club v. Bosworth*, 465 F. Supp. 2d 931, 941 (N.D. Cal. 2006) (entering a permanent injunction against the “White River Project[] until a proper supplemental NEPA review has been conducted.”).

SFK and Sierra Club are both parties to *Bosworth* case, and strongly object to the proposal to log in the White River Project area, especially in units subject to the court's permanent injunction. Even if the news we just heard today is correct, that the White River timber sale contract was cancelled by the Regional Forester, we believe the *Bosworth* court would need to be informed and lift its injunction before this project could proceed.

1. Scoping Should Be Reinitiated

For the reasons above, we believe that scoping should be re-initiated, with a detailed proposal sent to the public and all interested parties to meet the letter and intent of the NEPA scoping process. The key to meeting the goals of scoping is that the public is presented with sufficient information to be able to submit meaningful, informed comments. *See* 36 C.F.R. § 220.4(e) and 40 CFR 1501.7; *see also* 40 C.F.R. § 1500.1(b) (“Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.”).

This should include placing the proposal on the next SOPA and sending a detailed proposal letter (and news release) with maps, detailed proposed actions, and potential alternatives to the public and interested parties...the more information, the better.

2. Prepare One Environmental Analysis, not Two

“Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a); *see also* 40 C.F.R. § 1508.25(c)(2) & (c)(3) (suggesting that the best way to adequately assess the combined impacts of similar projects with cumulative effects and with common timing or geography, is to treat them in a single impact statement).

In its November 30, 2016 response to our questions, the Western Divide RD suggests breaking the proposal into two projects—Spear Creek (1500 acres) and Bull Run Creek (2000 acres)—and wants to analyze each project separately. It is unclear how this can be justified, since the proposals are identical and both propose removal of excess material with a commercial timber sale. The only distinction is that the Spear Creek portion of the project is in the Giant Sequoia National Monument (GSNM) portion of the Sequoia National Forest, and the other is in the general forest. While the areas may have different management standards, both are a subset of the Sequoia National Forest Plan, as amended by the GSNM Plan. They are clearly related to each other close enough to be, in effect, a single course of action, since they both stem from the Cedar Fire and both involve the same course of actions, which were initially proposed in the news release as one action. Moreover, the combined impacts are cumulative with common timing and geography, and so this proposal should be evaluated in a single environmental analysis. It should not be difficult to prepare alternatives and mitigation measures that ensure compliance with standards in both Monument and non-Monument areas.

3. Prepare an Environmental Impact Statement (EIS)

The proposed action, covering roughly 3,500 acres, is sufficiently large and will have sufficient significant impacts that the Forest Service should prepare an EIS.

At roughly 3,500 acres, the proposed actions are about 2/3 the size of the 4,898 acre Tobias Project, which was located in the same area where the fire burned. *See* Exhibit A – Tobias Project scoping letter. And at 3,500 acres, the proposed action is 1,000 acres larger than the Alta Project (formerly know as the Summit Project) just to the south in the Kern River Ranger District. *See* Exhibit B – Summit Project scoping letter. For both projects, the Forest Service prepared or is planning to prepare an EIS. The impacts to soils, wildlife habitat, and the public are significant, especially in the recently-burned Cedar Fire area. Because the impacts from logging in a postfire area could have significant, lasting effects, the Forest Service should prepare an EIS. *See* 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.”) (attached as Exhibit C).

4. Cumulative Effects

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

- Effects from various firefighting activities, such as dozer lines, hand lines, burn-out operations, BAER activities, etc.
- Effects from adjacent projects that have cumulative impacts on larger resources, including the
 - Frog Timber Sale Project
 - Summit Healthy Forest Project (CE)
 - Alta Fuels Reduction and Forest Health Project (formerly the Summit Project (EIS))
 - Road hazard felling in the Cedar Fire area in the adjacent Kern River Ranger District
 - Foreseeable post-fire hazard logging in the Cedar Fire area, including in the adjacent the Kern River Ranger District
 - The White River Timber Sale Project (partially in Monument portion of the Cedar Fire area and to the northwest in areas outside the fire area)
- Combined effects from actions and ongoing drought-related tree mortality event

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, as well as habitat for the endangered mountain yellow-legged frog.

5. The White River Timber Sale Project Overlaps Proposed Roadside Hazard/Salvage

As mentioned in the introduction, most roadside hazard or salvage areas in the Spear Creek portion of the proposal overlap units from the White River Timber Sale Project. Logging in all White River Project units remain permanently enjoined. *See Sierra Club v. Bosworth*, 465 F. Supp. 2d 931, 941 (N.D. Cal. 2006).

Enclosed as Exhibit D is the unit map for the White River Project, which includes the locations of proposed logging operations from the selected Alternative 3. There are roughly 8 White River units near the southern extent of road 24S93, starting at 24S93A and including 24S93B. And there are roughly 16 more units are to the east of roads 23S61D and 24S22 up to 24S29 along the Monument boundary (scroll to 2nd page of White River map). Most units overlap the proposed hazard/salvage areas proposed in the Spear Creek map.

Logging in these or other areas of the White River Project cannot proceed without approval of the court.

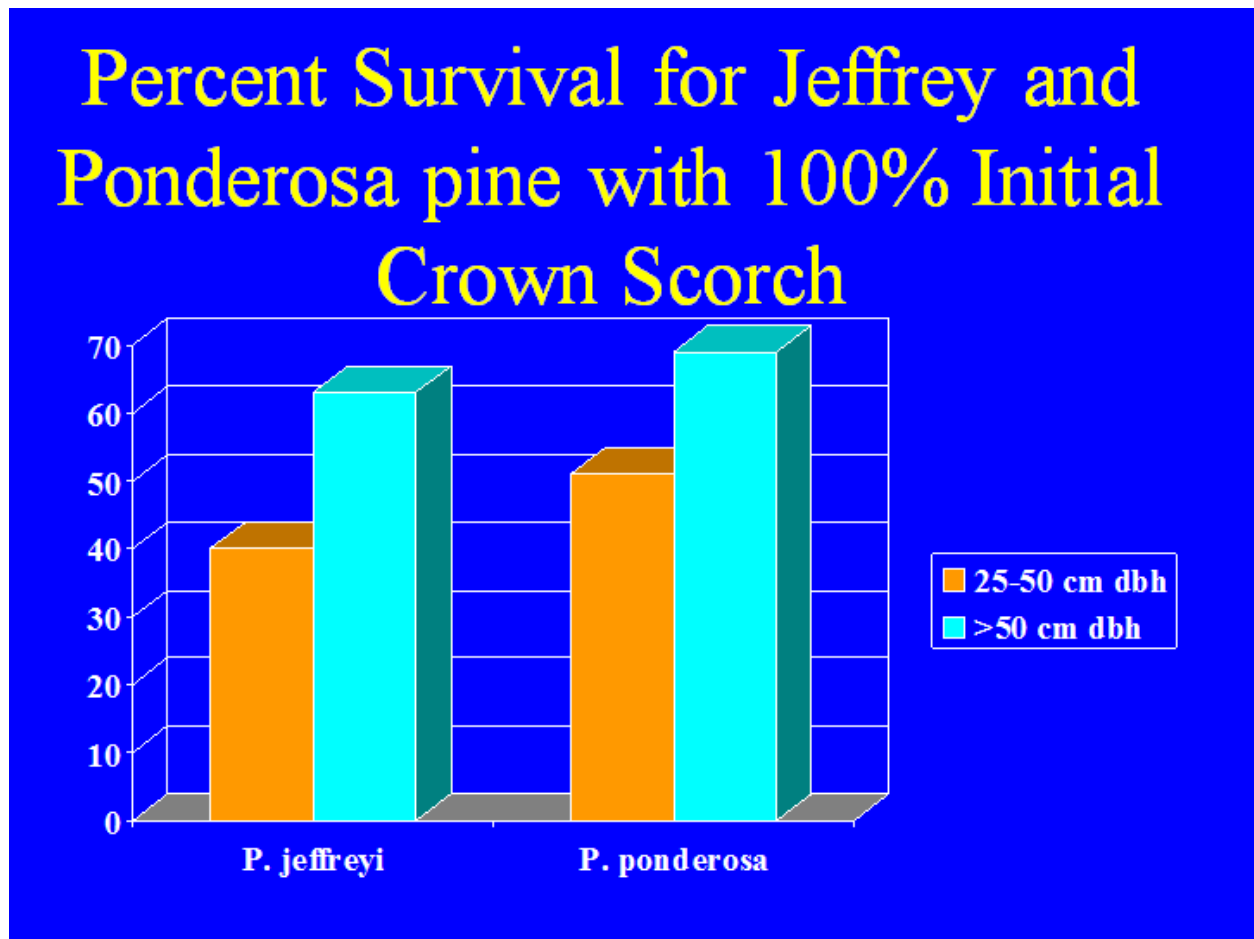
6. Consider Several Alternatives to Tree Removal

- a. No action – This alternative would only deal with imminent hazards as an emergency measure, which would be felled and left.
- b. Alternative that reduces treatments by removing various road sections from the proposal and closes those segments to public access – Many of the spur roads should be gated and closed and remain untreated, as an alternative, including:
 - i. Spear Creek Map
 - 24S27
 - 24S94 & 94A
 - 24S93, 93A & 93B
 - 23S16D
 - ii. Bull Run Map
 - End spur of 24S02
 - 24S09
 - 24S10
 - 24S28
 - 24S35A
 - End spur of 24S35
 - 25S37
 - 25S38A
- c. Fell and leave only – especially in the Monument, fell and leave tree boles as large down woody material, and remove 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 Exhibit E, p. 5), and therefore a detailed study of such an alternative should be 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.

- e. Combination Alternative – We would also suggest that the Forest Service study some sort of alternative that combines aspects of each of the alternatives we have proposed and some aspects of the proposed action.

7. Delay Tree Marking Until After Spring Flushing of Pines and Firs

Hazard tree identification and marking should not be done until after the spring of 2017, since many pines and some firs may have survived the fire, even though most needles may have scorched or singed and turned orange. Many pines and some firs will “flush” in the spring after a fire and are still alive, even if they looked dead after the fire. This occurred in various fires in the recent past, especially in areas where there is mixed severity, such as the Cedar Fire. Actual proportions and extent of high-severity fire may be even lower than reported, due to the failure of remote sensing to account for post-fire “flushing”, and “epicormic branching.” See Hanson, C.T., and M.P. North. 2006. *International Journal of Wildland Fire* 15: 31-35; Hanson, C.T. 2007. Doctoral dissertation, U.C. Davis; Odion, D.C., and C.T. Hanson. 2006. *Ecosystems* 9: 1177-1189.



- 8. Tree Removal, Only if Clearly Needed for Ecological Restoration and Maintenance or Public Safety

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. Moreover, leaving 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.

9. We request that the Forest Service document the exact locations of trees to be felled, so we can find them and verify compliance with R5 Hazard Tree Guidelines.

We request that when the Forest Service marks a tree for felling as a hazard, that it record the tree’s exact location, preferably by GPS, so that we can verify that it has been correctly marked under the hazard tree guidelines at a later time. We request that any trees be identified in the Hazard Tree Inspection Forms of the R5 Guidelines.

10. Hazard Tree Guidelines Comments

- a. Roads Should Not be Considered Targets under the Hazard Tree Guidelines

Appendix D of the Hazard Tree Guidelines (R5 Guide) states that “Failures [of trees] result in accidents only if the strike a target. Targets can be stationary such as buildings, or mobile, such as vehicles and people.” But roads are not considered targets under these guidelines.” So, the mere fact that a tree may strike a road is not a reason to cut it down. These guidelines, for example, should not be applied to closed roads, such as Maintenance Level 1 roads because they are not open to the public. Moreover, the risk that a tree might strike a mobile target, such as a vehicle or person on a backwoods road that is less heavily traveled than a main arterial road or highway, is different and less likely. Therefore, we request that the Forest Service assess the level of use of each road to determine the need for treatments, rather than treat all roads the same.

- b. Record of Tree Failures, Defects, and Losses

The R5 Guide also states that a hazard tree program includes “recording tree failures, associated defects, and losses.” We request copies of the Sequoia’s data records on tree failures, associated defects, and any losses. Moreover, the R5 Guides states: “Every tree that is defective and inspected must have documentation of the inspection.” We request that this information be made available at the earliest possible time, and that it be complete and legible. Again, as requested above, the record requires the “Tree Location” to identify it “for action, monitoring, tracking.” This can only be complied with if it is accurate, and the best way to do that is with a GPS device.

c. Removing the Target, Topping, Pruning, or Monitoring

The R5 Guide contemplates that the hazard tree program will consider other actions besides just removing the entire tree. In fact, the Guide requires consideration of target removal, which includes “Redirecting the use pattern with barriers and access relocation may also be done,” which “may require permanent closure and relocation of the facilities.” This should include consideration of individual road closures to avert the hazard and eliminate use by targets, such as vehicles or persons. In past roadside hazard projects, it did not appear that the Forest Service seriously considered these other options. We request that the Forest Service consider other methods of averting hazards. And we request that the Forest Service also consider monitoring some trees with low hazard ratings, rather than removing, topping, or pruning them.

d. Hazard Rating Low (3 or below)

In some cases, the District can determine that the overall hazard rating is low (3 or below). It should tag the tree and monitor it rather than mark it for removal. The R5 Guide calls for “Monitor Tag Tree” when the hazard rating is low.

11. The Forest Service must seek out and consider the “best available science” to inform its analysis.

The Forest Service “should seek out and consider all existing scientific evidence relevant to the decision and it cannot ignore existing data. . . . The Forest Service must determine which data are the most accurate, reliable, and relevant, and that will be reviewed deferentially, but it still must be good science—that is reliable, peer reviewed, or otherwise complying with valid scientific methods.” *Ecology Center v. U.S. Forest Service*, 451 F.3d 1183, 1194, n. 4 (10th Cir. 2006).

This also means that, in the final analysis, the Forest Service should disclose and discuss any science that it rejected as less accurate, reliable, or relevant than the science it actually applied to the project.

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



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