



File Code: 1570
Route To:

Date: **MAY 15 2013**

Subject: Appeal Decision for the Giant Sequoia National Monument Management Plan Amendment to the Sequoia National Forest Land Management Plan

To: Regional Forester, R-5

This is my decision on the appeals of the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the amendment adding the Giant Sequoia National Monument Plan (Monument Plan) to the 1988 Sequoia National Forest Land and Resource Management Plan (Forest Plan). All appeals of the Monument Plan have been consolidated into one set of issues and one decision is being rendered. The issues were sufficiently similar to allow consolidation (Optional Appeal Procedures, Section 13(b)). The appeal reference numbers are abbreviated throughout this decision document by the last four digits of the tracking number for the notice of appeal (NOA).

Eleven appeals were submitted under the Optional Appeal Procedures and were considered in my decision. Also, four requests to intervene in one or more of the appeals were received and granted. Comments were received from two of those intervenors and were also considered in my decision. Listings of the appeals and their tracking numbers, and the intervenors, are included in Appendix A. Each appellant and intervenor will receive notification of my decision. The final appeal decision is available via the Web at <http://www.fs.fed.us/emc/appllit/nhappdec.htm> or in hard copy, upon request.

You signed the ROD for the Monument Plan on August 8, 2012, amending the 1988 Sequoia National Forest Land and Resource Management Plan. The Monument Plan amendment conforms to the 1982 planning regulations at 36 CFR 219 [1982, as amended] (ROD, p. 9). The 1982 planning regulations referenced by the Regional Forester were last published in the Code of Federal Regulations (CFR) on July 1, 2000¹. The record for the appeal to the Chief of the Forest Service was transmitted in conformance with the Optional Appeal Procedures at Section 15(a).

¹ The Giant Sequoia National Monument Management Plan was prepared under the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974 as amended by the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600 et seq.), the implementing regulations of the NFMA at 36 CFR 219 (77 FR 21260, April 9, 2012), and the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR 1500-1508).

NFMA's current implementing regulations at 36 CFR 219.17(b)(3) (77 FR 21270) allow the use of the provisions of the prior planning regulation, including its transition provisions (2000 Planning Rule at 36 CFR 219.35(a) and (b) (December 18, 2009). The transition provisions of the 2000 planning rule allow the use of the prior planning regulation promulgated in 1982.



Giant Sequoia National Monument Management Plan

The August 2012 Monument Plan is the single comprehensive management plan for the Giant Sequoia National Monument. It is a standalone document but is also a subset of the Sequoia National Forest Land and Resource Management Plan. The Monument Plan incorporates the direction provided by the Presidential Proclamation creating the Monument; amends and replaces, in its entirety, all previous management direction from the Sequoia Forest Plan that applied to the Monument; and complies with the 1990 Mediated Settlement Agreement (ROD, p. 9).

The Monument Plan is structured in three parts: Part 1 presents the Vision for the National Monument, including the desired conditions; Part 2 provides the Strategy for the National Monument, including identification of suitable land uses and activities, management strategies, and objectives; and Part 3 provides the Design Criteria, including standards and guidelines, and monitoring and evaluation procedures to be used during site-specific planning, decision making, and implementation. Approval of any project or activity must be consistent with the plan (16 U.S.C. 1604(i)). Project-level decisions will be informed by site-specific analysis through an open, public process (Management Plan, p. 7).

The Monument Plan is adaptive in that new knowledge and information can be analyzed and the plan amended, if appropriate, at any time. It provides overall intent and guidance, but also allows the flexibility needed for the Agency to work with the public and adapt management strategies to changing demands and conditions. This allows the latest science and public input to be considered at the time a project-level decision is to be made (Management Plan, p. 7).

Issues

This appeal decision is the outcome of a deliberative and extensive review process. My review of the appellants' concerns provides a response to issues involving complex regulatory and management issues. Although some issues raised in the appeals are not specifically cited in this decision, all appellants' concerns have been considered. My appeal review focused mainly on compliance of the ROD and FEIS with applicable law, regulation, and policy, as cited by appellants.

Appellants raised appeal issues concerning procedural and planning requirements, as well as a range of natural resource issues, which included soil and water resources; sensitive species; forest health; vegetation management; and old growth. Appellants contended the decision violates the Giant Sequoia National Monument Proclamation, National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), and a Mediated Settlement Agreement.

Appeal Decision

Your decision meets the requirements of applicable federal law, regulations, and policy. Attachment 2 describes the issues raised by appellants and where the record provides evidence to address those issues. I affirm with the following instructions your decision to select Alternative B, as modified with the addition of one element in Alternative E, from the FEIS and approve the Giant Sequoia National Monument Management Plan.



Standards and guidelines

Appellants contend that standards and guidelines for treatment priority are inconsistent with the Decision Tree (Monument Plan, p. 81, Figure 4) and inadequate to comply with the Proclamation. It is contended that the decision tree narrative states that managed wildfire is the preferred tool, but the strategies in Tables 10 and 20 of the Monument Plan discuss prescribed fire as the tool of choice. NOA 0005, pp. 24-26; NOA 0006, pp. 24, 26, and 46.

I find that the Monument Plan is indeed confusing with respect to the priority for use of treatment tools. The stated priority of tools in Part 2 of the plan (Strategy) is to use “the following tools, in order of priority: prescribed fire, mechanical treatment, managed wildfire (when available)” (Monument Plan, p. 45, Table 10; see also p. 48, Table 20). However, in Part 3 (Design Criteria), the Decision Tree (p. 81, Figure 4) indicates that the highest priority for favored tools will be wildfires managed for resource benefits followed by prescribed fire, mechanical treatment without tree removal, then mechanical treatment with tree removal, and finally, no action. In the Record of Decision (p. 16) this matter is further confused by stating that the priorities for Alternative B (i.e., the Plan) are: (1) Prescribed fire, (2) Mechanical treatments, and (3) Managed wildfire.

Appellants also contend management standards for overlapping land allocations/management areas (i.e., WUI (Wildland Urban Intermix) Defense Zone, WUI Threat Zone, and TFETA (Tribal Fuel Emphasis Treatment Area)) are unclear with regard to how appropriate management direction is determined when they overlap with land allocation/management areas such as groves, old forest emphasis areas, and other “protected areas.” NOA 0005, pp. 47-48; NOA 0006, p. 48.

Based on my review of the appeal record, I find the Monument Plan has not clearly described the applicable standards and guidelines for areas with overlapping land allocations/management areas. It is Forest Service policy that publications be written in appropriate plain language (FSM 1630.3). Therefore, plan standards and guidelines must be written so the intent is clear.

The direction in Chapter 2 of the Monument Plan pertaining to management direction for land allocation overlap (Monument Plan, pp. 31-34) is unclear, specifically when WUI Defense Zone or the WUI Threat Zone areas overlap with Southern Sierra Fisher Conservation Area (SSFCA), old forest emphasis areas, Home Range Core Areas, or TFETA. The direction for Land Allocations and Management Areas of the plan, on page 31, states that the area with the most restrictive direction is given priority. However, Table 3, “Dominant Management Direction When Land Allocations/Management Areas Overlap” on page 33 shows which allocation direction must be followed when land allocations overlap. Table 3 appears to be inconsistent with the controlling direction on page 31.

Given my findings regarding the above contentions concerning clarity of standards and guidelines, I am instructing that clarification of the Monument Plan in Parts 2 and 3 be made to increase land manager and public understanding of the management intent and to improve clarity and ease of implementation. The clarification should reconcile the differences between the lists of priorities for application of prescribed fire, wildfire, and different types of mechanical treatments. Determination of the exact mix of those treatments is clearly a site-specific and time-



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specific decision to be made on a project by project basis. Therefore, the Monument Plan must clearly describe the decision process a manager might go through and how the priorities for vegetation treatments will be applied. Apparent inconsistencies in how management direction is prioritized for overlapping land allocations/management areas must also be rectified.

Hazard tree removal

Appellants contend the standards and guidelines for hazard tree felling or removal do not comply with the Proclamation because they allow the felling and removal of any size hazard tree to deviate from all vegetation management standards and guidelines. More specifically, appellants contend the standards and guidelines regarding hazard tree felling and removal are not consistent with the criteria in the Monument Plan for determining a clear need for removal of trees. NOA 0005 and NOA 0006, pp. 21-24.

The Monument Proclamation clearly allows for the removal of trees determined to be hazards to public safety. "Removal of trees, except for personal use fuel wood, from within the monument area may take place only if clearly needed for ecological restoration and maintenance or *public safety*." (emphasis added) Monument Plan, Appendix I, p. 156. Consequently, the Monument Plan includes a public safety criterion to be considered when determining whether tree removal is needed. That criterion states the following:

If keeping one or more trees on site would create a public safety hazard or attractive nuisance. Forest Service policy is to eliminate safety hazards from developed recreation sites, including trees or limbs identified as hazardous (FSM 2332). Depending on the situation, down trees in a developed recreation site may present a hazard if people are likely to climb on them and potentially fall and get hurt (becomes more likely if the logs are large and/or they are piled on top of one another.

Monument Plan, p. 79.

The criterion is specific to determining a need to remove trees that are safety hazards from developed recreation sites. However, vegetation standard and guideline #4 instructs to "Fall *and remove* hazard trees along Maintenance Level 3, 4, and 5 roads and within or immediately adjacent (tree falling distance) to administrative sites." (emphasis added) Monument Plan, p. 82. Although the standard is not necessarily inconsistent with the Monument Proclamation, the appellants are correct that it is inconsistent with the criterion provided in the Monument Plan for determining a clear need for tree removal, as the Proclamation requires.

You are instructed to correct the Monument Plan to provide consistency between the clear need criteria and the standards and guidelines as they pertain to removal of hazard trees that are a threat to public safety.



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This decision is the final administrative determination of the Department of Agriculture, unless the Secretary, on his own initiative, elects to review the decision within 15 days of receipt (Optional Appeal Procedures, Section 17(d)). By copy of this letter and notification of availability on the Web, I am notifying all parties to this appeal.



JAMES M. PEÑA

Reviewing Officer for the Chief

Enclosures: Attachment 1 – List of Appellants and Intervenors
Attachment 2 – Issues Reviewed and Decision Affirmed

cc: Appellants and Intervenors
Region 5 Appeals

