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Forest Supervisor
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appeals-pacificsouthwest-sequoia@fs.fed.us Subject: Ponderosa Urban Interface Project

RE: Appeal: Ponderosa Urban Interface Project DN FONSI

NOTICE OF APPEAL, STATEMENT OF REASONS & REQUEST FOR RELIEF

Dear Appeal Deciding Officer,

On January 31, 2007, District Ranger Priscilla Summers signed a Decision Notice (DN) for an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) to authorize thinning of trees up to 12 inches dbh (with 'incidental' removal of hazard trees of any sizes in different areas) as a means of fuels reduction around the community of Ponderosa.

NOTICE OF APPEAL

Pursuant to 36 C.F.R. § 215.14, Sequoia ForestKeeper appeal the DN and FONSI for the Ponderosa Urban Interface Project because the DN neglects important issues described below and jeopardizes the ecological health and integrity of the Sequoia National Forest and the Giant Sequoia National Monument.

This appeal is filed in a timely manner. The DN was signed on February 13, 2009. This appeal is filed today, April 6, 2009.

Appellant Sequoia ForestKeeper is a non-profit conservation corporation whose mission is to protect and restore the ecosystems of the Southern Sierra Nevada including, but not limited to, the Giant Sequoia National Monument and Sequoia National Forest through monitoring, enforcement, education, and litigation. Sequoia ForestKeeper and its more than 800 members and supporters have vital interests in protection of wildlife and imperiled species that occur on the public lands in the Sequoia National Forest. Sequoia ForestKeeper claims standing pursuant to 36 C.F.R. § 215.13(a) because it submitted timely substantive comments on the original EA and Supplemental EA for this project on July 25, 2008, and has a direct mission to support and

monitor decisions on the Sequoia National Forest.

REQUEST FOR STAY

In accordance with 36 C.F.R. § 215.9(b) all implementation of this project must cease until 15 days after the appeal is decided.

REQUEST FOR RELIEF

Appellant respectfully requests that the Forest Service withdraw the decision being appealed and prepare an EIS to more fully investigate and disclose the environmental impacts and tradeoffs associated with this project. Other changes that we support include queuing the project until an acceptable Monument Management Plan has completed the NEPA process, non-removal hazard tree prescriptions, and prescriptions that protect communities by treating areas within 200 to 300 feet of structures per Forest Service fire science by Jack Cohen. As discussed further below in this appeal, our primary proposal for this and future hazard tree projects is to cut down the hazard tree, thus rendering it harmless, then leave it behind to serve as habitat. This is not only more environmentally sound, but also removes the conflict of interest in tree selection.

STATEMENT OF REASONS

In issuing this EA, DN, and FONSI, the Forest Service has violated the Presidential Proclamation of 2000 that created the Giant Sequoia National Monument, Endangered Species Act, the National Forest Management Act, The Mediated Settlement Agreement, and the National Environmental Policy Act. The failures to consider all reasonable alternatives and the cumulative impacts with other projects both public and private, among many other errors discussed below, render this decision invalid.

MEDIATED SETTLEMENT AGREEMENT STRICTURE AGAINST TREE REMOVAL IN GROVE AND GROVE INFLUENCE ZONE

The Decision Memo for the Ponderosa Project fails to comply with the requirements of the Mediated Settlement Agreement (MSA) by implementing a project within the Grove Influence Zone boundary. The Grove Influence Zone Boundary is dependent on the location of grove boundary. The MSA requires that the Forest Service will determine each grove boundary and the definition of a grove through a NEPA process, but there has been no NEPA process to define each grove boundary. The MSA cover letter of March 8, 2002 says, “Basically the MSA does these four things: 1) It makes some land allocations on an interim basis pending LMP amendments (e.g.: giant sequoia grove delineation and management)” The MSA page 7 says, “Interim Protection – Until final grove boundary for each grove is determined in accordance with this agreement, that grove, based on the most recent data for the location of giant sequoias, shall be protected, including an interim 500 foot buffer extending from a hypothetical perimeter line around the outermost known giant sequoias in the grove. This will be a no logging, restricted mechanical entry area.” “An additional zone of 500 feet called the grove influence zone shall be

protected from logging activities inconsistent with section B.2.d.(1) of this agreement prior to the identification of final administrative grove influence zone boundaries” (MSA pg 8) “Within the Grove Influence Zone, only Regulation Class II, single tree, small group uneven-aged management silvicultural prescriptions will be permitted both before and after final administrative Grove Influence Zone boundaries are identified: provided , however, that if a more protective management designation also applies to the area, or portions of the area (such as streamside management zones, SOHAs, etc.), the more protective designation shall govern what, if any, logging activity is allowed in the Grove Influence Zone. ” (MSA pg 25 at B.2.d.(1)) Also, since Marianne Emmendorfer did not sent maps and GPS definitions of the final grove boundaries completed under the MSA as we were told at the Vegetation Management Meeting February 12th, 2009, the Ponderosa Project may be implementing tree removal inside a grove boundary in violation of the MSA.

MONUMENT PROCLAMATION STRICTURE AGAINST TREE REMOVAL

The Proclamation that created the Monument says, “These forests need restoration to counteract the effects of a century of fire suppression and logging.” and “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.” The Proclamation prohibits tree removal except in the extraordinary circumstances when ecological restoration can be achieved along with either maintenance or public safety.

The Project documents fail to address how this project provides ecological restoration of the project area through the implementation of this project. Therefore, this project fails to comply with the tree removal stricture imposed by the Monument Proclamation of April 15, 2000 (the dominant authority for lands included within the Monument).

PROCLAMATION REQUIREMENTS FOR SEQUOIA MONUMENT

THE MONUMENT’S PURPOSE

Giant Sequoia National Monument has one dominant purpose: protection of the objects found within the Monument that the Presidential Proclamation creating it identifies as justifying its creation. The Proclamation states unequivocally that the monument is created “for the purpose of protecting the objects identified in the above preceding paragraphs” (Proc., pp. 3-4).¹ The Antiquities Act that authorizes monuments requires that the objects be “of historic or scientific interest” and prohibits injury to them. 16 U.S.C. 431, 433. The Proclamation “set[s] apart and reserve[s]” (Proc. p. 3) the federal lands within the Monument’s borders, distinct from federal holdings that are not subject to this purpose. Management of the reserved land, by the

¹ This analysis cites to the copy of the Proclamation (“Proc.”) and the “Background Information on Giant Sequoia National Monument” (“Backgr.”) released by the White House Press Secretary and the Chair of the White House Council on Environmental Quality on the date of the monument’s creation; pages cited here for the Proclamation refer to those in the lower left corner. A scan of those documents is attached.

Secretary of Agriculture, must implement the protective purpose (Proc. p. 4). To the extent that management addresses other issues, it is explicitly “subject to the overriding purpose of protecting the scientific and historic objects described in the Proclamation” (Backgr. p. 8). Limited exceptions are allowed for “public safety” (Proc. p. 4) and “emergency” (Proc. p. 5).

The Proclamation describes a very broad set of objects to be protected, including “plant communities ranging from low-elevation oak woodlands and chaparral to high-elevation subalpine forest” (Proc. p. 2). Among the many other objects listed are “lithic scatters, food-processing” and other archaeological sites (Proc. p. 3), “remnants of early Euro-American settlement” (Proc. p. 1), limestone caves (Proc. p. 3), meadow sediments (Proc. p. 3), wildlife from the Pacific fisher to the California condor (Proc. p. 2), the Kern Canyon (Proc. p. 2), granitic domes and spires (Proc. p. 1), and “fungi and insects” (Proc. p. 2).

Presumably because of these manifold objects, the Proclamation refers in some places to having “purposes” in the plural. For instance, it limits motorized access “[f]or the purposes of protecting the objects included in the monument” (Proc. p. 5). However, protection of the objects within the monument is the only thing described as a “purpose” or set of “purposes” anywhere in the Proclamation.

Where other activities are mentioned in the Proclamation as appropriate for the Monument, they are made explicitly subordinate to protection of the monument’s objects. The management plan is to “encourage public and recreational access and use consistent with the purposes of the monument” (Proc. p. 4). A transportation plan is mandated “that provides for visitor enjoyment and understanding about the scientific and historic objects in the monument, consistent with their protection” (Proc. p. 5). Similarly, as noted above, “for the purposes of protecting the objects included in the monument, motorized vehicle use will be permitted only on designated roads” (Proc. p. 5).

MONUMENT PROCLAMATION REQUIREMENT TO PROTECT ALL OBJECTS OF INTERESTS

The analysis of the impacts of the Project fail to consider the impacts of the Project to all of the objects of interest defined in the Proclamation. “Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases, shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.” “NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Giant Sequoia National Monument, for the purpose of protecting the objects identified in the above preceding paragraphs, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled

"Proposed Giant Sequoia National Monument" attached to and forming a part of this proclamation." (Clinton 2000)

The Project documents fail to address how this project protects each of the objects of interest specified in the Proclamation through the implementation of this project. The Project documents discuss the impacts of the project to only the species of plants, birds, and animals that the region conventionally analyzes outside the Monument without analyzing the impacts to the other objects to be protected by the Proclamation. This is a major failing of the Project which necessitates the development of a full EIS.

FAILURE TO ADEQUATELY CONSIDER CUMULATIVE IMPACTS

This EA is presumptively inadequate because it does not include any discussion of the direct, indirect and cumulative impacts from the effects of the activity planned on adjacent public and private lands. Responses to Comments #8 page 2 says, "there are no proposed projects fitting the description given." However, the SOPA lists the Recreation & Administrative Site Hazard Tree Removal Project in the Ranger District and the Piute Fire Roadside Hazard Tree Removal Project as Hazard Tree Removal projects, neither of which was evaluated in the cumulative impacts analysis. Also, three other projects most likely have hazard tree removal components – the ALTA SIERRA FUELS REDUCTION PROJECT, the VALLEY VIEW FUELS REDUCTION PROJECT, and the BUCKHORN FUELS REDUCTION PROJECT.

In light of the significant direct, indirect, and cumulative effects associated with activities approved in the EA, on both the forest's general health and on listed and sensitive species, an EIS is required. *See Blue Mountain Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214-16 (9th Cir. 1998) (Individually minor but collectively significant actions taking place over a period of time raise substantial questions about whether proposed activities result in significant environmental impacts, and therefore an EIS must be prepared). Not only is an EIS required, but the scope of the alternatives must also be scaled back considerably to ensure that the environment is not irreparably degraded and a range of lower impact fire risk reduction alternatives must be considered.

This failure to consider the cumulative impacts of all past, present, and reasonably foreseeable future projects was fairly recently addressed by the Ninth Circuit. In *Klamath-Siskiyou Wildlands Center v. Bureau of Land Management*, 387 F.3d 989 (9th Cir. 2004), the court struck down very similar EA's to this one, in that they had given only cursory analysis of the cumulative impacts, rather than the required detailed and comprehensive "hard look" at the broader effect of all actions in the area. There, as here, the EA was "tiered" to the forest management plan in an effort to evade this requirement, and the court held that it was inadequate to do so. *Id.* at 997 (although the RMP contains generalized cumulative impacts analysis, the EA must contain specific analysis of the incremental impacts of all actions).

In this instance, there is no NEPA document that discloses the Forest-wide impacts of implementing the Framework thinning strategy across the greater landscape. The Framework

itself did not include any site specific disclosure of impacts. The Framework is a broad programmatic planning document that is not intended to make decisions on the ground. That is how we have gotten this far without a proper discussion of impacts, because then the Forest Service merely addresses impacts at the project level, without ever really looking at a large enough area to see the incremental impacts on the forest's species, ecosystems, and processes. As the Ninth Circuit has made abundantly clear, this practice will no longer be tolerated, as it not only violates NEPA, but also leads to violations of NFMA, the ESA, and other laws and regulations.

The question that needs to be answered is “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.” (*California v. Norton*, 311 F.3d 1162 (9th Cir. 2002). 40 C.F.R. § 1508.27(b)(7))

In the Sequoia National Forest hazard logging is an ongoing activity contemplated in forest planning. (The “Sequoia National Forest Hazard Tree Identification Guidelines” state “These guidelines provide for the annual abatement of trees that pose safety hazards on the Sequoia National Forest.”) Because hazard tree removal occurs often, particularly in popular areas, it is highly likely to have a significant impact on the human environment. And because hazard tree removal has occurred in the past and is foreseeable in the future, there is no reason for the cumulative impacts of these projects to escape NEPA analysis. For example, if there are hazard trees continuing down the road from the project area boundary that the Forest Service will soon find the need to remove, the cumulative impacts should be assessed together. Assessing the Ponderosa project area separately constitutes an arbitrary attempt to avoid a significance finding “by breaking [forest-wide hazard logging] into small component parts.” The courts have confirmed that this is not a legitimate means of arriving at a CE. See *Foundation for Global Sustainability Incorporated's Forest Protection and Biodiversity Project v. McConnell*, 829 F. Supp. 147 (W.D.N.C. 1993).

The cumulative impacts from past and future logging, road sanitation and other management activities in the project area certainly need to be considered as well. The court in *League of Wilderness Defenders-Blue Mountains Biodiversity Project v. U.S. Forest Service*, 2004 WL 2642705 (D. Or. 2004), addressed this problem and suggested a road hazard maintenance CE is inappropriate when there has recently been logging of a similar type in the project area. Again, because hazard tree removal is an annual activity in the project area, there are likely impacts from recent past and foreseeable future logging.

An EIS is also needed to assess the cumulative impact of fire, roads, and the project on habitat. Reducing canopy cover and forest structure by removing trees in a 430-foot wide along roadway and trail corridors will greatly add to habitat loss and fragmentation, creating cumulatively significant impacts. These factors must be candidly considered together in an EIS to satisfy NEPA.

The Wildlife BA BE says, “Harvest of commercial sized trees in more recent entries 25 years ago to present have been limited to the removal of roadside hazards or those adjacent to facilities as required by regulation and policy. The most recent hazard tree removal entry occurred in 1995 and incorporated approximately three miles of existing roadway in the project area, including portions of Western Divide Hwy, FS Road 21S78, 21S79, (200 feet on either side of the road). Most hazard reduction actions have resulted in minimal loss in large tree component and existing overhead canopy since the trees removed were already dead and traditionally located in open and previously modified sites (i.e. roadway, facilities).” The BA BE fails to consider the Hazard Tree Projects implemented in the Quaking Aspen Campground, the North Road Hazard Tree project approved in 2008, and the Western Divide Hazard Tree project completed in 2008.

We expect to have an opportunity to comment on a proper cumulative impacts analysis, as well as all scientific data relied upon in conducting that analysis, as is our basic right under NEPA. The documents provided thus far have not afforded this real opportunity for public participation.

INSUFFICIENT PLANNING DOCUMENTS LEAVE UNCERTAINTY - NOT A ROUTINE PRESCRIPTION

“Treatments within this allocation have the highest priority for the reduction of fuels to prevent the potential loss of life and property from wildland fire and to interrupt wildland fire spread and reduce fire severity. It will lead to ecosystem restoration by reducing fuel build up in order for fire to play a more natural role in the future where possible.” (DN FONSI pg 3)

Forest Service fire expert Jack Cohen states categorically that backcountry logging “does not effectively change home ignitability.” (See Safe at Home - Making the Federal Fire Safety Budget Work for Communities – page 3 <http://www.nrdc.org/land/forests/safe/contents.asp> also from the Testimony of Nathaniel Lawrence Natural Resources Defense Council on S. 2593, THE FOREST LANDSCAPE RESTORATION ACT – April 1, 2008} Cohen points to a “40-meter zone” of the home and its immediate surroundings that determines home ignitability – not treating miles from the home.

The best available scientific evidence is unclear. There is little science to support the removal of biomass for forest restoration because restoration requires more than just a mix of tree sizes. (See Testimony of Nathaniel Lawrence Natural Resources Defense Council http://www.nrdc.org/land/lan_08040101.asp on S. 2593, THE FOREST LANDSCAPE RESTORATION ACT submitted to THE COMMITTEE ON ENERGY AND NATURAL RESOURCES OF THE UNITED STATES SENATE, for its hearing on April 1, 2008)

In determining the potential for significant effects, agencies and the courts are directed to examine “the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.” 40 C.F.R. § 1508.27(5); see also *Jones v. Gordon*, 792 F.2d 821 (9th Cir. 1986).

This project lacks the required Monument Management Plan. This makes the possible effects of tree removal highly uncertain and thus there is inadequate formal guidance regarding proper implementation of such a project within the Monument at this time.

Tree removal increases the risk of severe fire as it generates slash, reduces canopy cover, increases temperatures, dries soil, promotes highly flammable brush growth and increases wind speeds in the forest. (See “Fire Weather” . . . A Guide For Application Of Meteorological Information To Forest Fire Control Operations, by Mark J. Schroeder, Weather Bureau, Environmental Sciences Administration, U.S. Commerce Department and Charles C. Buck, Forest Service, U.S. Department of Agriculture) (See also “Sequoia National Forest Hazard Tree Identification Guidelines” Appendix F) Moreover, proposed project activities include burning slash. Without either a Fire Management Plan for the Sequoias or an EIS for this project, the impact of tree removal and fuel treatment on the area’s fire regime is highly uncertain. As it stands, there is no documentation, guidance, or consideration regarding the impacts of tree removal and fuels treatment in the project area. The uncertainty of the effectiveness of fuel treatments on fire regime is highlighted by the testimony by Nathaniel Lawrence submitted to the Committee on Energy and Natural Resources of the United States Senate for its hearing on April 1, 2008 on The Forest Landscape Restoration Act (Exhibit A).

“We know quite a lot about how to make homes and other buildings survive fires. Thinning forests away from structures is not the answer. The Cerro Grande fire in Northern New Mexico vividly illustrates this. Shortly after the fire, Forest Service researcher Jack Cohen investigated the loss of 200 homes from the fire in Los Alamos. Cohen found that the fire entered the town as a low intensity ground fire. House after house burned to the ground while nearby trees survived. The cause was neither big flames nor wooden roofs, but flammable material on, adjacent to, and near the buildings.² Cohen and others have shown that, while homesites that are not fire-ready are destroyed by even low intensity burns, well-prepared ones survive even very hot wildfires. NRDC has summarized the needed measures in a report submitted with this testimony and based on a study led by former California State Fire Marshall Ron Coleman (Exhibit B).³ In sum, trees have to be kept thinned within a few hundred feet of homes, vegetation and other flammable material must be pulled back from around buildings, and the roofs, siding, doors, vents, eaves, and windows of structures need to be designed or retrofitted to withstand heat and sparks. When these measures are taken, home survival is very high in any wildfire.” (Nathaniel Lawrence April 1, 2008)

Merely tiering the project to the 1988 Sequoia National Forest Land and Resource Management Plan (LRMP) and the Sierra Nevada Forest Plan Amendment (SNFPA 2001)

² Cohen, J. 2000. Examination of the Home Destruction in Los Alamos Associated with the Cerro Grande Fire, July 10, 2000. Online at: http://www.nps.gov/fire/public/pub_publications.cfm.

³ Mall, A. and F. Matzner. 2007. Safe at Home: Making the Federal Fire Safety Budget Work for Communities. NRDC. New York, NY. Online at: www.nrdc.org/safeathome.

guidelines does not remedy the problem. The LRMP is based on decidedly out-dated guidelines from 1971 (see the May 1, 1998 R-5 directives.) Because of this, the LRMP itself, as well as the SNFPA, require a Fire Management Plan for the Sequoia National Forest. Since the Sequoia National Forest Fire Management Plan 2004-2005 was ruled illegal in *California, ex. Rel. Lockyer v. US Forest Service* (2005 WL 1630020 (N.D.Cal. 2005)) and no plan replacement has gone through the required NEPA process, the Forest Service is without a document to tier to and therefore must complete an EIS for this project.

Finally, there is substantial uncertainty as to which trees will be removed. Although the Decision Memo states that some trees over 12 inches dbh will be removed, it does not provide the standards to be used in deciding which ones to remove or leave in place. This project cannot be approved without more specificity regarding this extremely important matter.

POTENTIAL FOR ADVERSE IMPACTS ON AT-RISK SPECIES CONSTITUTES EXTRAORDINARY CIRCUMSTANCES

“Based on the analysis documented in the *Biological Assessment/Biological Evaluation for the Ponderosa Urban Interface Project* (Galloway, 2008), the Proposed Action along with proper implementation of stated design features resulted in the following determinations: A determination of “May affect but is not likely to result in a trend toward Federal listing” was rendered for the California spotted owl, great gray owl, goshawk, fisher, marten, mountain yellow-legged frog, and the relictual slender salamander.” (EA pg 19)

NFMA requires the National Forests to provide viable populations of wildlife and fish. Also, NFMA requires the Sequoia NF to adhere to the monitoring requirements of its Forest Plan. There is no data to tell how trends in MIS or TES terrestrial populations are doing.

Without reliable hard data on populations of MIS species, any disturbance or loss of habitat could cause populations to fall below what is considered viable. The Sequoia NF has no accurate and up-to-date baseline population data from which to measure the impact that the activity in the project area would have on the overall forest population.

The Sequoia NF has failed to conduct the necessary “habitat viability studies” necessary to allow the Sequoia NF to substitute habitat as a proxy for actual wildlife trend monitoring. The yearly Sequoia NF monitoring reports do not adequately show population trends for MIS species. Without adequate pre-decisional monitoring, the impacts from the proposed activities can not be documented or analyzed.

This project area includes both candidates for Federal listing (Pacific fisher) and Forest Service sensitive species (northern goshawk, California spotted owl, American marten, and Pacific fisher); it is in the Southern Sierra Nevada Fisher Conservation Area. While the FS did consider some of the impacts of the project on these species in a Biological Assessment (BA), the potential for adverse cumulative impacts on these species still needs to be assessed in an EIS.

Furthermore, the consideration the Forest Service has offered is insufficient, leaving open the potential for significant impacts that must be addressed in an EIS. The Service summarily asserts that this project will not have significant impacts on canopy cover or habitat because the removal will be dispersed over many acres. This raises three problems:

The excuse that few trees will be removed relative to the entire project area implies averaging the impact of trees removed over the area acreage. Because “any adverse environmental effect could be ‘diluted to insignificance’” by this kind of averaging, it has been ruled “unreasonable” by the Ninth Circuit. See *Oregon Natural Resources Council Fund v. Brong*, 2007 WL 2104180 (9th Cir. 2007). Thus the principal justification the Forest Service offers for a finding that there will be no significant impact to sensitive species habitat (as well as to other adverse effects of canopy reduction, such as increased fire risk) is invalid.

“The Ponderosa Urban Interface Project would not remove large live trees, nor result in substantial changes to existing canopy.” (Wildlife BA BE pg 24)

The Forest Service claims there is not significant impact on wildlife because the project does not remove large ‘live’ trees nor result in substantial changes to existing canopy, but the EA failed to do a cumulative impacts analysis of the canopy loss across Sequoia’s Southern Sierra Fisher Conservation Area, so it is impossible for the agency to know what the cumulative impacts would be on this critical habitat for the Pacific fisher.

Also, while the Project may not remove large live trees, the project proposes to remove an unspecified number of large supposedly ‘dead’ trees – the very trees in which the Pacific fisher established its dens.

“Hazard Tree Reduction projects have not resulted in substantial reduction or degradation of habitats considered suitable for these species. Past hazard reduction projects have occurred within a narrow band of habitat facing roadways or recreation sites. Hazard reduction actions have also included mitigations to limit the potential for disturbance from operations, and have included the use of appropriate best management practices and riparian protection measures where needed.” (Wildlife BA BE pg 26)

The Forest Service also claims there will be no significant impact on wildlife because animals do not like to den or nest near roads. First, this contradicts the Forest Service’s claim that there is no habitat fragmentation occurring in the area. It is also a perverse characterization of the problem. This habitat area is already in peril because of the road—removing trees that provide cover and nesting sites will increase the area disfavored by nesting wildlife. One can see the slippery slope beginning to form: In the future, after animals are driven farther from the road by this reduction in habitat, the Forest Service will be able to log the area because there will be no wildlife to be impacted. An EIS must be prepared to give a valid answer to all of these issues regarding significant effects.

FOREST CARNIVORES MAY BE IMPACTED DUE TO LOSS OF HABITAT ELEMENTS

Although the EA claims that the Ponderosa Project maintains large trees, snags, and logs throughout the project area, it is essential that the Forest Service take a detailed and careful look at the likely impacts on the fisher, marten and their habitats, since these carnivores require more in their habitat than these characteristics.

The status of the Pacific fisher in the Sierra Nevada is highly imperiled. The U.S. Fish and Wildlife Service recently concluded that the west coast population of the fisher, including the isolated population in the southern Sierra Nevada, warrants listing under the Endangered Species Act. (USDI Fish and Wildlife Service 2004). A report co-authored by leading Forest Service researchers concluded that the southern Sierra fisher population “has a very high likelihood of extinction given reasonable assumptions with respect to demographic parameters.” (USDI Fish and Wildlife Service 2004, pp. 18790-91; Lamberson *et al.* 2000).

Fisher require old forest stands with a dense, structurally complex multilayered canopy (Ruggerio *et al.* 1994, p. 53). Pacific fisher rest sites are associated with high shrub cover as well as forest cover (Zielinski *et al.* 2004, p.482). We ask that the Forest Service minimize project impacts to fisher by considering impacts of surface and ladder fuel reduction on nearby resting and denning sites. The EIS should map the location of multi-story forest stands and map the locations with high shrub cover in the project area (identifying which are plantations). In key areas such as old forest emphasis areas within the project area, we ask that the Forest Service maintain multi-story stands where high suitability habitat for fisher exists.

The Forest Service must comply with the Proclamation direction to protect the Monument and prevent old forest habitat fragmentation, to assess fragmentation issues in the biological evaluation, to assess potential impacts on habitat connectivity, and to retain forested linkages as part of project-level analysis. The impacts of proposed fuelbreaks on habitat connectivity and fragmentation within the project area would not be in keeping with the protective intent of the Proclamation. An EIS must be prepared to give a valid answer to all of these issues regarding significant effects.

TREE REMOVAL CREATES A UNIQUE RISK TO HUMAN ENVIRONMENT AND RENDERS THE DECISION ARBITRARY

While it may be Forest Service policy to abate hazardous conditions in the forest, the Service has no responsibility to protect people from falling trees. 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 take care of hazard trees alongside the road, but has discretion to balance safety and wildlife habitat considerations. The Forest Service does have a responsibility not to make existing land and road conditions more dangerous, and to comply with environmental laws.

40 C.F.R. § 1508.27(5) requires assessing “the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks” before finding no significant effects. The instant project poses many unique risks, including:

- (1) Increased risk of fire. Tree removal reduces canopy cover, increasing temperatures, drying soil, promoting brush growth and increasing wind speeds in the forest. All of these factors will increase the risk of catastrophic forest fires in this popular area. Logging also contributes to global warming which leads to more severe fires, according to Forest Service data. (See: Peter Fimrite, “Climate change, forest management results in bigger, hotter fires.” *San Francisco Chronicle*. August 9, 2007.)(See “Fire Weather”)
- (2) Dangers of logging. Despite best management practices, logging was the second most dangerous job in America in 2005. (According to the Bureau of Labor Statistics, 90.2 of every 100,000 loggers die annually from their work.)
- (3) Hazard of large trucks on forest roads. Logging trucks over 30 feet king-pin to rear-axle are incapable of traveling on the tight turns of area roads without “off-tracking” into other lanes.

By allowing large commercial trucks associated with implementation of the project, the Forest Service is creating a greater risk to human life and the human environment than is posed by hazard trees. The Forest Service not only failed to consider these risks, in violation of 40 C.F.R. § 1508.27(5), but also violated its duty under the Administrative Procedures Act (APA) to make a reasonable decision and articulate a rational basis for it.

If the goal of this project is purely to protect human safety, there would be less danger and less habitat loss if the sections of trees that have fallen across roads and trails were cut away and removed after the trees fell. The forest could put up warning signs at entrances to the forest advising persons who enter that they enter at their own risk.

FAILURE OF THE FOREST SERVICE TO APPLY CUMULATIVELY OVER MULTIPLE PROJECTS FAILS TO ADEQUATELY CONSIDER PROJECT IMPACTS

“Best Management Practices, as described in this document have been effective in protecting beneficial uses within the affected watersheds.” (Hydrology report pg 6)

Section 313 of the CWA requires all federal agencies to comply with state water quality standards, including a state’s antidegradation policy. 33 U.S.C. § 1323(a). The Ninth Circuit has repeatedly affirmed that federal agencies must, consistent with this statutory provision, ensure that any activity on federal lands complies with water quality standards. *See Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1153 (9th Cir. 1998); *Nat’l Wildlife Fed’n v. U.S. Army Corps of Engrs.*, 384 F.3d 1163, 1167 (9th Cir. 2004)

36 CFR 228-a requires the Forest Service to minimize adverse impacts. The Forest Service must not violate its duties under the Organic Act and 228 regulations by approving the project without sufficient evidence that the project was reasonable and complied with all federal environmental laws. At a minimum, the agency should not approve the project until it is satisfied that the project is economically and environmentally reasonable. The federal government must satisfy its own obligation to minimize adverse environmental impacts. All reasonable Alternatives must be studied and fully reviewed.

The EA fails to provide a cumulative impacts analysis of past, present, and future projects and the on-the ground evidence of past actions indicates that the BMPs are not working and have not been effective. Watershed locations including, but not limited to, Clicks Creek, the Kern River, and the dam at Isabella Reservoir are filled or are filling with sediment, are clear evidence of the failure of the BMPs to protect watersheds. Adding more sediment to the already overloaded streams in the watershed would be adding insult to injury.

“[T]here are no reliable data indicating that “Best Management Practices” (BMPs) consistently reduce the adverse effects of significant soil and vegetation disturbance on aquatic resources to ecologically negligible levels, especially within the context of currently pervasive watershed and aquatic degradation (Ziemer and Lisle, 1993; ISG, 1999; Espinosa et al., 1997; Beschta et al., 2004).” (Rhodes 2007)

“These practices [BMPs] were considered conventional, economical, reasonable, and acceptable to their practitioners. In practice, resolution of resource conflicts was usually decided in favor of commodity interests at the expense of aquatic resources. Application of BMPs then became viewed as a justification for proceeding blindly with resource extraction when obviously insufficient attention would be given to assessing BMP effectiveness or monitoring trends of degradation in aquatic resources.

Much of the failure to protect salmon habitat can be attributed to the philosophy of selecting a BMP for any proposed action. There is more emphasis given to selecting a method for developing any site than to the cumulative impact to the entire watershed and stream systems. This process could be more appropriately names “least management practices.” . . . Therefore, the least effective practices for protecting salmon habitat are frequently applied. . . . BMPs do not deal with cumulative effects. . . . The reality is that BMPs cannot protect aquatic resources from the effects of excessive development.” (Espinosa et al., 1997)

“BMPs are designed to reduce pollutant discharge from a single project but may not solve the larger problem concerning the cumulative effect of multiple projects.” (Ziemer and Lisle 1993)

SCIENCE INDICATES THAT REMOVAL OF SMALL DIAMETER TREES CAUSES IMPACTS AND PREVENTS NATURAL RECOVERY

“The collateral impacts of fuel treatments are of considerable concern due to the existing aquatic context. Across the West, aquatic systems are significantly and pervasively degraded (Rieman et al., 2003; Beschta et al., 2004). As a result, many populations of aquatic species, including most native trout and salmonids, have undergone severe contractions in their range and number and remaining populations are now imperiled and highly fragmented (Frissell, 1993; USFS and USBLM, 1997a; Kessler et al., 2001; Behnke, 2002; Bradford, 2005). Additional damage to watersheds and aquatic systems reduces the prospects for the protection and restoration of imperiled aquatic species (USFS and USBLM, 1997c; USFWS, 1998; Karr et al., 2004).” (Rhodes 2007)

“Mechanized fuel treatments also incur ecological costs by damaging soils, vegetation and hydrologic processes, as proponents of fuel reduction treatments have acknowledged (e.g., Allen et al., 2002; Graham et al., 1999; 2004; Agee and Skinner, 2005). Mechanical fuel reduction treatments typically involve the same suite of activities as logging, with the same set of impacts to soils, runoff, erosion, sedimentation, water quality, and stream structure and function. These effects, their mechanisms, and their aquatic impacts have been extensively and repeatedly documented across the West (e.g., Geppert et al., 1984; Meehan, 1991; USFS et al., 1993; Rhodes et al., 1994; CWWR, 1996, USFS and USBLM, 1997a; c; Beschta et al., 2004). Watershed damage ultimately translates into aquatic damage.” (Rhodes 2007)

“Thinning these forests is likely to lead to renewed tree regeneration, hence a need for renewed thinning, in a potentially endless, costly and futile cycle that does not restore the forest.” (Baker et al. 2006)

“Accelerated short and long-term sediment production from roads is of particular concern in most watersheds because it exacerbates the effects of severe fires on soil, aquatic habitats, and water quality (CWWR 1996)” (Beschta et al. 2004)

“[M]uch available information on watershed response to fire is from burned watersheds that have also been affected by roads, logging, and grazing. All of these land uses can significantly affect postfire runoff and erosion, as well as postfire recovery of soils, vegetation, watershed processes, and aquatic systems (Rhodes et al., 1994; Kattleman, 1996; Beschta et al., 2004).” (Rhodes 2007) “Road impacts on soil conditions, vegetation, and hydrologic processes are particularly enduring.” (Rhodes 2007)

“Although high-severity fire can cause severe soil erosion and topsoil loss, its effects on runoff and soil hydrology are transient, seldom lasting more than three years. The effects of grazing and roads on soil hydrology are more persistent and often more negative than those from fire.” (Rhodes 2007)

Road reconstruction, which greatly increases road impacts on watershed systems, is documented, very graphically, in Karr et al. (2004). Reconstruction impacts are extremely significant because the elevated sedimentation they cause is already a ubiquitous water quality problem throughout the West and a major cause of the loss of aquatic biodiversity.

Notably, even the Forest Service's own analyses of fuel treatments have concluded that they are unlikely to help reduce soil erosion and the sedimentation of aquatic systems:

Fuel management treatments generally are needed every 10 to 20 years and the associated cumulative effects occur during each access and treatment cycle. Although hill slope erosion rates recover quickly, the road system, which is typically used and maintained between treatment activities, is a chronic source of sediment. Sediment yields from high severity wildfires are much greater than the increase in sediment yields due to fuel management activities, but the recurrence interval of such wildfires can be hundreds of years. Over longer time scales, the cumulative impacts of fuel treatments, repeated at 10-20 year intervals, when combined with the impacts of continuous road maintenance and use, may be similar to the pulse impact from wildfires. (Robichaud, P.R., L.H. MacDonald, and R.B. Foltz, in press. [Fuel management and erosion](#). In *Cumulative Watershed Effects of Fuels Management: A Western Synthesis*. Gen. Tech. Rep., U.S. Department of Agriculture, Rocky Mountain Research Station. Available at: http://welcome.warnercnr.colostate.edu/~leemac/publications/Robichaud_MacDonald_Foltz_CWE_Fuel_Mgmt.pdf)

“Both ground-based yarding systems (tractors and skidders) and, to a lesser degree, cable systems can cause significant soil disturbance and compaction.” (Beschta et al. 2004)

“Salvage logging generally should be prohibited on sensitive sites, however, including riparian areas, moderately or severely burned areas, fragile soils, steep slopes, roadless areas, watersheds where sedimentation is already a problem, where significant impacts to early successional vegetation may occur, and sites where accelerated surface erosion or accelerated mass soil erosion are likely to occur.” (Beschta et al 2004)

Besides the very considerable & inexorable soil & watershed impacts of the logging and roads, there is also the issue of associated landings, which have impacts that are as persistent and severe as those of roads on soils, vegetation, and watershed processes. Even US Forest Service cumulative effects models acknowledge this (CWW, 1996).

“Avoid practices that consistently cause severe and persistent watershed damage, including machine piling and burning and the construction of roads and landings, including “temporary” ones. The numerous negative effects of roads are one of the primary sources of aquatic and watershed damage on a continental scale.” (Rhodes 2007) “Even “temporary” roads and landings that are subsequently obliterated have impacts on forests and soils that last for decades.” (Rhodes 2007)

Landings are typically constructed on about 2% of the area of fuel treatments by tree removal (ENF, 2004a; b; c). This means that 1,079 acres of logging implemented by the Ponderosa Project would likely result in about 21 acres of landings, which is equivalent, in terms of impact and area, as 8 miles of road with an average width of 20'. Scientific literature amply indicates that this amount of road would significantly damage the ecosystem, even if it were not in addition to the existing road impacts, which have been documented in a legion of studies.

FAILURE TO PROVIDE ADEQUATE SCIENTIFIC SUPPORT

“Decision - Based upon my review of all alternatives, I have decided to implement Alternative 3, which is to reduce trees, brush, and surface fuel (live and dead fuel) using a variety of treatment methods including thinning, masticating, under burning, piling and burning and biomass removal. This alternative will restore and move the area toward the desired vegetative conditions in planted stands to accelerate the development of old forest characteristics, increase heterogeneity, reduce risk of loss to wildland fire, and allow fire to play a more natural role in urban intermix areas.” (DN FONSI pg 2) “Treatments within this allocation have the highest priority for the reduction of fuels to prevent the potential loss of life and property from wildland fire and to interrupt wildland fire spread and reduce fire severity. It will lead to ecosystem restoration by reducing fuel build up in order for fire to play a more natural role in the future where possible.” (DN FONSI pg 3)

We are concerned as well about the relative lack of scientific support for conclusions throughout the EA, as well as the failure to take lessons from methods used in other areas. In particular, the project proposes to remove some hazard trees, which are most frequently large diameter trees, which have ecological value. Specifically, the Forest Service should consider and analyze:

1. The Sierra Nevada Forest Plan, which states that reduction of forest canopy cover actually causes more severe fires by increasing the velocity of "mid-flame winds." The Sierra Nevada Plan acknowledges that "in areas where the larger trees have been removed, stand replacing fires are more likely to occur." "[L]arge trees" are defined as those over 12 inches in diameter. U.S. Department of Agriculture, Forest Service, January, 2001.

2. The Forest Service's National Fire Plan, which warns that the agency should "not rely on commercial logging or new road building to reduce fire risks" because "the removal of large, merchantable trees from forests does not reduce fire risk and may, in fact, increase such risk." The National Fire Plan also finds that "logging and clear cutting can cause rapid regeneration of shrubs and trees that can create highly flammable fuel conditions within a few years of cutting." *Managing the Impact of Wildfires on Communities and the Environment* (The National Fire Plan). U.S. Department of Agriculture, Forest Service and U.S. Department of Interior. September 8, 2000.

3. *Fire Weather*, the Forest Service's seminal scientific handbook on logging and fire

behavior, which concludes that dense forest canopy cover is critical to the reduction of severe fires. The forest canopy provides substantial amounts of microclimate moisture by transpiration through leaves and needles, creating a wetter climate, which mitigates fire behavior. In addition, dense forest canopy reduces wind movement and fire spread. Commercial thinning operations and hazard tree removal projects increase fire risk by removing mature trees and reducing forest canopy cover, specifically because this activity leaves less friction area to prevent heavy winds in the forest. Because the wind has a drying effect on woody material on the forest floor the probability of fire is increased. When fire does occur in such areas, it spreads faster and hotter, pushed on by winds. Forest scientists have concluded that reduction in forest canopy caused by logging activities increases the amount of sunlight that reaches the forest floor, which causes a marked increase in growth of flammable weeds, shrubs, and saplings. Mark Schroeder & Charles Buck, 1970, *Fire Weather...A Guide for Application of Meteorological Information to Forest Fire Control Operations*, United States Department of Commerce and United States Department of Agriculture.

4. The Forest Service Fire Science by Jack Cohen indicates that treating the 200 feet immediately adjacent to structures will achieve community protection. Treating beyond 200 feet immediately adjacent to structures can cause unnecessary resource damage and does not protect communities. The California Department of Forestry and the Government Accountability Office agree that treating the 200 feet immediately adjacent to and surrounding structures is the proper way to protect communities – not logging miles from communities. This project would log miles from the community of Ponderosa in contradiction of fire science.

The Ponderosa EA fails to discuss or include the US Forest Service fire science on structure protection by Jack Cohen. This project instead falsely claims that treating forests miles from the Ponderosa will protect the community of Ponderosa. Treating forested public lands miles from structures will only cause resource damage to public lands.

The EA fails to use the science and research of Jack Cohen (Cohen, 1995, 1998, and 2000), available from <http://www.firelab.org> and the available publications at <http://www.firelab.org/fbp/fbresearch/wui/pubs.htm> including "*Preventing Disaster: Home Ignitability in the Wildland-Urban Interface*", Research Physical Scientist Forest Service Fire Sciences Laboratory, Missoula, MT, in order to justify the use of the thinning around communities to supposedly protect communities. (see <http://www.johnmuirproject.org/pdf/Cohen-Fire-Threat-to-Homes.pdf> and <http://www.johnmuirproject.org/pdf/Cohen-Fire-Threat-to-Homes-PSW-GTR-173.pdf>) This failure to use the fire science which actually only requires 200 to 300-foot wide treatment areas, is a fundamentally arbitrary and capricious use of the Forest Service research and a failure of the EA to provide a truthful analysis of the available science. The possible effects from the proposed treatment on the human environment does not involve unique or unknown risks; the risks of resource damage from this type of treatment are clear, they are real, and they have been documented in the research of Jack Cohen, which contains a massive amount of evidence showing that the environmental effects of similar activities would cause public land resource

damage in the Monument and would not protect the community. Jack Cohen stated in a personal communication dated March 17, 2003,

"You are correct in stating that my research indicates that modifying the home ignition zone (the home and its immediate surroundings within 200 ft) can perform the necessary and sufficient changes that effectively reduce home ignitability during extreme wildfire conditions. My research does address firebrands and spot ignitions. Putting a fuel break around communities without modifying the community will not be sufficient to significantly reduce the home ignition potential during extreme conditions. We know that fuel breaks don't stop spotting--that is why I suggest making the community the fuel break. This produces far less landscape disturbance for the purpose of community protection and reduces the community threat from any kind of wildland fire. That should provide increased opportunities for prescribed burning." (emphasis added).

The EIS for this project must consider the science in the Forest Service Handbook 360, titled "Fire Weather," that describes the fire weather conditions that provide the natural fire preventions characteristics of the closed canopy forest. You can download all 229 pages from: [http://www.johnmuirproject.org/fireweather/Fire_Weather_Handbook_\(USFS_1970\).pdf](http://www.johnmuirproject.org/fireweather/Fire_Weather_Handbook_(USFS_1970).pdf) (20MB).

5. The EA ignores the lessons from the Biscuit fire that areas that were mechanically thinned burned more severely and the Forest Service fails to support its contrary conclusion that the project will improve human safety.

6. Alternatives 1 and 3 arbitrarily select a 12 inch diameter tree as the upper limit for trees to remove from the project areas to reduce trees and surface fuel (live and dead fuel). The EA fails to provide scientific evidence to support the selection of a 12 inch diameter limit when there scientific evidence to select a 9 inch diameter limit.

7. Lastly, regarding the newly introduced Alternative 3, the EA, Decision Notice (DN), and FONSI fail to consider impacts to Climate Change of biomass energy production facilities, which the DN promotes.

"Decision - Based upon my review of all alternatives, I have decided to implement Alternative 3, which is to reduce trees, brush, and surface fuel (live and dead fuel) using a variety of treatment methods including thinning, masticating, under burning, piling and burning and biomass removal. To reduce surface fuels, the existing dead vegetative material found on the forest floor less than eight inches in diameter would be hand or machine piled. These piles could be pile-burned, jackpot burned, and/or removed as biomass for use at a biomass fuels plant." (DN pg 2)

The EA, DN, and FONSI fail to consider the science that indicates that production of greenhouse Global Climate Change gasses would result from biomass energy production that the District Ranger indicates was the reason for selecting Alternative 3. Power generation facilities fed by

forest biomass require huge amounts of energy to transport feed stocks or require clearing wide transmission corridors to connect to the grid, release sequestered carbon stored in trees, and continue to produce Carbon dioxide and monoxide, which exacerbate global climate change in addition to being completely uneconomical.

The District Ranger's DN and FONSI and selection of the newly created Alternative 3 ignore the simple fact that burning biomass in power generating facilities fails to restore fire to the forests that need fire to recover from more than a century of fire suppression and logging (see Clinton 2000) and burning biomass in power generating facilities continues to produce Carbon monoxide and dioxide, which exacerbate climate change in addition to being a complete waste of taxpayer money. There is little science to support the removal of biomass for forest restoration because restoration requires more than just a mix of tree sizes. (See Testimony of Nathaniel Lawrence Natural Resources Defense Council http://www.nrdc.org/land/lan_08040101.asp on S. 2593, THE FOREST LANDSCAPE RESTORATION ACT submitted to THE COMMITTEE ON ENERGY AND NATURAL RESOURCES OF THE UNITED STATES SENATE, for its hearing on April 1, 2008)(see Exhibit A)

FAILURE TO CONSIDER MEANINGFULL ALTERNATIVES

The Decision Memo fails to offer a valid reason for not analyzing an alternative based on the Forest Service's fire science research of Jack Cohen, which, among other things, would only mechanically treat the 200 feet immediately adjacent to and surrounding structures; treating any farther from the structures would unnecessarily and excessively remove trees from the Monument, which is resource damage. Merely stating, as in the Ponderosa Project Responses to Comments, that "No specific resource damage is described here for which to address with site-specific mitigations or design features," is entirely inadequate a justification for ignoring the use of the Forest Service's fire science research of Jack Cohen in the Monument where structures would be protected and fire would be safely reintroduced into the project area.

Alternatives 1 and 3 fail to protect the community of Ponderosa because they fail to treat the 200 feet immediately adjacent to and surrounding structures in the community and fail to consider the flying embers that could ignite the structures when they land among the structures, where an Alternative based on the Forest Service's fire science research of Jack Cohen would be applied to treat flammable materials and protect the community.

An alternative based on Forest Service structure-protection fire science by Jack Cohen to protect communities in the Giant Sequoia National Monument would prove to be effective for community protection and restoration. Arbitrarily not considering an alternative based on Forest Service structure-protection fire science to protect communities in the Monument is an unsupportable policy for the Forest Service to perpetrate and in the end will be an expensive decision for the Federal Treasury and the environment. Analysis of forest biomass removal processes indicate that they cost more energy than they produce. Logging has long been a money-losing venture for the Forest Service. Furthermore, the courts are not sympathetic to arbitrary decisions to put merchantable timber interests above environmental law and sustainable

forest management. See *Earth Island Institute v. U.S. Forest Service*, 442 F.3d 1147, 1177 (9th Cir. 2006). There the Ninth Circuit reprimands: “We have noticed a disturbing trend in the USFS’s recent timber-harvesting and timber-sale activities. It has not escaped our notice that the USFS has a substantial financial interest in the harvesting of timber in the National Forest. We regret to say that in this case, like the others just cited, the USFS appears to have been more interested in harvesting timber than in complying with our environmental laws.” In this case, it is rather difficult to imagine that there is truly a need to use mechanical means to remove fuels from beyond 200 feet immediately adjacent to structures to protect the structures.

Further, there should be a meaningful consideration of the no action alternative, as required by NEPA. As it is widely held that the agency is only developing this alternative to legally insulate themselves once they choose logging, and to present it in an “analysis” unduly biased towards their preferred logging alternative, if there is to be any chance of mid-ground and mutual resolution, it has to embody the flexibility inherent within the restoration-focused Cohen-based alternative described above. As this is new ground to trail-blaze, we herein offer our assistance in developing this and other alternative proposals. As NEPA requires the agency to develop all reasonable alternatives, the abundant evidence arising from past scientific and legal contention perhaps makes it crystal clear that the only “reasonable” alternative in such a contentious and polarized situation is indeed the restoration-focused Cohen-based community treatment described above.

In sum, we respectfully request that the Decision for the Ponderosa Urban Intermix Project be withdrawn and implementation suspended until an appropriate legal analysis and an EIS is completed. We have demonstrated the agency’s failure to comply with the Endangered Species Act, the National Forest Management Act, and the National Environmental Policy Act. We believe that these comments demonstrate the inadequacy and inaccuracies of the DN, demonstrate the need for an EIS, and help to define many of the issues that still need to be addressed before this project can proceed.

We thank you for your consideration of this appeal and we look forward to moving towards a resolution.

Respectfully Submitted,

A handwritten signature in black ink that reads "Ara Marderosian". The signature is written in a cursive, flowing style.

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Exhibit A: The testimony by Nathaniel Lawrence submitted to the Committee on Energy and Natural Resources of the United States Senate for its hearing on April 1, 2008 on The Forest Landscape Restoration Act

Exhibit B: Mall, A. and F. Matzner. 2007. Safe at Home: Making the Federal Fire Safety Budget Work for Communities. NRDC. New York, NY. Online at: www.nrdc.org/safeathome.

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