



René Voss – Attorney

Natural Resources Law
15 Alderney Road
San Anselmo, CA 94960

renepvoss@gmail.com
Tel: 415-446-9027

**PROTECTING
NATURAL
RESOURCES**

November 25, 2020

Submitted to: comments-pacificsouthwest-sequoia@usda.gov

Teresa Benson – Sequoia Forest Supervisor
Kristin Waltz – Acting Ecosystem Staff Officer
Sequoia National Forest/Giant Sequoia National Monument
1839 South Newcomb Street
Porterville, CA 93257

cc: Ara Marderosian
Matt Kenna, Attorney
Stephen Montgomery
Alison Sheehy
Eric La Price

**Subject: Castle Fire Roadside and Recreation Site Hazard Tree Project Scoping
Comments**

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

Project Description

On August 19, 2020, lightning started the Castle Fire (aka the SQF Complex Fire), which burned through roughly 170,000 acres, including approximately 128,900 acres of the Sequoia National Forest, Giant Sequoia National Monument, and the Golden Trout Wilderness. The fire burned through several giant sequoia groves and numerous recreation sites, mostly in the Western Divide Ranger District.

According to the scoping letter, dated Nov. 2, 2020, the Forest Service proposes to fell and/or log hazardous trees along 130 miles of roadway and in and around many recreation sites within the Castle Fire area. The letter states that “Mitigation will include identifying and felling hazard trees up to 300 feet from the side of the road or around recreation and administrative sites. Felled trees could be chipped, masticated, lopped and scattered, pile burned, removed for wood products such as timber or biomass, personal or commercial firewood, or other similar means of processing and/or removal.” Scoping Letter, pp. 1-2. Land managers plan to “identify hazard trees in accordance with the Hazard Tree Guidelines for Forest Service Facilities and Roads in the Pacific Southwest Region (2012, as amended 2020).” *Id.*, p. 1.

The Forest Service anticipates completing environmental analysis and hazard trees mitigation within and around recreation and administrative sites within the Castle Fire perimeter in 2021 and 2022.

COMMENTS

SFK and SC urge you to consider the following specific comments. Because tree removal is proposed from the Giant Sequoia National Monument and from habitat for the endangered Pacific fisher, additional NEPA scrutiny in an EA or EIS will be required.

1. Prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and Consider Alternatives

The size of the proposed actions and large volume of wood proposed to be removed from the project area are on a similar scale as the largest timber sale operations implemented on the Sequoia National Forest in decades. Hence, the project likely constitutes a major federal action that would require analysis in an Environmental Impact Statement (EIS). Because an EIS may be necessary, the Forest Service should first prepare at least an EA and consider alternatives to determine if the effects from the project may be significant and require a full analysis in an EIS.

The effects from the proposed actions must be considered in a comprehensive EA with full public involvement and a full range of alternatives before proceeding with further analysis. Moreover, because the fire area is core habitat of the Pacific fisher and contains important linkage corridors, the effects from tree felling and removal will damage this core habitat, including denning areas. These effects constitute extraordinary circumstances that preclude the use of categorical exclusions (CEs) to exempt the project from detailed environmental analysis.

2. A Recent 9th Circuit Ruling Held that Roadside Hazard Projects like the one Proposed Here Cannot be Analyzed by CE and Require Preparation of at least an EA

The current proposal is similar to the proposals to fell and log hazard trees along hundreds of miles of road on the Mendocino National Forest after the Ranch Fire, which led to litigation and a recent holding from the 9th Circuit Court of Appeals that roadside hazard projects like it require the preparation of an EA and cannot be excluded from detailed environmental review by CE, especially the road maintenance CE (36 C.F.R. § 220.6 (d)(4)). The 9th Circuit concluded that “[u]nder no reasonable interpretation of its language does the Project come within the CE for ‘repair and maintenance’ of roads.” *Envtl. Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991 (9th Cir. 2020) (slip op. attached as Exhibit A).

There, the proposed logging extended 200 feet from each side of the roads (*id.*), whereas here the Sequoia National Forest proposes to allow hazard tree felling and removal from an even greater distance—up to 300 feet from each side of the roadways.

The question before the Court was whether an extensive commercial logging project that includes felling large, partially burned “merchantable” trees—including 100- and 111-foot trees located 150 and 166 feet from roads, as well as taller trees even farther away—could be considered “repair and maintenance” within the meaning of 36 C.F.R. § 220.6(d)(4). As the Forest Service’s own project documents showed, many of the trees would not come close to the roads even if they were to fall directly toward them.

The Court explained: “The rationale for a CE is that a project that will have only a minimal impact on the environment should be allowed to proceed without an EIS or and EA. The CE upon which the Forest Service relies authorizes projects for such things as grading and resurfacing of existing roads, cleaning existing culverts, and clearing roadside brush. A CE of such limited scope cannot reasonably be interpreted to authorize a Project such as the one before

us, which allows commercial logging of large trees up to 200 feet away from either side of hundreds of miles of Forest Service roads.” *EPIC v. Carlson*, 968 F.3d at 990.

Here, the proposed Castle Fire roadside hazard project would allow the felling and likely commercial removal of large tree up to 300 feet away from either side of 130 miles of roadway. This increased distance, when compared to the Mendocino projects, would potentially include many more trees, and likely even larger trees. Therefore, as the Court held, the limited scope of the road maintenance CE (or recreation site maintenance CE, as it may also apply here) cannot reasonably be used to authorize the current proposal on the Sequoia National Forest.

Therefore, we urge you to prepare at least and Environmental Assessment and consider alternatives to the proposed action. Anything less will likely lead to further litigation.

3. Since the Forest Service would Allow Commercial Removal of Hazard Trees on Such a Large Project Area, it Must Also prepare an EA

Commercial salvage logging, which may occur as proposed, can only be excluded from review in an EA or EIS if they are less than 250 acres in size. See 36 C.F.R. § 220.6(e)(13) (including post-fire salvage logging in list of examples).

Here, the project could potentially allow logging 300 feet from either side of 130 miles of roadway, which greatly exceeds the 250 acre limit. In fact, the total acreage for this project is roughly 9,454.5 acres (= (600 feet x 130 mile x 5,280 ft/mile)/43,560sq. feet/acre), or over 37 times the 250 acre limit. Again, as the 9th Circuit Court of appeals stated, “[a] CE of such limited scope cannot reasonably be interpreted to authorize a Project such as the one before us, which allows commercial logging of large trees up to 200 feet away from either side of hundreds of miles of Forest Service roads.” *EPIC v. Carlson*, 968 F.3d at 990. Of note, the current proposal, at 9,454.5 acres is over twice the 4,700 acre Mendocino NF project where the court found that an EA was required.

4. An EA must be Prepared to Analyze the Effects on the Endangered Pacific Fisher

The Castle Fire itself is likely to have an effect (negative, and in some areas positive or neutral) on the endangered Pacific fisher population in project area. The fire and the proposed action (and alternative) are likely to have direct, indirect, and cumulative effects on the local population of fishers, as well as the fisher’s ability to disperse or move through a fragmented fire and project area. Therefore, the effects from the proposed action and any alternatives must be considered in an EA. Moreover, these effects could be significant, and therefore constitute “extraordinary circumstances” that would preclude the use of a CE.

In circumstances similar to the Castle Fire, the Forest Service found that the combination of the Rancheria Project and the Cedar Fire in the Greenhorn Mountains of the Sequoia National Forest may constitute significant effects acknowledging that it needed to supplement its NEPA analysis. In its Supplemental Information Report (SIR), the Forest Supervisor found that “the habitat fragmentation and loss of connectivity caused by the Cedar Fire occurred after the 2013 Fisher BE was completed. These changes may be significant and alter the original determination for

this project that the Rancheria Project ‘may affect individuals, but is not likely to contribute to the need for Federal listing or result in loss of viability of fisher.... Therefore, in accordance with FSH 1909.15 Section 18.4, it is my determination that supplemental NEPA analysis must be prepared’ ” SIR, p. 12 (Exhibit B, attached).

The Forest Service has recognized the significance of fragmentation and loss of connectivity caused by a fire in combination with the Rancheria logging project, which was actually smaller than the proposed 9,000+ acres of roadside hazard activities proposed here. It must therefore also consider that these activities may significantly affect the fisher’s viability and prepare an EA or EIS.

5. Alternatives the Forest Service Should Consider

Alternatives should include (1) a no-action alternative, (2) the proposed action, (3) one or more alternatives that remove less material than the proposed action, and (4) an alternative that only fells and retains but does not remove hazard trees. We also request (5) an alternative that only treats hazard trees along level 3 and higher roads, and (6) only treats hazard trees from 200 ft on each side of the roadway, similar to previous proposals, including the Piute Project (below), and the recent Plateau Roads HT Project (see Exhibit C).

The Sequoia National Forest has previously analyzed projects this way, such as the Piute Fire Roadside Hazard Tree Removal Project, in which the Forest Service prepared an EA and issued a DN-FONSI. *See* Exhibits D & E.

The Piute Project was actually much smaller in scope than the current project and only removed trees from 200 feet on each side of approximately 32 miles of road, yet the Forest Service prepared an EA with alternatives, including a fell and retain alternative.

In fact, the EA stated when discussing the “Retain Cut Trees” alternative that “[t]his alternative would meet the purpose and need by cutting, limbing, and leaving trees that pose a hazard,” addressing “concerns regarding potential soil and vegetation disturbance if cut trees are removed as described under the proposed action.” EA, p. 8 (Exhibit E). Therefore, such an alternative or a variant that retains cut hazard trees is a viable alternative that should be analyzed in an EA.

6. The EA Must Analyze the Effects from the Removal and Burning of Trees on Greenhouse Gas (GHG) Emissions and Climate Change

The proposal would likely remove thousands of trees by burning on site, as firewood, and in biomass plants, which would not only release thousands of tons of GHGs into the atmosphere over a very short period of time, but would also irrevocably consume the limited natural resource of petroleum products in order to transport the biomass to a burning facility and would emit additional GHGs by doing so. Leaving the material in the forest to naturally decay would significantly reduce the pulse of GHGs and store much of the carbon in the soil in comparison to the proposal to fell and remove trees. Moreover, the Forest Service, other public agencies, and private entities continue to implement similar large-scale biomass and other burning activities throughout the Southern Sierra Nevada mountains in response to similar post-fire logging

proposals and the massive pulse of tree mortality from the drought. In combination, these activities will likely release even more GHGs into the atmosphere over a very short period of time thus exacerbating effects on climate change. These cumulative effects of GHG emissions and their effects on climate change must be considered and analyzed.

Despite efforts to eliminate them, consideration of climate change and GHG emissions are still required by the Forest Service's Washington Office. *See* <https://www.fs.usda.gov/ccrc/topics/introduction-incorporating-climate-change-nepa-process> (*see also*, Attachment F, hereto).

Each alternative should discuss and analyze carbon and methane emissions from implementation of the proposed action and the equipment used to implement the proposed action, and the no-action alternative should also provide information about the potential for carbon sequestration in area soils (and the reduced rate of GHG emissions from natural decay) from foregoing project implementation that would remove or burn trees.

The environmental analysis must disclose the emissions from biomass and on-site burning, as well as the GHG emissions caused by equipment and transportation, for each action alternative. For this, the Chief's office of the Forest Service has generated specific direction on how to discuss climate change effects in a NEPA analysis. *See* Climate Change Considerations in Project Level NEPA Analysis (Jan. 13, 2009) (attached as Attachment E). That document includes how similar projects should disclose direct effects on climate change:

- **The effect of a proposed project on climate change** (GHG emissions and carbon cycling). Examples include: short-term GHG emissions and alteration to the carbon cycle caused by hazardous fuels reduction projects, GHG emissions from oil and gas field development, and avoiding large GHG emissions pulses and effects to the carbon cycle by thinning overstocked stands to increase forest resilience and decrease the potential for large scale wildfire.

Id. at 2. To assist in disclosing these effects, the Forest Service provides tools that can help managers determine the direct contributions of GHG emissions from project burning or treatments. *Id.* at 5 (*FOFEM 5.5, Consume 3.0, and the Forest Vegetation Simulator*). Because the Forest Service has tools or models to effectively calculate emissions, it must disclose these emissions for each of the action alternatives. In addition, the guidance document suggests that the NEPA document include a qualitative effects analysis. *Id.* Such an analysis should include the cumulative effects, quantified in an "individual, regional, national, global" context. *Id.* at 6.

Finally, the guidance suggests that NEPA provides direction on how managers should respond to comments raised during project analysis regarding climate change:

1. Modify alternatives including the proposed action.
2. Develop and evaluate alternatives not previously given serious consideration by the Agency.
3. Supplement, improve, or modify the analysis.
4. Make factual corrections.

5. Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the Agency's position and, if appropriate, indicate those circumstances that would trigger agency reappraisal or further response.

Id. at 8. At the very least, because this project includes tree removal and burning that will contribute GHG emissions, the EA must include an acknowledgment of carbon emissions and must provide a response to this issue.

Moreover, the analysis should account for and quantify (as part of the cumulative effects analysis) not only the emission from burning on-site and the emissions from any biomass that is removed from the project area and later burned off-site, but also the contribution of emissions from transporting this material for off-site burning, and the contribution of emissions from planning and implementing the project by contractors and by the Forest Service.

This holistic approach to account for GHG emission is necessary to provide managers and the public with the kind of information under NEPA to make informed choices between alternatives, to mitigate actions to that may affect climate change, and to consider and assess the larger picture of GHG contributions from all national forest projects that may contribute GHG emissions.

Finally, if the Southwest Regional Office has or is planning to conduct additional analysis on the effects from the cumulative treatments from similar projects in the Southern Sierras, the analysis should reference and disclose that information.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'René Voss', with a stylized flourish at the end.

René Voss – Attorney at Law