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**PROTECTING  
NATURAL  
RESOURCES**

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

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cc: Ara Marderosian  
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**Subject: Hume Lake Ranger District 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

Based on a district assessment, the Hume Lake Ranger District proposes to fell and remove trees in two areas along roads in the district's portion of the Sequoia National Forest, Giant Sequoia National Monument. According to a scoping email, dated Dec. 14, 2020, the Forest Service proposes to fell and/or log hazardous trees along (1) General's Highway, Big Meadows Road (FR 14S11) to and around Heart Meadow Cabin Tract, and (2) Roads 13S85 and 13S85B, which lead to a private inholding.

### 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 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 Authorized Using the Road Maintenance CE and Likely Require Preparation of at least an EA

A recent holding from the 9th Circuit Court of Appeals that roadside hazard projects like the one proposed 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.*), just as here. The question before the Court was whether a salvage or biomass removal 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 proposal would allow the felling and likely commercial removal of large trees up to 200 feet away from either side of the roadways. Therefore, as the Court held, the limited scope of the road maintenance CE cannot reasonably be used to authorize the current proposal on the Sequoia National Forest.

Therefore, we urge you to prepare at least an Environmental Assessment and consider alternatives to the proposed action.

3. 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.

#### 4. 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, allowing high levels of down woody material for wildlife, and (4) an alternative that only fells and retains all hazard trees but does not remove them.

The Hume Lake Ranger District has previously analyzed projects this way, such as the 2013 **Hume Roadside and Recreation Site Hazard Tree Project**, in which the Forest Service prepared an EA and issued a DN-FONSI. *See* Exhibits B & C.

In fact, the EA stated when discussing the “Drop and Mitigate” (Alternative C) meet the purpose and need to mitigate hazard trees. Therefore, such an alternative or a variant that retains cut hazard trees is a viable alternative that should be analyzed in an EA.

#### 5. 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. Leaving the material in the forest by only felling the hazardous trees, without the need for heavy ground-disturbing equipment, would also dramatically reduce ground disturbance and the subsequent pulse of down-stream sediment flows into streams and rivers that could asphyxiate or kill fish and aquatic invertebrates and ultimately fill in reservoirs, thus preventing full use of the expensive storage that was funded by the public to capture clean drinking water for down-stream communities. 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". The signature is fluid and cursive, with a long horizontal stroke at the end.

René Voss – Attorney at Law