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Re: Proposed USFS NEPA Revisions

I am writing in response to the US Forest Service's (hereafter "USFS") proposed rule changes to how it implements the National Environmental Policy Act (hereafter "NEPA"). I am strongly opposed to the planned changes and urge the USFS to reject them. My objections relate to the overall scope and intent of the planned changes as well as specific aspects of the proposal.

After reviewing the various documents provided on the USFS website (including webinars)ⁱ, three key issues stand out which my comments address: 1) the logic of fire suppression used to support proposed NEPA changes, 2) weakened public review and comment processes, 3) new Categorical Exclusions (hereafter "CE") for restoration and infrastructure projects.

1) Fire suppression driving NEPA changes

The USFS has made it clear in planning documents and other public communications that shifts in resource and staff allocations due to wildfire-related activities has not only hindered its capacity to respond in a timely and effective manner to outstanding activities, but has also led to a backlog of unresolved projects. These concerns have been presented as a key justification for why NEPA needs to be further streamlined and "modernized" to meet this new fiscal and policy landscape. It is true that the growing threat of wildfires (particularly in the western US) has increased due to climate change, but it is not evident in USFS documents how weakening or limiting the existing NEPA process will address these dynamics.

As noted by some of the webinar participants, comprehensive fire suppression funding was included in H.R.1625, the Consolidated Appropriations Act of 2018. The allocation of these additional funds calls into question the USFS claim that funding gaps are driving the NEPA revision processes.ⁱⁱ The USFS claimed there would still be structural issues due to years of fire suppression related resource changes which justified the NEPA changes even with new funds, but no evidence was provided to support this claim. And as discussed in detail below, a 2011 GAO report noted consistent financial management problems by the USFS in relation to fuel reduction projects. These fiscal management problems were reaffirmed in 2018 by another GAO report, and like the 2011 report, funding for fire suppression activities were highlighted:

“In fiscal year 2017, GAO issued a legal opinion that the Forest Service had failed to comply with the purpose statute with regard to a \$65 million line-item appropriation specifically provided for the purpose of acquiring aircraft for the next-generation airtanker fleet. Further, the Forest Service lacked a process and related control activities to reasonably assure that unobligated no-year appropriation balances from prior years were reviewed for their continuing need; did not have a properly designed system for administrative control of funds, which keeps obligations and expenditures from exceeding limits authorized by law; and had not properly designed control activities for fund transfers to its Wildland Fire Management program. These deficiencies increase the risk that the Forest Service may make budget requests in excess of its needs.”ⁱⁱⁱ Such findings call into question the underlying argument that it is wildfire dynamics which are a primary driver of the proposed NEPA revisions, rather than USFS mismanagement.

No changes to NEPA can address climate change as a systemic driver of ecological stress and wildfires on public forests, yet there is an implicit claim in planning documents that speeding up and streamlining the NEPA review processes will allow the USFS to be more responsive to these climate-induced changes. Unfortunately, there is no scientific basis for such a claim. In fact, precisely the opposite appears to be true. In parts of the western US where the fire threat is greatest, we also find some of the largest tracts of intact old growth forests. Scientists have clearly established that intact, mature forests are more resilient to fire damage compared to secondary-growth forests, and in many cases such forests have co-evolved with wildfire, such as the Giant Sequoia, Arizona Pine and Jeffrey Pine.^{iv} Natural micro-level landscape diversity produced by these frequent fire interactions made many old-growth forests in fire prone landscapes more resilient to catastrophic wildfires and produced more diverse habitats.^v

These ecological dynamics have largely been disrupted over the last a century by a combination of grazing, fire suppression, clear-cut logging of mature forests, unrestricted construction of homes in fire sensitive wildland-urban interfaces, and a tendency to locate industrial infrastructure such as oil and gas wells and electric lines on public lands. The catastrophic destruction of Paradise, California in 2018 by the Camp Fire is a case in point. Despite extensive warnings that the town was at risk of catastrophic wildfire it continued to operate under a business as usual mentality that paid little serious attention to the drivers of wildfire.^{vi}

The proposed NEPA changes appear to be an attempt to clear out administrative backlogs in the hopes that the rapid approval of more fire suppression activities in a short period of time will somehow undue more than a century of poor land use management decisions and contribute to more climate-resilient national forests. While certain restoration activities may achieve this, the logic of managing public forests for commercial timber production undermines ecological restoration by prioritizing the economics of logging over the needs of conservation. Researcher have clearly documented an increased risk of wildfire in previously clear-cut areas as the large

amount of slash and treetops left behind serves as ladder fuel for wildfires. And the resulting secondary-growth forests which were replaced are significantly more vulnerable to future fire threats, producing an ecological feedback loop referred to as a landscape trap.^{vii} The USFS should not be using wildfires as a justification for weakening existing NEPA protections.

2) Weakened public review and comment processes

One of the most fundamental aspects of NEPA is the requirement for public consultation which ensures the public has a right to monitor, assess, review and respond to any proposed action which has the potential to negatively impact the public. Any proposal to reduce or revise these obligations is a violation of the spirit of NEPA and the CEQ. The USFS argued that the “proposed changes provide for discretion and flexibility in our scoping and public engagement based on what is appropriate for the project” and that these changes “will allow national forests and grasslands to concentrate resources on projects that are potentially more complex or have greater public interest. Increased discretion and flexibility can result in more transparency, provide timelier response to public needs, and accelerate decision making.”^{viii} However, as we have seen time and again with the USFS and other federal agencies, placing blind trust in government officials to decide what is in the best interest of the public is a recipe for disaster. As a 2011 Government Accounting Office report on the USFS made clear, there are persistent accountability and oversight problems that go to the highest levels of the administration. For example, documentation on the new proposed Categorical Exclusions notes that USFS relied on the PALS systems to provide project documentation, yet as the GAO report noted:

“Our 2009 testimony noted shortcomings in the completeness and accuracy of Forest Service data on activities and costs. Although we have not comprehensively reviewed the quality of all Forest Service data, we have encountered shortcomings during several recent reviews that reinforce our concerns. For example, during our review of appeals and litigation of Forest Service decisions related to fuel reduction projects, we sought to use the agency’s Planning, Appeals, and Litigation System [PALS], which was designed to track planning, appeals, and litigation information for all Forest Service decisions. During our review, however, we determined that the system did not contain all the information we believed was pertinent to decisions that had been appealed or litigated and that the information the system did contain was not always complete or accurate.”^{ix}

These GAO report, coming nearly a decade apart (2009 and 2018) further noted strong concerns about how the USFS was handling its national fire planning and funding process, pointing out that the allocation and justification of expenditures were problematic. “The agency, for example, still lacks a measure of the effectiveness of fuel reduction treatments and therefore lacks information needed to ensure that fuel reduction funds are directed to the areas where they can best minimize risk to communities and natural and cultural resources. And while Forest Service

officials told us that they, in conjunction with Interior, had begun a comprehensive effort to evaluate the effectiveness of different types of fuel treatments, including the longevity of those treatments and their effects on ecosystems and natural resources, this endeavor is likely to be a long term effort and require considerable research investment.”^x The updated 2018 GAO report suggests these issues were never resolved.

It bears repeating that the lack of adequate fire suppression funds by the USFS has been used as a justification for why the existing NEPA guidelines need to be updated. But as the GAO reports makes clear, the USFS is unable to internally justify the effectiveness or costs of its own actions. Demands for greater public accountability of USFS actions is therefore warranted. The transparency of government decision-making processes has never been improved by a decision to withhold public information or limit the scope of public involvement and oversight when public resources and goods are in play. In fact, the exact opposite has been demonstrated time and again—the public is the best watchdog of the common good.

Any attempt to limit or circumscribe the role and scope of public involvement in USFS decision making and planning through NEPA cannot be warranted and must be rejected.

3) Expanded area and scope of Restoration and Infrastructure Categorical Exclusions

The USFS rationale in the Justification for Restoration CE noted that: “Activities to improve ecosystem health, resilience, and other watershed conditions cannot exceed 7,300 treated acres. If commercial/non-commercial timber harvest activities are proposed they must be carried out in combination with at least one additional restoration activity and harvested acres cannot exceed 4,200 of the 7,300 acres.”^{xi}

Based on these guidelines, nearly 60% of a 7,300-acre Restoration CE project could include commercial logging, with no restrictions on the type of operation. Drawing on past experiences with the USFS in Ohio, this would open the Wayne National Forest (hereafter “Wayne”) to increased selective and clear-cut logging in the name of restoration. If these proposed NEPA changes went into effect, a significant amount of USFS activities on the Wayne could be done with absolutely no public input or comment process by using the new Restoration CE.

The justification provided by USFS for how they determined that logging up to 4,200 acres of a 7,300- acre project area would meet ecological restoration goals is not supported by the best available science. Rather, the supporting documents state that a random selection of prior actions was compiled, and these materials formed the basis for calculating acreage thresholds and categories of activity. It is important to note here that when developing the Restoration CE, only 2 of the 68 randomly selected EA projects reviewed by the USFS did not involve either commercial logging or thinning activities. At the same time, there were less than a dozen projects which focused on habitat or watershed restoration or invasive species removal, indicating an

institutional and systemic bias towards commercial logging as the preferred method of “restoration” used by the USFS.^{xii} This basic fact makes the use of a random selection of prior EA activities to develop the Restoration CE guidelines both arbitrary and capricious. The historical bias of logging was simply reproduced and carried forward as an exemptible action with a veneer of restoration attached to it for political cover.

Equally troubling, the list of specified “restoration and resilience activities” includes practices which have been used previously by the USFS as a justification for approving timber sales, such as “habitat improvement and/or creation” and “hazardous fuels reduction and/or wildfire risk reduction.” There is nothing in the Restoration CE guidelines which would prevent the USFS from approving a 4,200-acre clear-cut with a secondary “restoration” goal of creating new disturbed or open forest areas for game species such as grouse or pheasant, thereby justifying the logging a second time in the name of “habitat improvement and/or creation.” This has already been a common practice in many national forests, so it is unclear why Forest Managers would suddenly feel less obliged to continue such actions, but now on an even larger scale.

The same logic applies to justifying restoration logging under the guise of “hazardous fuels reduction and/or wildfire risk reduction.” This was our experience with the Wayne in Ohio, where the USFS proposed the Ironton Heavy Fuelwood Reduction Project (IHFRP) after the February 2003 ice storms impacted parts of the Wayne. Phase II of the IHFRP proposed to salvage log approximately 930 acres of the Wayne in the name of “heavy fuelwood reduction” and was highlighted at the time by the Bush Administration as one of their Healthy Forest Initiative (HFI) focal projects. This project was approved by the USFS with a CE but was later challenged in court, leading a judge to issue an injunction and Temporary Restraining Order (TRO) in 2004 on the project (along with a related Bluegrass Ridge and Markin Fork timber sale in the same area). The plaintiffs in that case, the Buckeye Forest Council and Heartwood, arguing the USFS violated NEPA, NFMA and ESA and threatened the federally protected Indiana bat (*Myotis sodalis*).^{xiii} Although the courts ultimately sided with the USFS and FWS in their argument that there would be no harmful cumulative impacts on the Indiana bat from the proposed projects, subsequent facts on the ground show this claim was in fact false.

The 2019 Population Status Update released by the US Fish and Wildlife Service (hereafter “USFWS”) show the Indiana bat has seen a 62% population decline (net loss of 4,739 individuals) in Ohio since 2007. Since the Wayne houses key hibernaculum sites for the Indiana bat in Ohio, management activities may have contributed to declining population numbers. Nationwide the Indiana bat has seen steep population declines, although as the USFWS notes, some of this mortality has been linked to the effects of white-nose syndrome.^{xiv} Past experience in Ohio has shown that too often the USFS uses a CE to avoid adequate environmental analysis and assessment.

In addition to this Restoration CE, the proposed Infrastructure CE could further exacerbate negative impacts on national forests as described in CE #4 and #5: “Construction or realignment of up to 5 miles of NFS roads, reconstruction of up to 10 miles of NFS roads and associated parking areas, opening or closing an NFS road, and culvert or bridge rehabilitation or replacement along NFS roads...[and]...Converting an unauthorized or non-NFS road to an NFS road.”^{xv} As we have seen in the Wayne and other national forests, fragmentation of public forestlands by formal and informal roads (logging skid trails, illegal ORV, decommissioned oil and gas access roads) is a serious problem.^{xvi} Interior service roads are also a major source of habitat degradation and a primary vector of invasive species entry and dispersion.^{xvii} Efforts to reconstruct roads, rather than closing and decommissioning, will likely further erode the future health and stability of public forestlands.

For the reasons laid out above, I strongly urge the USFS to return to reject the proposed changes to NEPA. While it is true that the policy landscape is continually changing and the USFS needs to be responsive to these changes, the proposed NEPA revisions fail to protect the public interest and long-term health and resilience of public lands in the process.

For these reasons I urge the USFS to reject the proposed changes to NEPA.

Thank you for your consideration of my comments.

Sincerely,

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ⁱ <https://www.fs.fed.us/emc/nepa/revisions/index.shtml>

ⁱⁱ <https://www.congress.gov/bill/115th-congress/house-bill/1625>

ⁱⁱⁱ <https://www.gao.gov/assets/690/689757.pdf>

^{iv} [https://doi.org/10.1890/1540-9295\(2006\)4\[481:MFFITW\]2.0.CO;2](https://doi.org/10.1890/1540-9295(2006)4[481:MFFITW]2.0.CO;2)

^v <http://www.ecologyandsociety.org/vol12/iss2/art18/>

^{vi} <https://www.latimes.com/local/california/la-me-ln-paradise-evacuation-road-20181120-story.html>

^{vii} <https://www.pnas.org/content/pnas/108/38/15887.full.pdf>

^{viii} <https://www.fs.fed.us/emc/nepa/revisions/index.shtml#proposedrulesupportingdocs>

^{ix} <https://www.gao.gov/assets/130/125695.pdf>

^x <https://www.gao.gov/assets/130/125695.pdf>

^{xi} <https://www.fs.fed.us/emc/nepa/revisions/includes/docs/RestorationCESupportingStatement.pdf>

^{xii} <https://www.fs.fed.us/emc/nepa/revisions/includes/docs/AppendicesRestoration.pdf>

^{xiii} <https://law.justia.com/cases/federal/district-courts/FSupp2/337/1030/2470093/>

^{xiv} https://www.fws.gov/midwest/endangered/mammals/inba/pdf/2019_IBat_Pop_Estimate_6_27_2019a.pdf

^{xv} <https://www.fs.fed.us/emc/nepa/revisions/includes/docs/InfrastructureCESupportingStatement.pdf>

^{xvi} <https://www.sciencedirect.com/science/article/abs/pii/S0959378005000701>

^{xvii} <http://safepassagecoalition.org/resources/Habitat%20Fragmentation.pdf>