



February 3, 2020

Eli Ilano, Forest Supervisor  
Tahoe National Forest  
631 Coyote Street  
Nevada City, CA 95959

In Reply To: Proposed Tahoe Wildfire Management Amendment

Dear Mr. Ilano,

The American Forest Resource Council (AFRC) provides the following scoping comments on the proposed **Tahoe Wildfire Management Amendment**. We have reviewed your scoping letter and the attached FAQs document (Managing Natural Fire for Multiple Resource Benefits). AFRC is a regional trade association whose purpose is to advocate for sustained yield timber harvests on public timberlands throughout the West to enhance forest health and resistance to fire, insects, and disease. We do this by promoting active management to attain productive public forests, protect adjoining private forests, and assure community stability. We work to improve federal and state laws, regulations, policies and decisions regarding access to and management of public forest lands and protection of all forest lands. AFRC represents over 50 forest product businesses and forest landowners throughout the West. Many of our members have their operations in communities adjacent to the Tahoe National Forest, and the management on these lands ultimately dictates not only the viability of their businesses, but also the economic health of the communities themselves. We have worked to defend the Forest's ability to manage the landscape, most notably on the Sunny South project where our member Sierra Pacific Industries purchased the timber and AFRC participated in the legal challenge to the project.

AFRC understands and appreciates the role that fire historically had on the Tahoe National Forest, particularly low- and mixed-severity fire. We also understand the repercussions of a century of suppressing those fires. The heavy fuel loads that have established in the absence of fire are problematic from an ecological and public safety perspective, particularly when high-severity fire is the result. However, we do not believe that the solution to these problems is to allow natural fires to burn under Forest Service supervision. Therefore, AFRC cannot support the proposed Forest Plan amendment for Managing Natural Fire for Multiple Resource Benefits.

First and foremost, the problem of *“unnatural”* fuels accumulation, as a result of human intervention in the form of fire suppression, cannot be solved responsibly by attempting to harness

*“natural”* fire progression. The unnatural accumulation of fuels needs to be addressed in a **deliberate and strategic manner** developed and directed by professional Forest Service fire ecologists and foresters—not in a haphazard manner developed and directed as an impromptu project. Allowing nature to determine **when and where** to address fuel accumulation seems reckless and ill-advised considering localized weather conditions can be unpredictable and lead to unexpected wildfire progression and negative environmental, economic, health and safety results. This uncertainty of the “when and where” is what troubles AFRC the most. Fuels accumulation needs to be managed in the right place at the right time, spatially and temporally—neither of which natural lightning- caused fire can satisfy. There are far too many contingencies and risks to contend with for managing fire during the fire season and engaging fire management activities as an impromptu project is a poor choice as compared to managing fuels mechanically or as a controlled burn outside of fire season. Natural fires will happen, but management ahead of a fire start is essential to prevent a fire from being a catastrophe.

In regard to spatial distribution, AFRC believes that there are some stands that are suitable for introduction of fire and some stands that are unsuitable for introduction of fire. Introduction of fire into dense forest stands with excessive fuels (as a result of fire suppression) should only be considered following mechanical removal of those fuels. AFRC is fully supportive of the Forest Service removing those fuels mechanically followed by introduction of controlled fire. Unfortunately, such a scenario is extremely unlikely to occur through uncontrolled natural fires since a fire burning in the absence of Forest Service management will not distinguish between a stand that looks like this:





to a stand that looks like this:



Allowing fire to burn in the first photographed stand would likely result in a **stand replacing fire**; which is a result that, we assume, the Tahoe National Forest does not desire and one that AFRC does not want to see on our National Forests. Allowing fire to burn in the second photographed stand has potential to yield desirable outcomes including hazardous fuels reduction, nutrient cycling, and protection of overstory forest canopy. We believe that the determination to put fire into the second photographed stand but not into the first photographed stand is a decision that only Forest Service professionals should be directed to make. Such a decision could be compromised by amending the Forest Plan to shift that decision to the mercy of naturally burning fires, wind and weather patterns, and terrain variations.

In regard to temporal distribution, AFRC believes that management through fire is only appropriate at certain times of the year under certain weather conditions. A carefully crafted plan developed by Forest Service professionals can be executed when the weather conditions are optimal. AFRC fully supports using fire on the shoulder seasons (spring and fall) when temperatures are moderate and fuel moistures are accommodating. However, we do not supportive of allowing a fire, regardless of its intensity, to burn in June, July, August, or September. Weather patterns are unpredictable, the fire season has been intensifying and lengthening, and a-low intensity fire burning in the summer months could unexpectedly shift to high-intensity quickly.

Given these concerns, AFRC would like to ensure that the Forest Service considers all relevant issues appropriately in the ensuing analysis.

- 1.) Consider the impacts of the proposed plan amendment to public safety. The scoping document indicates that “managing lightning-caused wildfire under the appropriate conditions would enhance community and firefighter safety.” At face value, we disagree with this comment. The enhancement of community and firefighter safety would be realized through prescribed fire in the right stands at the right time. How does the Forest Service propose to assess, during an active wildfire, whether the stand level conditions are appropriate for wildfire and whether the weather conditions are appropriate for wildfire? How does the Forest Service propose to determine whether *future* unpredictable weather conditions will be accommodating to wildfire? For example, if a decision is made on a Monday to allow a wildfire to burn into Stand A, how will the Forest Service determine if that wildfire should be burning in Stand A on Wednesday? Does the Forest Service have extensive stand specific fuel estimates to rely on when “planning” whether an impromptu fire project is appropriate for the predicted weather and potential fire control lines?

Lassen Volcanic National Park has been “Managing Natural Fire for Multiple Resources” for years and has mostly been successful for their specific objectives. In most cases, fire is the only tool they have. However, on two occasions in the past 20 years, a managed fire flared up and burned thousands of acres on adjacent National Forest and private property. The Reading Fire burned homes and threatened the community of Old Station. The fire also burned thousands of acres of mature timber, two PACs, older plantations from previous fires, and multiple riparian zones. Fire salvage on the most operable tractor ground was completed in a timely manner, but many acres were not treated and are now littered with dead trees and increased surface fuels.

- 2.) Consider the impacts of the proposed plan amendment to timber resources. The scoping notice does not mention the impact of such an amendment on timber resources. How would allowing a wildfire to burn through a dense forest stand at high-intensity impact future near-term timber resource provisions? How would allowing a wildfire to burn through a young forest plantation impact future long-term timber resource goals and objectives?

We are concerned about the amendment’s compliance with governing statutes. National Forests are established “to improve and protect the forest” and “to furnish a continuous supply of timber for the use and necessities of citizens of the United States.” 16 U.S.C. § 475 (Organic Act). Forests “shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.” 16 U.S.C. § 528 (MUSYA). How does this plan amendment provide for “multiple use and sustained yield” required by MUSYA and NFMA? *See* 16 U.S.C. § 1604(e)(1). To the extent your action is based on certain portions of the 2012 Planning Rule, such as 36 C.F.R. § 219.8 (Sustainability), AFRC maintains the Planning Rule fails to provide for multiple use as required by MUSYA and NFMA.

- 3.) Consider the impacts of the proposed plan amendment to adjacent landowners’ timber resources. In many cases, the agency’s immediate neighbors are managing forests for

sustained-yield timber production. This sustained yield is founded on a carefully devised management plan including harvesting, planting, nurturing, thinning, and harvesting again. The potential for uncontrolled wildfire on Forest Service land to disrupt this management regime needs to be carefully considered. Private forest landowners have invested a lot of time, energy, and money into their managed forests. Risk to these investments needs to be considered. When a natural ignited fire gets away, on average, for every acre that is burnt at high intensity, 20 MMBF @ \$400/MBF is lost (\$8,000/acre). How will the USFS compensate private landowners impacted from “managed” fires impacting their timber assets and required wildlife protection areas?

This issue is of special concern because of the inequitable distribution of liability. A landowner or worker who accidentally ignites a fire that spreads to public land can be held liable for millions of dollars of public expense. See Cal. Health & Safety Code § 13007. By contrast, the government has no duty to suppress a fire, or to do so in a certain way. *United States v. Sierra Pac. Indus.*, 879 F.Supp.2d 1128, 1137 (E.D. Cal. 2012). Damages from a fire that spreads to private property are usually precluded by the “discretionary function” exception to the Federal Tort Claims Act, 28 U.S.C. § 2680(a); see *Miller v. United States*, 163 F.3d 591, 594 (9th Cir. 1998). A claimant has the heavy burden of showing that government actions at issue “were actually not policy-oriented.” *Hardscrabble Ranch, L.L.C. v. United States*, 840 F.3d 1216, 1222 (10th Cir. 2016) (citing *United States v. Gaubert*, 499 U.S. 315, 324-25 (1991)).

- 4) Consider the impacts of the proposed plan amendment to forest health. As we stated above, “managed” wildfire in untreated stands with excessive fuels accumulation has the potential to kill overstory canopy resulting in a stand-replacing fire event and destroying key wildlife habitat. Please consider and analyze this risk that this plan amendment brings to overall forest health. Why is managing fire in an impromptu manner a better strategy than utilizing controlled burns that fit within a strategic forest fire resiliency plan?
- 5.) Consider the impacts to CO<sub>2</sub> release following the potential burning of dense forest stands prior to mechanical treatment. Thinning out commercially-sized trees *prior* to introduction of fire has a twofold impact on carbon sequestration benefits. Such thinning would a.) remove trees from the landscape and facilitate the storage of that carbon in wood products, and substitute for more carbon-intense products; and b.) reduce the risk of having those trees burn in a fire resulting in the release of that carbon rather than the storage of that carbon. The implementation of this plan amendment could have, under this scenario, a net negative impact on the stabilization of carbon resources. How does an impromptu fire project satisfy the requirements to disclose and mitigate the potential for negative CO<sub>2</sub> and human health impacts as compared to feasible alternatives? How will the impacted population centers be notified regarding the extent and timing of human health risks associated with impromptu fire project emissions?

6.) How is this plan amendment consistent with the Clean Air Act and what are the consequences to public health? Severe and uncontrolled wildfire is a significant source of PM<sub>2.5</sub>, one of the most dangerous air pollutants. For good reason; according to the EPA, Exposures to PM<sub>2.5</sub> are “associated with decreased lung function growth, exacerbation of allergic symptoms, and increased respiratory symptoms.” Env’tl. Prot. Agency, “Criteria Air Pollutants,” at 3, in *America’s Children & the Environment* (3d ed. 2015). These risks are highest for “[c]hildren, older adults, individuals with preexisting heart and lung disease (including asthma), and persons with lower socioeconomic status. ...” *Id.* Moreover, “[i]nformation is accumulating and currently provides suggestive evidence for associations between long-term PM<sub>2.5</sub> exposure and developmental effects such as low birth weight and infant mortality due to respiratory causes.” *Id.* How will the Forest Service justify ensuring large air pollution events when the alternative of management and prescribed burning is available?

PM<sub>2.5</sub> is a “criteria” pollutant under the Clean Air Act, a pollutant “which may reasonably be expected to endanger public health or welfare.” Clean Air Act § 108(a)(1)(A), 42 U.S.C. § 7408(a)(1)(A). The National Ambient Air Quality Standards (or NAAQS) established under section 109 of the Clean Air Act are limits deemed “requisite to protect the public health.” 42 U.S.C. § 7409(b)(2). Out-of-control wildfires will lead directly to significantly exceeding NAAQS in areas adjacent to the forest and causing significant harm to vulnerable populations. One study found wildfire particulate-matter emissions in concentrations present in California’s Central Valley during a wildfire outbreak in 2008 “were ten times more damaging to lung function than similar concentrations of particulate matter found in urban ambient air.” Kirsten H. Engel, *Perverse Incentives: The Case of Wildfire Smoke Regulation*, 40 *Ecol. L.Q.* 101, 112 (2014) (citing Teresa C. Wegesser et al., *California Wildfires of 2008: Coarse and Fine Particulate Matter Toxicity*, 117 *Env’tl. Health Persp.* 893, 896 (2009)).

While the EPA’s “exceptional events” rule largely excuses wildfires from Clean Air Act compliance, it places the burden on the relevant state to demonstrate that wildfire caused the particular exceedance. 40 C.F.R. § 50.14(b)(4). This safety valve for state legal compliance doesn’t undo the disastrous effects of uncontrolled fire on forest and public health.

Finally, we do not support the Forest Service accounting for accomplishments on measurable targets that the agency receives Congressional funding for, such as hazardous fuels reduction. If the Tahoe National Forest anticipates doing this, then we would request that your funding for programs like hazardous fuels reduction be reallocated to Forests that plan to implement such programs through active management.

Thank you for the opportunity to comment. Please keep us informed as the amendment progresses.

Sincerely,

/s/ *Scott Stawiariski*

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cc: AFRC, CFA, Tahoe FLT, R5 Staff