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February 16, 2021

Mr. Michael VanDyck
Forest Management Simulator Group Leader
2150A Centre Avenue
Fort Collins, CO 80526
Submitted Electronically

RE: Batch 2 FSM and FSH Updates

Dear Mr. VanDyck:

On behalf of F.H. Stoltze Land & Lumber Company, please accept the following comments and suggestions on the Batch 2 revisions to Forest Service Manual and Forest Service Handbook documents.

As active members of the Federal Timber Purchasers Committee, we fully support the detailed comments submitted by the organization and by reference and attachment submit the same on behalf of F.H. Stoltze Land & Lumber Co. as substantive comments on detailed changes in the handbook.

In addition to the comments submitted by attachment, please consider the following specific comments on Batch 2 Updates on behalf of Stoltze. These comments are intended to implement the changes in the MOU between the Small Business Administration and USFS dated April 3, 2020 into the necessary handbook and/or manual provisions. Specifically reference Sec 5 of said MOU, reading in part: *“The Forest Service will afford SBA the opportunity to review prior to public announcement all proposed sale programs involving sales with an estimated value of \$2,000 or more, including set-asides proposed by the Forest Service. Timber volume sold under Stewardship Integrated Resource Timber Contracts will be included in the market share calculations and in calculation of the set aside trigger.....”*



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To that end, please adopt the following recommended changes to FSH 2409 – 19 Chapter 60:

Pg. 44: 61.8 - Small Business Administration Set Aside Program and Special Salvage Timber Sale (SSTS) Program

Invite field representatives of the Small Business Administration (SBA) to participate in stewardship contracting projects. The SBA has access to information about capabilities of small businesses that may be important to implementation of the projects and can provide an important link to small businesses during the selection and design of projects. Provide an electronic copy of stewardship contract solicitations and awarded contracts to SBA field representatives.

To ensure there is opportunity for use of local small business sawmills, make certain that the request for proposals for stewardship contracting projects considers technical evaluation criteria that give weight *for use of local businesses*, including small business sawlog mills. When defining the evaluation criteria, give additional weight to those proposals that are responsive to the local community's needs.

Include stewardship contracts and agreements in the timber sale set-aside program. Track the volume of all sawlogs in stewardship contracts and agreements on form FS-2400-31a as normal volume and include it in all SBA program calculations. Track the sawlog volume going to small and large businesses and to manufacturers and non-manufacturers, as defined in FSH 2409.18, chapter 90.

Use this information to track “trigger” of the SBA set aside. Also consider using Stewardship contracts in periods of program trigger to satisfy the 20% open sale requirements when necessary. Also use this information at the end of the scheduled 5-year recomputation of shares for the timber sale set-aside program to determine if changes are needed in the share percentages.

Pg. 48 62-Exhibit 01-Continued Stewardship Contract and Agreement Use Matrix

Revise said matrix specifically the line item titled “SBA Set-Asides” and change the entry under the heading “*Integrated Resource Timber Contract (IRTC) FS-2400-13 Scaled and FS-2400-13T Tree Measurement*” to “YES”

The issue of including USFS timber sale volume sold through the Good Neighbor Authority process in the SBA timber sale set aside program must be addressed in the new FSH – 2419- Chapter 80. Please adopt the following changes to said handbook:

Pg. 13 81-Exhibit 01- Tool Selection Matrix

Revise said matrix specifically the line item titled “SBA Set-Aside” and change the entry under the heading “*Good Neighbor Agreement*” to “YES”. Also change the entry under the heading “*Stewardship Contract*” to “YES”.

NEW SECTION Pg. 15: 81.4 - Small Business Administration Set Aside Program and Special Salvage Timber Sale (SSTS) Program

Invite field representatives of the Small Business Administration (SBA) to participate in GNA projects. The SBA has access to information about capabilities of small businesses that may be important to implementation of the projects and can provide an important link to small businesses during the selection and design of projects. Provide an electronic copy of GNA contract solicitations and awarded contracts to SBA field representatives.

Include GNA contracts in the timber sale set-aside program. Track the volume of all sawlogs in GNA contracts on form FS-2400-31a as normal volume and include it in all SBA program calculations. Track the sawlog volume going to small and large businesses and to manufacturers and non-manufacturers, as defined in FSH 2409.18, chapter 90.

Use this information to track “trigger” of the SBA set aside. Also consider using GNA contracts in periods of program trigger to satisfy the 20% open sale requirements when necessary. Also use this information at the end of the scheduled 5-year recomputation of shares for the timber sale set-aside program to determine if changes are needed in the share percentages.

Conclusion:

It is imperative to the successful implementation of the Small Business Set Aside program that ALL timber volume sold from USFS managed lands are included in the program. This is clearly the intent of the MOU between USFS and SBA, most recently updated in April of 2020. The above referenced changes to the Forest Service Handbook are critical to meeting the intent of the program and MOU.

Once again, we want to endorse and re-submit as comments from Stoltze the detailed comments submitted by the Federal Timber Purchaser's Committee attached hereto. We appreciate the opportunity to review the proposed changes and provide comment. Please do not hesitate to contact me with any questions or for clarification. We look forward to your response to our comments and tracking progress on adoption and implementation of the revisions.

Sincerely,



Paul R. McKenzie
Vice President – General Manager

ENC

Federal Timber Purchasers Committee

1901 Pennsylvania Ave, NW, Ste 303 Washington DC 20006

February 16, 2021

Mr. Michael VanDyck
Forest Management Simulator Group Leader
2150A Centre Avenue
Fort Collins, CO 80526

Dear Mr. VanDyck:

Thank you for the opportunity to review and comment on the draft Batch 2 revisions to Forest Service Manual and Handbook documents. Following are several overarching comments followed by our detailed section by section comments:

Liability Limit for Operations Fires on National Forest Land in GNA Contracts

Forest Service Timber Sale Contracts have included limits on the liability of a purchaser for non-negligent Operations fires, contingent on the purchaser's compliance with specified fire precautions, since at least the early 1960s. Fire liability limits are now also included in Stewardship Contracts, Stewardship Agreements, and Stewardship Partners' Timber Sale Contracts. These Fire Liability Limits for Operations Fires provide critical protection for purchasers against potentially catastrophic liability for suppression costs and other damages that could result even where the purchaser has not been negligent.

However, the Forest Service has yet to require liability limits for non-negligent Operations fires on NFS land in State GNA Contracts.

As you are aware, according to the Chief's December 16, 2020 letter to the FTPC, "States currently can [emphasis added] modify their State Timber Contracts to include such [fire liability limitation for operations fires] language." Several States are already including fire liability limits for operations fires in their GNA Timber Sale Contracts, with Forest Service approval.

From this, we reasonably conclude that there is nothing inherently adverse to the interests of the United States in such a clause. (Indeed, if there were, it is doubtful

that the clause would have been included in USFS timber contracts for the past 60+ years.)

Nonetheless, when asked why such a clause (limited to operations on NFS land) can't be a required clause in state GNA timber sale contracts, the FS's response is consistently that "we can't" (not that for policy reasons, we have decided against doing so). No further explanation or reference to any statutory prohibition has been provided (and we are aware of none). If the FS has valid concerns about the legality of requiring this clause in state GNA timber sale contracts, we would like some idea what those concerns are, so that they can be assessed and, if appropriate, be discussed.

We note that in the Chief's letter she indicated that "the Forest Service has no legal authority to require States to include such language in its contracts pursuant to a Good Neighbor Agreement." But, the converse is also true - **there is no law prohibiting the FS from requiring States to include such language in their GNA timber sale contracts.** Moreover, in GNA situations, since the State is acting as the agent of the FS, it only makes sense for the FS to make the degree of its risk vis a vis operations fires on NPS land under those contracts identical with that included in its own direct timber sale contracts with purchasers. Lastly, we note that we know of no authority to require the inclusion of numerous clauses in state GNA timber sale contracts, but they have nonetheless been required. These clauses include provisions mandating --

- the containment of petroleum spills
- notice if hazardous materials are spilled
- the cleaning of equipment to prevent invasive species
- suspension or cancellation of the contract if the Forest Service is required to interrupt or cancel operations due to a court order or to comply with NEPA or other legal sanction

That said, since, on the advice of our counsel, we do not believe that any legal impediment exists to requiring the clause in state GNA timber sale contracts, as part of the revision of the FSM and FSHs, we recommend that the Forest Service

require States to include fire liability limits in GNA Timber Sale Contracts, for the following reasons:

- Requiring fire liability limits in State GNA contracts would provide the same level of critical protection for purchasers that already exists in USFS Timber Sale Contracts, Stewardship Contracts, Stewardship Agreements, and Stewardship Partners' Timber Sale Contracts.
- Fire liability limits in State GNA Contracts will contribute to the success of GNA programs.
- Requiring fire liability limits for operations fires on national forest lands will not be a disadvantage to States.

Included in our comments are specific recommendations for changes to Section 82.23, Section 61.14a, and the Stewardship Agreement and Stewardship Agreement Supplemental Project Agreements.

Transfer of Title for GNA and SA

Passage of title to national forest timber from Stewardship Agreements and State Good Neighbor Agreements must be transparent and clear. Purchasers must be confident of their title to Forest Service timber, and Forest Service, Partner, and State personnel must clearly understand the details of how title passage occurs.

Stewardship Agreements - the Chief's December 16, 2020 response letter to the FTPC referenced FSH 1509.11, Section 72.6, which clarifies that title to the timber will transfer from the Forest Service to the Cooperator when the timber has been cut, scaled, removed, and paid for. However, 1509.11, Section 72.6 does not discuss the transfer of title from the Cooperator to the Purchaser. Further, FSH 2409.19, Chapter 60 doesn't contain any discussion of passage of title to the timber for Stewardship Agreements.

We recommend adding a section to FSH 2409.19, Chapter 60 describing how and when title to the timber will pass from the Forest Service to the Cooperator, and that title to the timber will pass from the Cooperator to the Purchaser under the terms of the Cooperator's contract, which is subject to Forest Service review and approval.

We also recommend reviewing and editing the templates for Stewardship Agreement and Stewardship Agreement SPA III. B and Appendix F to a) require a clear description of how title passes from the Forest Service to the Purchaser, 2) show that the Partner will be inserted in each of the blank spaces in the templates, as was done for other portions of Parts I – IV, and 3) require that the Cooperator’s contract contain a provision that clearly describes how and when the Purchaser will acquire title.

Good Neighbor Authority - Section 82.25 only states that the Forest Service will maintain title to the timber until it has been cut, measured, and removed from the sale area, regardless of payment details between the State and the Purchaser.

During a recent call, Forest Service staff acknowledged that title to the timber will pass directly from the Forest Service to the Purchaser, subject to details in the State Contract. We recommend editing Section 82.25 to explain that. We also recommend editing the templates for GNA and GNA SPA, including Appendices A, D, and E to 1) clearly describe how title to the timber will pass from the Forest Service to the Purchaser and 2) require that the State’s contract contain a provision that clearly describes passage of title to the timber from the Forest Service to the Purchaser.

Optional Items for Stewardship Contracts

According to the last sentence in Section 62.12a, “The goal of options is to ensure the Government and the Contractor are aware of the future requirements and that the Contractor has enough information to provide a sound business plan and response to the proposal with bids that reflect this understanding”. We understand that options in Multiple Year IRSCs are different than optional work items; however, there are helpful concepts in that sentence which should be reflected in policy and direction for optional work items in IRSCs and IRTCs.

We recommend adding direction in Chapter 60 to - 1) require that the list of optional items is realistic, 2) require full disclosure in the RFP about how optional items will be considered in the evaluation, including how much weight will be given to each optional item, and 3) assume all optional work will be authorized in

year one with a price escalator, based on the annual cost-of-living index, for work authorized in subsequent years.

Restoration

We fully support “restoration” as one of the land management goals in national forest plans and programs. We do not, however, support establishing “restoration” as the primary or exclusive goal of national forest management through the proposed directives.

The emphasis on “restoration” for Stewardship Contracts and Agreements appears to stem from Section 60.3, 1, which establishes a “focus on restoration” as policy. However, the enabling legislation authorizes use of Stewardship Contracts and Agreements to “achieve land management goals”, with no emphasis or priority for “restoration”. The statute and regulations identify seven land management goals that can be met via Stewardship Contracting. The FS Manual and Handbooks must comply with the authorizing statute which establishes multiple use goals. It is inappropriate to elevate one statutory goal over others to which Congress has assigned equal weight, and doing so may subject worthwhile Stewardship projects to increased risk of litigation.

The emphasis on “restoration” for Good Neighbor Agreements appears to stem from the abbreviated definition of “Authorized Restoration Services” in 80.5; as we note in our comments on 80.5, the authorizing legislation goes on to define the term “forest, rangeland, and watershed restoration services” as — “(i) activities to treat insect- and disease-infected trees; (ii) activities to reduce hazardous fuels; and (iii) any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat.” Clearly, the full definition includes a broad spectrum of management activities, which must also be included in 80.5.

We have commented on the individual references to “restoration” throughout the proposed revisions to the FS Manual and Handbooks. For any we missed, we generally recommend replacing “restoration” with “land management goals”.

Following are our detailed comments on the Batch 2 documents:

FSM 2420 Timber Appraisal

2420 – Objectives

We recommend rewriting #1 as follows:

1. Determine fair market value (36 CFR 223.60).

We recommend moving #3, 4, and 5 to 2420.3 – Policy.

2420.42 – Director, Forest Management, WO

We recommend adding the following monitoring item – “**to monitor the percent of sales volume sold during each fiscal year**”.

2420.43 – Regional Foresters

We recommend adding “**and 2422.2**” to #10.

2422.1 – Advertised Values in Relation to Bid Values

We recommend deleting this section. Given the variability of markets and between individual projects, these metrics are a distraction from the sale and accomplishment of projects. Post-sale analyses can help inform appraisal processes to accurately derive advertised rates.

2422.2 – Responsiveness to Market Changes

We recommend editing the first sentence as follows – “Regional Foresters shall establish criteria that seek to achieve the sale of ~~at least 85~~ **100** percent of sales volume during each fiscal year ... to achieve this standard.” We don’t understand why the Forest Service would propose a criterion that “seeks” to sell less than all of their sales every year.

We also recommend adding the following as a third paragraph -

“By April 30 and October 31, each year, Regional Foresters must report to the Washington Office the percent of advertised volume that was sold for the previous rolling 4-quarter period ending March 31 and September 30, respectively.”

FSH 2409.19, Chapter 10, CWKV Costs, Collections, and Accounting

10.1 – Authority

#2 - Based on our understanding that CWK2 can be either “Regional CWK2” or “Forest CWK2”, we recommend inserting “Forest Projects” after CWK2, as

follows: “... and CWK2 (Cooperative Work, Knutson-Vandenburg, Regional Projects, **and Forest Projects**).”

10.2 – Objectives

We recommend editing the 2nd sentence as follows – “The program allows for performing **reforestation, timber stand improvement, community protection, maintenance of forest roads**, watershed restoration ...”. These statutorily authorized activities (16 USC 576b) must be included.

10.3 – Policy

We recommend editing #5 as follows – “When ... coordinate ~~the funding needs~~ **CWKV collections** with other needs, such as National Forest Fund, Brush Disposal deposits, ...”.

#12 appears to conflict with #6 regarding how to handle excess CWKV balances; we recommend reconciling that apparent conflict. We also recommend editing 10.41 - #2, 10.42b - #3, 10.5 – Excess CWKV funds, and 10.5.-Unused KV funds for clarification and consistency.

10.43 – Regional Foresters

We recommend adding –

“Establish direction for use of CWK2 funds.”

“Track Forest collection of excess CWKV (CWK2) for use outside of the sale area, establish a regional CWK2 fund, and establish direction for management and use of CWK2 funds.”

“Identify the percentage of CWKV funds collected for use outside the sale area boundary available annually to the collecting Forest.”

10.44 – Forest Supervisors

We recommend editing 4.b. to replace “Unused” with “**Excess**”, and adding the following to the end of 4.c. – **“including an outline of proposed Forest KV (CWK2) for use on projects outside the sale area.”**

10.45 – District Rangers

We recommend adding a new 1.a. as follows – “In development of SAI plans, identify a desired level of CWKV collections for use outside the sale area.”

10.5 – Definitions

CWKV for Use Outside the Sale Area Collection - We recommend editing the 1st sentence as follows “A collection ... within that “Forest and” Region.”

Excess CWKV Funds - We recommend deleting “within the Region” in the 1st sentence and modifying the 2nd sentence as follows – “These funds are either retained on the Forest as CWK2 or returned ...were collected.”

We recommend adding a definition for Required Reforestation, along the lines of –
“Required Reforestation. Reforestation of harvested areas as required by the NFMA. Required Reforestation is the first priority for CWKV funds”.

We recommend adding a definition of CWK2, per the last sentence in 10.1, #2, as follows –

Forest KV (CWK2). This is the fund that consists of Forest’s CWKV declared excess to their needs that is not transferred to the regional pool, but allowed, by the Region, to be retained at the Forest for projects outside of the sale area.

11- Development of Sale Area Improvement Plans

We recommend editing this section as follows –

“Except as provided in section 11.5 and to the extent that sale area improvement (SAI) needs have been identified, each proposed timber sale that has identified SAI activities must have a sale area improvement plan, which identifies required reforestation needs and protection and improvement needs for the future productivity of the renewable resources of forest lands in the sale area. Identification of additional needs outside of the sale area should also be identified and prioritized for funding through CWK2. The identification of these needs arises from environmental analysis of the proposed sale area and from analyses outside of the proposed sale area. The plan contains specifically identified activities that are eligible for funding through CWKV collections and calculates and determines the

amount of CWKV funds to be collected ~~as part of the contract~~ **from timber sale receipts.”**

13.5 – Limitations on Use of CWKV Funds

We recommend that you edit #12, as follows – “12. Activities that are the responsibility of the timber purchaser (~~including BD~~) under the terms of the contract.” BD deposits are collected to fund slash disposal by the Forest Service, not the Purchaser.

14 – Purchaser Requirements vs. CWKV Funding

We recommend editing the last sentence in the opening paragraph as follows – “Examples of actions for which the purchaser or operator ~~are~~ **may be** responsible include ...” Purchasers are only responsible for work identified in the contract as purchaser responsibility. Not all of the work in the examples is always the purchaser’s responsibility.

16.1 – Associated Costs and Collections

We recommend editing the 3rd sentence in 1st paragraph as follows – “Collect CWKV funds ~~for timber cut~~ **from timber sale receipts** during a contract or appraisal period from timber sale receipts for approved work ...”.

16.21 – Form FS-2400-0050A –

We recommend adding the following sentence to the end of the 2nd paragraph – **“Include desired CWKV collections for use outside of the sale area.”**

We recommend editing the last sentence in the 4th paragraph as follows – “On sales without an SAI plan ... or for CWKV ~~collections~~ **activities or projects** outside the sale area.”

Line 21 - we recommend changing “Deposits” to “Collections”.

16.24 – Use of Base Rates

We recommend editing the 1st sentence along the lines of the following to clarify that “Base Rates” and “Minimum Rates” are not necessarily the same - “Base rates ~~are the minimum rates charged for each timber species, and they cover all required~~

reforestation costs include all costs of required reforestation and are the lowest rates authorized for the sale of timber.”

We recommend editing the 3rd and 4th sentences along the lines of the following –

“However, it should be noted that, for sales offering low value timber or sales with high development costs, selling advertising timber at above base rates that include all reforestation costs may reduce a sale’s profitability to potential timber purchasers to such an extent that the timber sale does not sell. In such a case, base rates could be increased to include reduced by funding only a portion of the required reforestation cost from to be funded by CWKV with the balance to be covered by appropriated funds; or, all reforestation activities could be funded with appropriated funds, if the availability of appropriated funds can be assured.

17.1 – CWKV Pool and Tracking of CWKV Funds

We recommend editing the 1st paragraph as follows –

“The CWKV pool ... ~~Do not collect CWKV funds on one sale with the intention of spending them on another sale area. CWKV funds collected on one sale area must not be used to fund work that is unfunded on another sale area.~~ However, CWKV funds can be collected on one sale with the intention of use outside of the sale area. ... other non-CWKV funds.”

The proposed paragraph would defeat the main purpose of expanding the use of KV, which is to allow the FS to collect more KV funds than they need for any individual sale in order to fund additional priority work on the Forest. This is how Stewardship retained receipts are often used and we don’t see why KV, from timber sales, cannot be used the same way.

17.2 – Annual Review and Report of the CWKV Balance

We recommend adding the following new paragraph, right after the paragraph ending in “March 15 of the following year.” –

“The Regional Office Forest Management staff, with assistance from the budget staffs, shall designate a portion of excess CWKV (new CWK2) from each Forest that will be returned to that Forest for use locally.”

FSH 2409.19, Chapter 20, CWK2 Project Planning

20.3 – Policy

We recommend adding “**Second**” to the beginning of #5, and moving #5 to the end of #4 to clarify the “two distinct ways of generating CWK2 funds”.

20.5 Definitions

We recommend adding the following definition for CWK2 –

“**This is the fund that consists of Forest’s declared excess to their needs that is not transferred to the regional pool, but allowed, by the Region, to be retained at the Forest for projects outside of the sale area.**”

FSH 2409.19, Chapter 60, Stewardship Contracts

60.2 – Objectives

We recommend replacing “objectives” with “goals” in the first sentence to be consistent with the authorizing legislation.

60.3 – Policy

#1 – we recommend editing this sentence as follows – “Stewardship Contracts and Agreements are used to accomplish resource **land** management **goals** ~~objectives with a focus on restoration~~”.

60.42a – Regional Foresters

#1- We recommend making “approve the use of Stewardship Contract and Agreements” a Forest Supervisor responsibility, with exceptions for contracts longer than 10 years or contracts of unusual complexity or size.

60.42c – District Rangers

#16 – we recommend changing “did not receive bids” to “**were not awarded**”.

60.42d – Contracting Officers for Procurement of Services and Sale of Property Stewardship Contracts

We recommend adding a reference to 64.2 to clarify respective responsibilities of Timber Sale Contracting Officers and Procurement Contracting Officers for Stewardship Contracting.

60.5 – Definitions

Best value basis – we recommend adding “**Highest Price Technically Acceptable and Lowest Price Technically Acceptable** may meet the requirements of Best Value Basis for IRTCs and IRSCs, respectively.”

Indian Forest Land or Rangeland – we recommend adding the following three sentences to the definition –

“**Ordinarily this will include only land within the present-day boundaries of a Tribal Reservation or individual allotment. Historical territory, sometimes referred to as “ceded lands,” is not Indian Forest Land or Rangeland. Historical territory is excluded from eligibility for projects under the TFPA.**”

Optional Stewardship Projects or Work Items – we recommend editing the 1st sentence to “Service work identified as optional in the **RFP and** Contract or Agreement.”

61 – Key Elements When Considering Stewardship Projects

We recommend replacing “restoration” with “land management” in the 1st sentence under “Other Key Elements to consider”.

We recommend replacing “collaborative group” with “**collaborators**” in 1b.

We recommend editing 3a under “Other Key Elements to consider” as follows –
“~~Knutson-Vandenburg (K-V) Act of 1930 (16 USC 576, 576a-576b), as amended and Salvage Sale Funds (SSF)(NFMA)~~ **CWKV and SSSF** may not be collected ~~on an~~ **from** IRTCs, IRSCs, or Stewardship Agreements. Distribution **of receipts** to CWKV or SSSF is not permitted (~~16 USC 6591e, see 205~~). **For Stewardship Contracts or Agreements that require reforestation, the District Ranger shall ensure the accomplishment of such reforestation through other funding sources than essential CWKV.**”

61.11a – Principles of Collaboration

We recommend editing the 3rd sentence as follows – “Contractors representing a cross-section of businesses, including timber industry representatives, should also be ~~part of the collaborative group~~ **among those collaborators.**”

61.12 – Identifying Local Community

We recommend adding “**The District Ranger is responsible for making the determination of local community.**”

61.15 – Project Selection Criteria under the Tribal Forest Protection Act

We recommend adding the following sentence to #1 –

“**When determining adjacency, the Forest Service will consider lands lying near or close to, but not necessarily touching Indian forest land.**”

61.2 – Appropriate Use of Stewardship Contracts and Agreements

Paragraph 1- as we commented in our Batch 1 comments on 2432.32, we recommend 1) that “Forest Restoration Best Tool Decision Tree” be changed to “**Forest Management Best Tool Decision Tree**”, since not all projects with timber harvest are “Restoration”, and 2) that “collaboration” be deleted from the first bubble, since collaboration is not required for all timber projects, all forest restoration projects, or, in this case, all Stewardship projects.

Key elements #1 and 2 – these are duplicative, and should be combined into a single element.

Exhibit 01 – First, the 2nd bubble down asks whether the project is best conducted through a Stewardship Contract or Stewardship Agreement and references Section 64; we don’t see anything in Sec. 64 to answer that question and recommend either adding something to Section 64 or changing the reference. Second, the 3rd bubble down depends on whether “the benefit is strictly to the government”; we question whether that is ever the case and recommend that you clarify that statement.

Exhibit 02 - We appreciate the removal of former Section 61.21, which indicated that the Forest Service should not use Stewardship Contracts for environmental analysis, including NEPA analysis. Despite this former provision, a court upheld the North Fork Mill Creek A-to-Z project on the Colville National Forest, where preparation of NEPA analysis was included in the Stewardship Contract, because the Forest Service Handbook “does not have the force and effect of law.” *All. for the Wild Rockies v. Pena*, No. 2:16-CV-294-RMP, 2018 WL 4760503, at *7 (E.D. Wash. Oct. 2, 2018). While this precedent is helpful, adding environmental

analysis to section 61.2 – Exhibit 02 would forestall future legal complications for a potentially powerful forest management tool.

61.3 – Estimating Value and Cost and 61.5 – Sale Without Advertisement

Both of these sections prohibit use of rollback factor for Stewardship Agreements, sole source Stewardship Contracts, and Contracts or Agreements without advertisement. We recommend authorizing, but not requiring, roll-back factors in both Sections to allow for 1) possible changes in the market between the base period and when the appraisal is completed, 2) reflect differences in sale conditions that may not have been reflected in the appraisal, 3) the risk that timber volumes, the proportion of non-saw biomass, sale characteristics, or values for sawtimber sales in the TE data base are not representative, 4) the risk that markets or other economic conditions may change during the period of the contract, and local market conditions.

62 – Preparing Stewardship Contracts and Agreements

Exhibit 01 - We recommend adding “Fire Liability Limit” with a “Yes” in all 4 columns.

62.11 and 62.12 IRTC and IRSC

We recommend deleting “restoration” in #4 of both sections as Stewardship work items encompass much more than “restoration”, as outlined in 61.2, Exhibit 02.

62.12a and 62.12b – Determining Use of Multiple Year or Multi-Year Stewardship Contracts

We recommend deleting the 1st sentence in both sections for clarity.

62.14a – Stewardship Agreements Involving Product Removal

We recommend deleting “restoration” in the 1st and last sentences.

We recommend editing the 2nd paragraph as follows –

“Agreements that include the sale of forest products must document consent of the Approving Official and the Cooperator that ~~the best value approach is~~ timber sales used to accomplish included product removal **will be sold on a competitive basis.**” This edit is needed to conform to current practices. Use

of “best value approach” is not currently required by any of the Stewardship Agreement templates and, to our knowledge, is not currently being used by Cooperators.

“... ~~It is recommended that the~~ **The** Forest Service **shall** provide a minimum solicitation list of prospective bidders or provide an approved bidders list. ~~if there is expected or anticipated competitive interest in the products.”~~

“Appropriate project tracking ... product removals and treated acreage. **When product removal included in an Agreement is being counted as a component of the Forest’s assigned target outputs, the volume cut and removed shall be tracked by the Partner and reported to the Forest on a regular basis.** ... ~~restoration~~ work identified in the Agreement.”

We recommend adding a new subsection that outlines and discusses requirements for Partner Timber Sale Contracts, similar to how Section 82.2 outlines and discusses requirements for State GNA Timber Sale Contracts. In particular, the new subsection should include requirements for Title Passage, Liability for Loss, and Fire Liability Limits.

As a related matter, we also recommend revising the Stewardship Agreement (FS-1500-21c) and Stewardship Agreement Supplemental Project Agreement (FS-1500-21A) as follows:

- a) amend Section III B. as follows:
 1. replace “This Appendix may include:” with “**This Appendix shall include:**”
 2. add “**Fire Liability Limits**”
- b) move G. 46 Fire Precautions and Control to Appendix F as a required provision.

62.14b – Best Approach Determination for Agreements

This section duplicates the 2nd paragraph of 62.14, and should be deleted.

62.6 – Area Map and Treatment Area Boundaries for Stewardship Contracts and Agreements

We recommend updating this section and FSH 2409.12, Section 71.22, which is referenced, to include Virtual Boundaries as appropriate for Stewardship Contracts and Agreements.

We also recommend adding “**Tree Marking**” to the title of this section.

62.81 – Work Items Involving Road and Trail Construction and Maintenance

We recommend editing the 2nd and 3rd paragraphs as follows –

“Stewardship projects may include road and trail reconstruction or maintenance activities ~~that are restorative in nature~~ **that meet any of the seven land management goals for Stewardship Contracting** such as road decommissioning (obliteration), **road reconstruction or rehabilitation to facilitate access**, ... to distinguish what work is necessary for log haul (~~BMP's~~ **BMPs** and resource protection) and what work is ~~restorative in nature~~ **needed to meet land management goals.**”

“Coordinate with Engineering, **Fire Suppression**, and Recreation staff to ... encouraged in Stewardship Contracts.”

63.11 – Non-Price Factors

We recommend editing the 2nd paragraph, as follows, to be consistent with authorizing legislation –

“In a contract over 10 years in duration, **Contracting Officers may** give a procurement preference to a Contractor that would, as part of the contract, promote an innovative use of forest products, including cross-laminated timber through the development of an evaluation factor.”

We recommend adding the following sentence to 2a-Past Performance –

“Past performance on similar contracts on State or other federal lands should be considered.”

63.12 – Price-Related Criteria

We recommend adding the following paragraph to this section –

“Optional items that the contracting officer has determined are reasonably likely to be ordered must be identified in the solicitation. The solicitation must disclose how optional items will be evaluated, including how much weight they are to be given in accordance with Section 63.1. Solicitation instructions must explain that that the proposed prices for optional items will be evaluated as if the optional items will be authorized in year one of the contract, and the price escalated at the time of authorization of the optional item using the most recent Consumer Price Index published by the U.S. Bureau of Labor Statistics.”

63.13 – Solicitation of Proposals and Offers

We recommend editing the 2nd paragraph as follows –

“The instructions must identify the relative importance of each factor and sub-factor as well as their relationship to price. ~~For example, technical evaluation criteria may be listed in order of importance or described as approximately equal.~~ To provide clarity, contracting officers should favor the use of definitive and quantifiable weights to each of the 3 factors. For example, assign specific percentages to each factor rather than priority rankings. Price must be ... of the technical factors.”

63.3 – Time Limits in Awarding Stewardship Contracts

In general, the Forest Service has been steadily reducing the length of time from bid date to award of Stewardship Contracts since the initial authorization of Stewardship Contracts. That said, it would be helpful to have a target for a specific amount of time instead of “as promptly as possible”. We recommend replacing “awarded as promptly as possible” with “**generally awarded within 14 days**”.

64.2 – Contracting Officers for Stewardship Contracts

We recommend updating this section to align designation authorities for Stewardship Contracts and Agreements with Section 60.41b, #7.

64.5 – Tracking Work Progress

We recommend editing the 2nd paragraph as follows –

“Spreadsheets are set up ... or delegated official. **Monthly reports shall include volume and type of forest products removed. At completion of the contract, the Contracting Officer shall report on the total volume and type of forest products removed.** Progress reports ... details on reporting in FPFs.”

66 – Revenues from Stewardship Contracting

We recommend replacing “restoration” with “**land management**” in the 1st sentence.

FSH 2409.19, Chapter 80, Good Neighbor Authority

80.2 – the objective of the Good Neighbor Authority is more than improving “the quality of restoration”; we recommend adding language from the 2nd sentence to the 1st sentence, as follows - “**The objective of the Good Neighbor Authority is to increase the pace, scale, capacity, and efficiency of restoration activities on national forest lands and improve coordination across ownership boundaries to achieve mutual objectives**”.

We recommend deleting “to increase the pace, scale, capacity, and efficiency of restoration activities” from the 2nd sentence, and moving the edited 2nd sentence to the 2nd paragraph.

80.3 – we recommend editing the 2nd sentence in #2 to “**Timber sale and disposal shall be approved by a line officer with delegated authority for the planned volume of timber**”.

According to #7, counties and tribes are not authorized to “retain” revenues. According to the 1st paragraph of 81.31, counties and tribes are not authorized to “generate or collect” revenue. Counties and tribes would be unable to “retain” revenues if they cannot “generate or collect” revenue in the first place. We recommend that you clarify and align those authorizations.

80.5 – Definitions

Throughout the handbook, there is some ambiguity on how Good Neighbor Agreements are defined and used. In particular, we notice that the term “Good

Neighbor Agreement” is defined in 80.5 as an agreement between the Secretary and a Cooperator, such as a state or tribe. However, we also notice that this term is used throughout the Handbook to describe, what we believe to be, Supplemental Project Agreements (SPAs) that are made between individual Forests and Cooperators. Those SPAs contain more specifics on how the Agreements will function locally. We believe that these two terms, SPA and Good Neighbor Agreement, must be clearly and properly defined in this section and used appropriately throughout the Handbook.

Authorized Restoration Services - we recommend adding the following excerpt from PL 113-79 to the end of the definition -

“The term “forest, rangeland, and watershed restoration services” means— (i) activities to treat insect- and disease-infected trees; (ii) activities to reduce hazardous fuels; and (iii) any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat.”

We recommend adding the following new definition –

Supplemental Project Agreement (SPA). An agreement executed under the terms and conditions of the Good Neighbor Agreement that incorporates project-specific provisions.

We recommend that the Manual and Handbooks generally use the term “Supplemental Project Agreement” instead of “SPA”.

80.6 – Understanding Agreements and Supplemental Project Agreements

We recommend posting a link to the detailed information on the various types of Agreements available to the publicly accessible Forest Service website.

81 – Planning Good Neighbor Timber Sale Projects

Forest Restoration Best Tool Decision Tree – as we commented regarding 61.2, we recommend 1) that “Forest Restoration Best Tool Decision Tree” be changed to “**Forest Management Best Tool Decision Tree**”, and 2) that “collaboration” be deleted from the first bubble.

81-Exhibit 01

1-We recommend adding a footnote for Good Neighbor Agreement regarding “Subject to Construction Wage Rates or Service Contract Wage Rates”, since some States may require GNA projects, which the State prepares and implements, to include a requirement for “Prevailing Wage Rates”.

81.12 – Selection of Project Areas

#1 – we recommend replacing “agency” with “**Forest Service**”.

81.2 – Collaboration – we recommend changing the title of this section to “**Coordination**” to distinguish it as a different process than Forest Service collaboration with stakeholders. “Coordination” is consistent with current terminology in Section 84.1.

81.3 – Fund Use and Revenue Collection Ability

Sections 80.3-#7, 81.3, 81.3 – Exhibit 1, 81.31, 82.4, and 83.1 are not entirely consistent regarding collection of revenues from State GNA timber sales. We recommend some editing for consistency and clarity.

81.31 – Revenues from Good Neighbor

The second paragraph references deferred road maintenance as an activity that a State cooperator could be required to fund through project revenue. We recommend that you clearly define “Deferred road maintenance”, either here or in the Definitions section in 80.5.

The fourth paragraph refers to unplanned revenues that would be returned to the Treasury after October 1, 2023. We recommend that you clearly define what unplanned revenues are related to other revenues.

81.33 – Collection of Road Maintenance Funds

We recommend editing this section as follows – “Road maintenance may be performed by the State or its Subcontractors. Cooperative work deposits for road maintenance and surface rock replacement that will not be performed by the State may be collected **by the Forest Service from the State** according to FSH 1509.11, chapter 40 - Collection Agreements.”

81.34 – Use of Wyden Authority

We recommend deleting “This can be accomplished” from the 2nd sentence and combining sentences one and two as follows –

“Projects can be developed and funded to include lands both on and off the National Forest. ~~This can be accomplished~~ by utilizing the authority under the Wyden Amendment.”

81.4 – Examples of Restoration Services

We recommend editing the first sentence as follows – “The Forest Service may ... objectives, **including — (i) activities to treat insect- and disease-infected trees; (ii) activities to reduce hazardous fuels; and (iii) any other activities to restore or improve forest, rangeland, and watershed health, including fish and wildlife habitat.**”

We recommend editing the list of “forest restoration” examples, as follows –

1. Forest Restoration

- a. **Timber** stand improvement
- b. **Stand thinning to restore late seral habitat**
- c. **Stand regeneration to restore early seral habitat**
- d. Prescribed burning
- e. Reforestation
- f. **Removing insect or disease infested trees**

81.5 – Timber Sale Selection of Offeror

We recommend editing this sentence as follows – “When timber removal is included in a Good Neighbor project, the ~~Forest Service and the Cooperator~~ **Good Neighbor Agreement or Supplemental Project Agreement** shall specify whether the timber will be sold directly by the Forest Service or by the Cooperator, ~~under a good neighbor agreement~~ **on behalf of the Forest Service**”, as stated in Appendix A of the Good Neighbor Authority Supplemental Project Agreement.

81.52 – Cooperator as Offeror

Since the Cooperator does not have title to the timber, we recommend editing the 1st sentence as follows – “The Cooperator may offer National Forest System timber for sale, **on behalf of the Forest Service**, under a Good Neighbor Agreement”.

82.1 – Field Preparation

We recommend editing the 3rd sentence of the 1st paragraph as follows – “The Forest Service ... for the sale of any **national forest** timber”.

82.11 – Exemptions to National Forest Management Act of 1976, Section 14

As stated in the 2nd paragraph, “The policy is to rely on state contracting procedures for advertising, marking/designation, and supervision to ensure accountability”. Section 84.2 takes a slightly different approach, stating that “The lead role regarding timber theft prevention and other law enforcement issues on Good Neighbor projects will be established and agreed upon within the Good Neighbor Agreement.” We recommend modifying 84.2 to align with 82.11.

82.2 – Requirements of State Instrument for Sale of Timber

In the 2nd paragraph, we recommend replacing “and/or” with “**and**”.

In paragraph 3 and the list of examples, we recommend using “requirement” instead of making a not-so-clear distinction between “legal requirements” and “agreed upon requirements”. In particular, we recommend not using “agreed upon requirements” as that term implies a “conditional” requirement.

We recommend adding “**Publication of Advertisement and notification of prospective bidders**”, with the objective that States will publish advertisements of national forest timber for sale and will notify persons on State bidders lists.

82.23 - Fire Liability

In line with our overarching comment regarding Liability Limits for Operations fires, we recommend modifying the paragraph as follows –

“State timber sales **shall include** ~~are not required to follow~~ Forest Service fire liability provisions **for Operations fires on national forest land, as included in the 2400-6(T) timber sale contract.** ~~However, a State’s timber~~

~~sale instrument shall not relieve the Purchaser of liability in the event of negligence. The instruments should include fire prevention and response measures. If the State instrument lacks such prevention and response mechanisms, the State instrument should incorporate fire precaution measures from the standard Forest Service timber sale contract that would otherwise be applicable to this type of project on National Forest System lands. The Forest Service retains authority to conduct an investigation to determine if negligence has occurred~~ **with respect to an Operations fire.**

Regarding the reference to FSM 1580 in the last sentence, we were unable to find anything in that section relevant to Fire Liability. We recommend either adding either the “additional information” or a reference to the specific relevant portion of FSM 1580 to this paragraph.

82.24 – Forest Resources Conservation and Shortage Relief Act

The benefits of Good Neighbor Authority are best realized when execution of timber sales is streamlined where appropriate. Most States in Regions 1-6 already have accountability measures in place to ensure State timber is sold in accordance with the Shortage Relief Act. This includes log branding and/or painting. If those measures are in place, the Handbook should provide allowance for the Forest Service and State Cooperator to implement sales using the States’ accountability measures instead of the Forest Service’s. Doing so would allow State Cooperators to execute timber sales more efficiently.

We recommend changing the last sentence to “At a minimum, States shall **ensure** ~~adopt Regional~~ standards for log painting and branding comply with the Shortage Relief Act. **Allow waivers for log painting and branding comparable to those routinely allowed by the Forest Service on local sales of national forest timber.**”

82.25 – Title Passage

See our comments on Title to Timber starting on page 2.

We recommend the following changes –

~~“To minimize conflict in the event of a contract default, the~~ **The** Forest Service shall maintain all right, title, and interest in included timber until it has been cut, measured, and removed from the timber sale area **and paid for.**

~~regardless of payment arrangements between the State and Purchaser.~~ **When included timber has been cut, measured, removed, and paid for, title for the timber shall pass directly from the Forest Service to the Purchaser.** Any timber not removed on or prior to the contract termination date remains the property of the Forest Service.

During development of the GNA SPA and the review of the draft State contract, the Forest Service Line Officer and Contracting Officer shall ensure inclusion of provisions specifying how, and when, title to the timber will pass from the Forest Service to the purchaser.”

82.3 – Timber sale roads

We recommend editing the 1st sentence of the 2nd paragraph as follows – **“During periods of timber hauling, timber sale roads shall be maintained, commensurate with use, to meet ~~the minimum standards for removing forest products~~ established Forest Service maintenance standards for those roads.”**

82.4 – Determination of Appraised Value

We recommend deleting the entire 1st paragraph. The 1st sentence isn't accurate, as there have been a number of GNA timber sales sold where, for various reasons, the States do not retain “all revenue from a timber sale”. The last sentence isn't germane or necessary, and the 2nd and 3rd sentence duplicate language in the 2nd paragraph.

The 2nd paragraph needs to do a better job of identifying whether the State or the Forest Service will do the appraisal and establish the “appraised rate”.

The last three paragraphs in this section are also not germane to determination of appraised value. We recommend moving all of those to Section 81.31 – Revenues from Good Neighbor.

We recommend you add the following as a new paragraph –

“In States that require “Prevailing Wage Rates” in GNA timber sale contracts, use an Unusual Adjustment to reflect the difference between “Prevailing Wage Rates” and wage rates associated with Forest Service timber sales in the Transaction Evidence data base.”

83.1 Timber Information Manager (TIM)

The 5th paragraph appears to be obsolete. If so, we recommend deleting it.

83.4 - Harvest and Accomplishment Data Reporting to the Forest Service

We recommend adding the following two sentences to the end of 83.4 –

“The Forest Service shall work with the partner to prepare an accountable timber sale project. The Forest Service retains the authority to provide or approve all silvicultural prescriptions and marking guides to be applied on NFS lands.”

83.5 – Collection Agreements

We recommend editing the 1st paragraph as follows, and deleting the 2nd paragraph – “When the State is providing funding to the Forest Service for required reforestation, brush disposal, or road maintenance through a collection agreement, ~~advance payment to the Forest Service is required under good neighbor authority~~ the collection agreements, and modifications to them, shall be executed and all revenues for that work shall be received from the State prior to required reforestation, brush disposal, and road maintenance being performed by the Forest Service.”

84.2 – Law Enforcement

We recommend editing the 3rd sentence as follows – “Both ... project orientation, ~~and interagency coordination~~ and coordination with the purchaser.” Having both State and Forest Service Law Enforcement at pre-operations meetings will also help ensure coordination with the purchaser.

We also recommend adding a requirement that the Forest Service update Theft Prevention Plans to include sales of national forest timber by States under the Good Neighbor Authority. Finally, ensuring that Transfer of Title is clear and transparent in the FSH and the State contract will also be helpful for Forest Service Law Enforcement staff.

Thank you for your consideration of these comments. We believe that an in-person meeting with Forest Management staff would be especially helpful in recognizing our respective concerns and finding mutually acceptable language; we therefore respectfully request an opportunity to discuss these comments in person with Forest Management staff as early in your review process as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Buck Fullerton". The signature is fluid and cursive, with a long horizontal stroke at the end.

Buck Fullerton
Chair