CENTER *for* BIOLOGICAL DIVERSITY

THE JOHN MUIR PROJECT of EARTH ISLAND INSTITUTE

May 11, 2022

Submitted via:
https://cara.fs2c.usda.gov/Public//CommentInput?Project=60950.

Re: Region 5 Post Disturbance Hazardous Tree Management

Dear USFS:

On behalf of the John Muir Project of Earth Island Institute (JMP) and the Center for Biological Diversity (CBD), we are submitting these comments for the proposed R5 hazard tree management (North Zone, Central Sierra Zone, Southern Sierra Zone).

The Project purports to be a hazard tree project but the vast majority of the logging would take place on numerous maintenance level 2 (high clearance) roads that are not essential to recreation or any other activity. In fact, the Forests would benefit from closing and/or decommissioning of roads to protect wildlife and watersheds. In the North Zone, over 2,000 miles of level 2 roads are proposed for logging; in the Central Sierra Zone, over 1,100 miles; and in the Southern Sierra Zone, over 1,000 miles. *4,000 miles of level 2 roads*, and yet the Forest Service asserts every one of those miles must be logged and that simultaneously there is no potential for significant impacts from such logging. As discussed below, we ask that the Forest Service analyze alternatives that meaningfully address the potential for closing (temporarily or permanently) many of the level 2 roads, and that the necessary site-specific analysis occurs and potential significant impacts avoided.

Lack of supporting documents: As an initial matter, each of the draft EAs cite to the "wildlife analysis, biological evaluation, and biological assessment being prepared for the project record." But these supporting documents are not all available for public inspection on the project website. For example, as of May 11, 2022, no biological evaluations were yet disclosed despite repeated requests from the public for all supporting documents to be made publicly available during the comment period. Such material much be disclosed to the public per the NEPA regulations: "No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment." 40 CFR 1502.21. We therefore again ask that all supporting documents cited in the draft EAs be made public and a new comment period established to correct this error. *See League of Wilderness Defs./Blue Mts. Biodiversity Project v. Connaughton*, No. 3:12-cv-02271-HZ, 2014 U.S. Dist. LEXIS 170072, at *41-52 (D. Or. Dec. 9, 2014) ("Section 1502.21 plainly prohibits an agency from relying on information in the preparation of an EIS while refusing to make that information available to the public.")

Alternatives: The draft EAs assert that alternatives regarding level 2 roads were not "considered . . . in detail because they are wholly inconsistent with purpose and need element 2, which emphasizes the need to maintain the integrity and utility of National Forest System roads, trails, and facilities." This assertion makes no sense, however, because there is no requirement to keep open every level 2 road,[1] and furthermore, the purpose and need of a project cannot be so narrow as to eliminate the assessment of reasonable alternatives. That is especially so here, where the draft EAs offer no site-specific analysis to explain why all of the proposed level 2 road logging is essential. For instance, the draft EAs assert that it "is counterproductive to the agency's core objectives to consider closing important roads, trails, and facilities," but then offer no meaningful analysis to explain why every mile of the over 4,000 miles of level 2 roads is "important". To the contrary, many of these roads are not needed to access recreation sites or infrastructure, or as necessary ingress/egress, and closing roads could actually achieve the purpose of maintaining integrity because closed roads can ensure safety along those roads and can help begin to protect ecological and watershed integrity. Many of the roads could therefore be changed into Level 1 roads and dropped from proposed roadside hazard tree logging.

The "touchstone" of a lawful alternatives analysis is whether the agency's "selection and discussion of alternatives fosters informed decisionmaking and informed public participation." *Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 872 (9th Cir. 2004). Federal agencies must "[r]igorously explore and objectively evaluate all reasonable alternatives to a proposed project." *Center for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008). But as has occurred here, "[o]ne obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose and need so slender as to define competing reasonable alternatives out of consideration." *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 814 n.7 (9th Cir. 1999). The Forest Service cannot evade a meaningful alternatives analysis by generically asserting that every proposed level 2 road must be logged rather than potentially closed.

In short, level 2 roads that are essential for accessing recreation sites (such as campgrounds), or which are needed for access to private inholdings could still be included in the project, but the many level 2 roads that are not essential could be dropped, thereby (1) actually meeting the project purpose but (2) also protecting the many other important values in national forests (i.e., ecological integrity, water quality, solitude, etc). Furthermore, no basis or analysis is given in the draft EAs for not including alternatives that would, e.g., leave all large felled hazard trees (e.g., over 20 inches dbh) on the ground (and not remove them) for carbon storage, nutrient cycling, and large downed log wildlife habitat.

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[1] For example, the Plumas LRMP states: "Adjust road design and location, or use permanent/seasonal closures, to avoid or reduce impacts on migration routes, streamside management zones, raptor nesting areas, sensitive plant populations, and other key wildlife areas."; the Lassen LRMP states: "Areas with road densities of 2 mles per square mile or higher will be evaluated for habitat effectiveness. Roads and travel networks will be assessed for existing and future needs. Roads no longer needed for administrative purposes will be closed to enhance wildlife habitat, and to protect water quality and soil productivity Some roads may be obliterated and the land restored to a near natural gradient…. Look for opportunities to convert roads that are no longer needed to equestrian, mountain bike and/or pedestrian trails."; and the Sierra LRMP states: "Controlled use of the road system including road closures, may be triggered by: Wildlife protection… Protection of sensitive resources."

Potential for significant impacts: Without meaningful site-specific analysis, the Forest Service has concluded there is no potential significant impact from logging over 2,000 miles of level 2 roads in the North Zone; over 1,100 miles in the Central Sierra Zone; and over 1,000 miles in the Southern Sierra Zone. As the project maps illustrate, the impacts will be expansive, but also concentrated, due to the massive amount of roads proposed for logging that are in close proximity. The logged trees are trees that would otherwise be used by many species in the years ahead, for nesting and foraging (e.g., by woodpeckers), or nesting/perching/resting (e.g., by owls and fishers). That is especially so if the areas were left unlogged and the level 2 roads closed/converted to level 1—for example, species like fishers are more likely to use an area if the road is no longer a used road.

Moreover, by leaving areas alone instead of logged (via road closure), the project could actually help rare species like the fisher to recover in the coming decades rather than further contributing to their demise. And certainly the Forest Service's section 7(a)(1) ESA duties are more important than the generic desire to maintain road integrity by logging so many level 2 roads. Our national forests are forests, not road systems. And while obviously some roads are necessary to meet objectives like recreation, it does not follow that a dense network of level 2 roads is necessary.

Significant benefit to the forest can and should be achieved by reducing the level 2 road network to achieve the protection of wildlife habitat and watersheds. If instead, the Forest Service continues to seek to log vast miles of level 2 roads, then at the very least it cannot rely on an EA to achieve that misguided goal. The Forest Service must analyze, at the stie-specific level, the impacts of hazard tree removal on habitat degradation and fragmentation. As stated in previous comments, avian chicks could be killed in the hazard tree project area should logging occur during the nesting season, when the chicks are unable to fly. And of course snags of all sizes are of great value to wildlife year round as discussed in the following publications: Blakey et al. 2019[2] (discussing bat use of severely burned forest); Buchalski et al. 2013[3] (discussing bat use of severely burned forest); Burnett et al. 2010[4], 2012[5] (discussing avian use of severely burned forest); Campos and Burnett 2015[6], 2016[7], 2017[8] (discussing avian and bat use of severely burned forest); Fogg et al. 2015[9], 2016[10] (discussing avian use of severely burned forest);

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[2] Blakey, Rachel & Webb, Elisabeth & Kesler, Dylan & Siegel, Rodney & Corcoran, Derek & Johnson, Matthew. 2019. Bats in a changing landscape: Linking occupancy and traits of a diverse montane bat community to fire regime. Ecology and Evolution. 9. 10.1002/ece3.5121.

[3] Buchalski, M.R., J.B. Fontaine, P.A. Heady III, J.P. Hayes, and W.F. Frick. 2013. Bat response to differing fire severity in mixed-conifer forest, California, USA. PLOS ONE 8: e57884

[4] Burnett, R.D., P. Taillie, and N. Seavy. 2010. Plumas Lassen Study 2009 Annual Report. U.S. Forest Service, Pacific Southwest Region, Vallejo, CA

[5] Burnett, R.D., M. Preston, and N. Seavy. 2012. Plumas Lassen Study 2011 Annual Report. U.S. Forest Service, Pacific Southwest Region, Vallejo, CA

[6] Campos, Brent R. and Ryan D. Burnett. 2015. Avian monitoring of the Storrie and Chips Fire Areas: 2014 report

[7] Campos, Brent R. and Ryan D. Burnett. 2016. Bird and Bat Inventories in the Moonlight, Storrie, and Chips Fire Areas: 2015 report to the Lassen and Plumas National Forests

[8] Campos, B.R., R.D. Burnett and Z.L. Steel. 2017. Bird and bat inventories in the Storrie and Chips fire areas 2015-2016: Final report to the Lassen National Forest. Point Blue Conservation Science, Petaluma, CA.

[9] Fogg, Alissa M., Zachary L. Steel and Ryan D. Burnett. 2015. Avian Monitoring of the Freds and Power Fire Areas

[10] Fogg, Alissa, Zack Steel, and Ryan Burnett. 2016. Avian Monitoring in Central Sierra Post-fire Areas

Loffland et al. 2017[11] (discussing bee use of severely burned forest); Roberts et al. 2021[12] (discussing avian use of severely burned forest); Seavey et al. 2012[13] (discussing woodpecker use of severely burned forest); Siegel et al. 2012[14], 2013[15], 2014[16], 2014[17], 2016[18] (discussing woodpecker use of severely burned forest); Stillman et al. 2019[19] and 2019[20] (discussing woodpecker use of severely burned forest); Taillie et al. 2018[21] (discussing avian use of severely

[11] Loffland, H.L., J.S. Polasik, M.W. Tingley, E.A. Elsey, C. Loffland, G. Lebuhn, and R.B. Siegel. 2017. Bumble bee use of post-fire chaparral in the central Sierra Nevada. The Journal of Wildlife Management 81:1084–1097.

[12] Roberts, L.J.; Burnett, R.; Fogg, A. 2021. Fire and Mechanical Forest Management Treatments Support Different Portions of the Bird Community in Fire-Suppressed Forests. Forests 12, 150.

[13] Seavy, N.E., R.D. Burnett, and P.J. Taille. 2012. Black-backed woodpecker nest-tree preference in burned forests of the Sierra Nevada, California. Wildlife Society Bulletin 36: 722–728

[14] Siegel, R.B., M.W. Tingley, and R.L. Wilkerson. 2012. Black-backed Woodpecker MIS surveys on Sierra Nevada national forests: 2011 annual report. Report to U.S.D.A. Forest Service Pacific Southwest Region. The Institute for Bird Populations, Point Reyes Station, CA

While species like black-backed woodpeckers immediately utilize severely burned forests, many other species that rely on severely burned areas—such as the cavities — show up several to many years post-fire. Siegel et al. 2012 explains: "Many more species occur at high burn severity sites starting several years post-fire, …. and these include the majority of ground and shrub nesters as well as many cavity nesters. Secondary cavity nesters, such as swallows, bluebirds, and wrens, are particularly associated with severe burns, but only after nest cavities have been created, presumably by the pioneering cavity-excavating species such as the Black-backed Woodpecker. Consequently, fires that create preferred conditions for Black-backed Woodpeckers in the early post-fire years will likely result in increased nesting sites for secondary cavity nesters in successive years."

[15] Siegel, R.B., M.W. Tingley, R.L. Wilkerson, M.L. Bond, and C.A. Howell. 2013. Assessing home range size and habitat needs of Black-backed Woodpeckers in California: Report for the 2011 and 2012 field seasons. Institute for Bird Populations

[16] Siegel, R.B., M.W. Tingley, and R.L. Wilkerson. 2014. Assessing home-range size and habitat needs of Black-backed Woodpeckers in California: report for the 2013 field season. Report to U.S.D.A. Forest Service Pacific Southwest Region. The Institute for Bird Populations, Point Reyes Station, CA

[17] Siegel, R.B., R.L. Wilkerson, M.W. Tingley, and C.A. Howell. 2014. Roost sites of the Black-backed Woodpecker in burned forest. Western Birds 45:296–303

[18] Siegel, R.B., M.W. Tingley, R.L. Wilkerson, C.A. Howell, M. Johnson, and P. Pyle. 2016. Age structure of Black-backed Woodpecker populations in burned forests. The Auk: Ornithological Advances 133:69–78

Siegel et al. states that its "results indicate that natal dispersal is the primary means by which Black-backed Woodpeckers colonize recently burned areas in western forests, and that breeding dispersal is uncommon. The decline of Black-backed Woodpecker populations 6–10 yr after fire likely reflects the lifespan of individual birds that colonized the burned area, or of offspring that they produced in the early postfire years."

[19] Stillman, A.N., R.B. Siegel, R.L. Wilkerson, M. Johnson, and M.W. Tingley. 2019. Age-dependent habitat relationships of a burned forest specialist emphasise the role of pyrodiversity in fire management. Journal of Applied Ecology 56:880-890

[20] Stillman, A.N., R.B. Siegel, R.L. Wilkerson, M. Johnson, C.A. Howell and M.W. Tingley. 2019. Nest site selection and nest survival of Black-backed Woodpeckers after wildfire. The Condor: Ornithological Applications XX:1–13

[21] Taillie, P. J., R. D. Burnett, L. J. Roberts, B. R. Campos, M. N. Peterson, and C. E. Moorman. 2018. Interacting and non-linear avian responses to mixed-severity wildfire and time since fire. Ecosphere 9(6):e02291. 10.1002/ecs2.2291

burned forest); Tingley et al. 2014[22], 2016[23] (discussing woodpecker use of severely burned forest); White et al. 2016,[24] 2019[25] (discussing avian use of severely burned forest).

Hard look: "General statements about 'possible' effects and 'some risk' do not constitute a 'hard look' absent a justification regarding why more definitive information could not be provided." *Neighbors of Cuddy Mountain v. U.S. Forest Service,* 137 F.3d 1372, 1379-80 (9th Cir. 1998). Here, all that has occurred in the draft EAs is a high-level generic assessment that fails to address site-specific issues or impacts. The EAs are peppered with cursory and incomplete impacts analyses without any quantified or detailed information. Such cursory and conclusory analysis violates NEPA's hard look requirement.

EIS: An EIS must be prepared if "substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental factor." *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1332 (9th Cir. 1992). To trigger this requirement a "plaintiff need not show that significant effects will in fact occur," raising "substantial questions whether a project *may* have a significant effect" is sufficient. *Id*. If an agency decides not to prepare an EIS, it must supply a convincing statement of reasons to explain why a project's impacts are insignificant. The statement of reasons is crucial to determining whether the agency took a "hard look" at the potential environmental impact of a project. *See Blue Mt. Biodiversity Proj. v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998). An agency "cannot avoid preparing an EIS by making conclusory assertions that an activity will have only an insignificant impact on the environment." *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 864 (9th Cir. 2004). Nor can an agency minimize activities' environmental impact by adopting a broad scale analysis and marginalizing the activity's site-specific impact. *See, e.g.*, *Pac. Coast Fed'n of Fishermen's Ass'n v. Nat'l Marine Fisheries Serv.*, 265 F.3d 1028, 1036 (9th Cir. 2001).

Here, the Forest Service's failure to produce one or more EISs for its proposed actions violates NEPA for several reasons, including the potential for significant environmental effects caused by the size and intensity of logging and the effects of the actions, as discussed above. The Forest Service must either (1) prepare a single programmatic EIS (followed by site-specific NEPA analyses), or (2) prepare individual, site-specific EIS analyses. Instead, the Forest Service chose a third pathway that is inconsistent with NEPA—preparing regional EAs that are essentially programmatic documents that fail to disclose and consider site-specific impacts, without any follow-up or site-specific analysis. Moreover, the Forest Service has failed to provide a convincing statement of reasons to explain why the projects' impacts are insignificant. The size and intensity of the logging proposed requires a more thorough analysis in an EIS.

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[22] Tingley, M.W., R.L. Wilkerson, M.L. Bond, C.A. Howell, and R.B. Siegel. 2014. Variation in home range size of Black-backed Woodpeckers (*Picoides arcticus*). The Condor: Ornithological Applications 116: 325–340

[23] Tingley, M.W., V. Ruiz-Gutiérrez, R.L. Wilkerson, C.A. Howell, and R.B. Siegel. 2016. Pyrodiversity promotes avian diversity over the decade following forest fire. Proceedings of the Royal Society B 283:20161703.

[24] White, A. M.; Manley, P. N.; Tarbill, G. L.; Richardson, T. W.; Russell, R. E.; Safford, H. D.; Dobrowski, S. Z. 2016. Avian community responses to post-fire forest structure: implications for fire management in mixed conifer forests. Animal Conservation. 19(3): 256-264

[25] White, A.M., G.L. Tarbill, B. Wilkerson, and R. Siegel. 2019. Few detections of Black-backed Woodpeckers (Picoides arcticus) in extreme wildfires in the Sierra Nevada. Avian Conservation and Ecology 14:17

Sincerely,

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