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RE: Objection to Clackamas Fires Roadside Danger Tree Project

August 2, 2022

Meta Loftsgaarden
Forest Supervisor, Objection Reviewing Officer
USDA-Forest Service
Mt. Hood National Forest
16400 Champion Way
Sandy OR 97055

Dear Ms. Loftsgaarden,

Pursuant to 36 CFR 218, FSEEE files this objection to Clackamas District Ranger Curtis Booher's proposed Clackamas Fires Roadside Danger Tree Project. On May 27, 2022, FSEEE commented on the Project.

The Project's draft EA fails to assess or disclose the safety risk associated with dead or dying trees, in violation of NEPA.

FSEEE Comment: "You assert that certain trees pose a safety risk to human life, including public visitors and forest workers who use the road, trails, and facilities. However, you provide no factual evidence to support this assertion; in fact, it is simply not true," attaching Declaration of Professor Travis Heggie.

Forest Service Response: "This project aims to reduce risks, but some risk will still be inherently present. Any preventable human fatality is one too many. Therefore, as described in the proposed action discussion above, this project proposes to cut dead danger trees that have a low-to-high probability of failure and are within the striking distance of the road." Final EA at 20.

FSEEE Objection: All trees fall down. In other words, the "probability of failure" for each and every tree is 100%. The risk to people from falling trees is not **whether** a tree falls; rather, it is the odds that a person is underneath a tree **when** it falls. The testimony of Dr. Heggie is that the risk to national forest visitors being under a fire-affected tree and hit when it falls is exceedingly low; so low that trees are not generally considered to be a public safety hazard. The draft EA does not mention, nor does it dispute, Dr. Heggie's testimony.

NEPA requires the Forest Service to assess quantitatively the purported benefits of its proposed action, in addition to the environmental costs. In doing so, the Forest Service must consider "[i]mpacts that may be both beneficial and adverse." *Id.* at § 1508.27(b)(1). Agencies must also consider "[t]he **degree**

to which the proposed action affects public health or safety." *Id.* at § 1508.27(b)(2); *350 Mont. v. Bernhardt*, 443 F. Supp. 3d 1185 (D. Mont. 2020) (emphasis added). Where the risks to public safety can be quantified, NEPA requires the Forest Service do so. *See, e.g., id.* (Train derailment risk can be quantified thus agency must do so). The Forest Service's failure to assess quantitatively public safety risk violates NEPA.

NEPA also requires that its risk analysis compares the action and no-action alternatives. *See Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 623 F.3d 633, 642 (9th Cir. 2010) (The purpose of a "no action alternative" is to allow "policymakers and the public to compare the environmental consequences of the status quo to the consequences of the proposed action"); *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998) (same). The risk assessment should compare the safety risks associated with trees falling of their own accord, when no one is likely underneath, to the action alternative's risks to tree cutters who are certain to be in each tree's potential fall zone when cutting it down. It doesn't take rocket science to know which is more dangerous -- a tree that falls randomly across a low-traffic, remote forest road versus a tree cut by a faller. The unconscionable inference associated with the lack of any quantitative risk assessment is that the Project places a substantially greater value on a public visitor's life than on a tree faller's life.

In conclusion, the gravamen of the Project is found in this statement: "Any preventable human (nb: tree fallers are not human?) fatality is one too many."¹ However, no law, regulation, or Forest Service policy requires the Forest Service manage the national forests to prevent fatalities, much less all fatalities that are hypothetically within the agency's capability to prevent. As Dr. Heggie points out, hiking and climbing are the leading cause of backcountry deaths (40%), with avalanches (15%), and drowning (10%) rounding out the top three. Preventing these deaths would require closing the national forests to public use altogether, which flies in the face of Congress's multiple-use mandate. Preventing all human fatalities is an irrational policy; it cannot be relied upon as a basis for national forest management, including for this Project.

Relief Requested

FSEEE asks that the Forest Service assess quantitatively the human safety risks associated with the action and no-action alternatives, as required by NEPA, before deciding to proceed with this Project.

Sincerely,



Executive Director

¹ This sentence puts an infinite value on human life with no cost being too great to prevent a single death. That's a viewpoint held by certain religions, e.g., Catholicism. It is not, however, a governing principle associated with any federal law or rule. In fact, numerous federal agencies (Department of Transportation, the CDC, and the EPA) place a finite value on human life when determining whether health or safety regulations are worth their associated costs. There is no basis in Forest Service statute or regulation that authorizes the agency to assign an infinite value to human life, i.e., to spare no expense (fiscal and/or environmental) in "preventing" a single human fatality. To the extent this Project is based on a religious viewpoint, e.g., the infinite value or intrinsic sanctity of human life, the decision runs afoul of the Constitution's Establishment Clause.