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Via Email Only: objections-pnw-umpqua@usda.gov

Alice Carlton, Forest Supervisor
USDA Forest Service
Attn: 2021 Wildfire Danger Tree Project
2900 N.W. Stewart Parkway
Roseburg, OR 97471

Re: Objection to 2021 Wildfire Danger Tree Project

Objector:

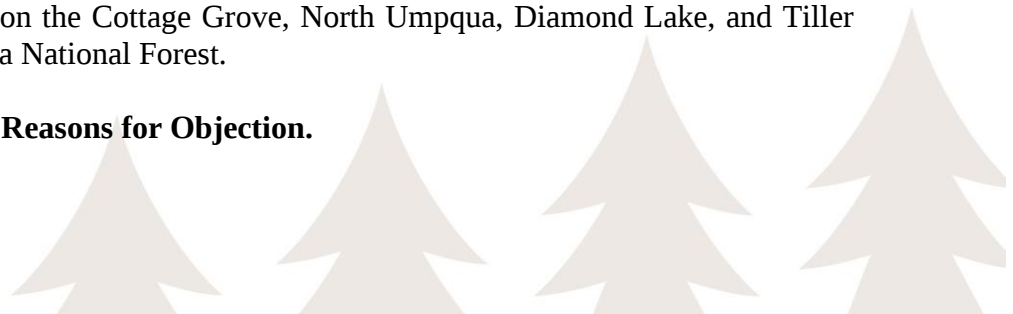
Douglas County Board of Commissioners
1036 S.E. Douglas Avenue, Room 217
Roseburg, Oregon 97470
Phone: 541-440-4201

Objector's Designated Representative:

Dominic M. Carollo
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On behalf of the Douglas County Board of Commissioners ("Douglas County"), and pursuant to 36 C.F.R. § 218.7, please accept this objection to the proposed draft Decision Notice and Finding of No Significant Impact for the 2021 Wildfire Roadside Danger Tree Mitigation Project Environmental Assessment ("EA"). Previously, Douglas County submitted written comments on December 2, 2022 in response to the Scoping Notice, and the issues raised in the following objection are based on these previously submitted comments and, thereby, are in adherence with 36 C.F.R. § 218.7(c)(2)(ii). North Zone District Ranger, David Andersen, is the responsible official. The 2021 Wildfire Roadside Danger Tree Mitigation Project ("2021 Wildfire Danger Tree Project") occurs on the Cottage Grove, North Umpqua, Diamond Lake, and Tiller Ranger Districts in the Umpqua National Forest.

I. General Statement of Reasons for Objection.



As explained in Douglas County's previously submitted comments, Douglas County encourages the Forest Service to expand the size and scope of the 2021 Wildfire Danger Tree Project, and increase commercial roadside harvest. Specifically, Douglas County urges the Forest Service to analyze and adopt an alternative permitting the removal of danger trees beyond 1.5 tree height lengths of the road edge, the addition of more roads—and more road miles—to the project, increasing commercial roadside harvest, reducing fall-and-leave in favor of commercial harvest, and amending the tree selection criteria to permit removal of any trees showing evidence of insect infestation, risk of death, or risk of windthrow.

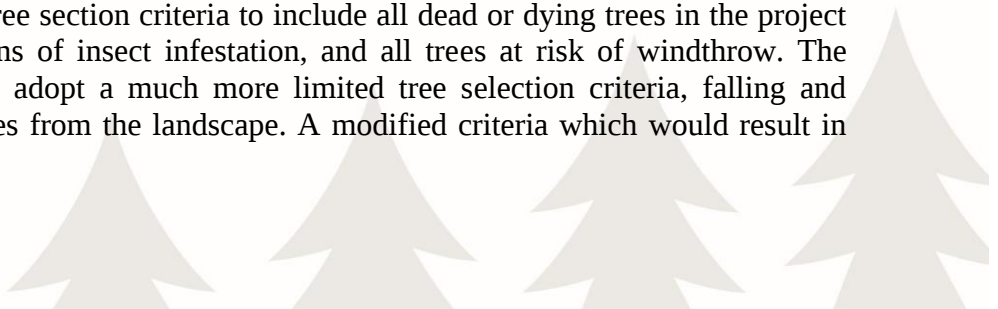
Douglas County's comments explained why the 2021 Wildfire Danger Tree Project is insufficient to improve safety conditions and alleviate wildfire risks—two of the 2021 Wildfire Danger Tree Project's purposes. Douglas County objects to the Forest Service's failure to analyze alternatives that may better achieve the 2021 Wildfire Danger Tree Project's purpose and need, and objects to the Forest Service's failure to evaluate Douglas County's significant comments.

II. EA Should be Amended to Consider Additional Alternatives.

One of the stated primary purposes of this project is to decrease fuel loading and improve fire resiliency near roads within the 2021 Wildfires' perimeters in the Umpqua National Forest. Douglas County generally supports this objective. An inadequately managed forest leaves the surrounding County and private lands at risk of wildfires, which perpetually threaten the health, safety, and livelihoods of Douglas County residents. It is a well-understood reality in natural resource and wildland fire management that course woody fuels can increase fire prevalence, burn rates, severity, and spread. In fact, as Douglas County's previously submitted comments noted, the 2021 Wildfires were fueled by dead course woody fuels left behind after previous wildfires.

Douglas County provided multiple proposals seeking to reduce fire risk consistent with this purpose and need, advising the Forest Service to consider these proposals, either in full, individually, or in combination, and adopt the proposals in the final Decision Notice. The proposals offered by Douglas County differed from the proposed action in the following ways:

- Increased the size of the road buffer created by the 2021 Wildfire Danger Tree Project to create more defensible space to prevent or slow future wildfires, reduce the risk and occurrence of reburns, and improve forest access and safety. The proposed action acknowledges that “this project is not designed to create a comprehensive system of fuelbreaks to alter landscape-scale fire effects.”
- Increased the number of trees removed alongside roads within the 2021 Wildfire Danger Tree Project. To improve road safety, forest access, and reduce the spread and severity of future wildfires Douglas County proposed to remove additional trees within the project area by amending the tree section criteria to include all dead or dying trees in the project area, all trees with signs of insect infestation, and all trees at risk of windthrow. The proposed action would adopt a much more limited tree selection criteria, falling and removing far fewer trees from the landscape. A modified criteria which would result in



more trees removed would better alleviate wildfire risk by reducing fuel loads consistent with the 2021 Wildfire Danger Tree Project's purpose and need, while simultaneously reducing the likelihood of tree strike.

- Increased the use of commercial roadside harvest and reduced the use of fall-and-leave management strategies. The proposed action would include only 697 acres of commercial harvest, but 2,332 acres of fall and leave. Fall and leave management would result in increased coarse woody fuels on the landscape, exacerbating fire risk and degrading public safety in direct contravention to the project's purpose and need. Moreover, minimal use of commercial harvest will result in more fuels remaining on the landscape and more danger trees at risk of falling onto roadways. Minimizing use of commercial harvest is inhibiting the 2021 Wildfire Danger Tree Project's ability to meet its purpose and need.

Another stated purpose of the 2021 Wildfire Danger Tree Project is to prevent tree strike and improve access and road integrity within the National Forest. Douglas County's comments and proposals also strike at the heart of these purposes and needs. Along with the proposals mentioned above, Douglas County proposed the following:

- Increase the number of roads or road miles treated within the 2021 Wildfire Danger Tree Project. Persons, including Forest Service staff and firefighting personnel, utilizing the Umpqua National Forest will frequently travel roads affected by the 2021 Wildfires but which will not be treated by the 2021 Wildfire Danger Tree Project under the proposed action. The threat of tree strike, impeded access, and road integrity will continue to be an issue on these roads.

The Environmental Assessment did not evaluate an alternative containing any portion of the proposals forwarded by Douglas County despite the fact that such an alternative would have produced a reasoned choice. *See Cent. Sierra Env't Res. Ctr. v. U.S. Forest Serv.*, 916 F. Supp. 2d 1078, 1088 (E.D. Cal. 2013) ("NEPA requires agencies to '[r]igorously explore and objectively evaluate all reasonable alternatives' and explain why potential alternatives excluded from this detailed study were not part of the analysis."). "Consideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process," and "any proposed federal action involving unresolved conflicts as to the proper use of resources triggers NEPA's consideration of alternatives requirement, whether or not an EIS is also required." *Bob Marshall All. v. Hodel*, 852 F.2d 1223, 1228-1229 (9th Cir. 1988). Given the purposes and needs of the 2021 Wildfire Danger Tree Project, the Forest Service's decision to write off Douglas County's proposals without evaluation is quintessentially arbitrary and capricious. *See Env't Prot. & Info. Ctr. v. Blackwell*, No. CIVS041027WBSGGH, 2005 WL 8176926, at *8 (E.D. Cal. May 5, 2005) (Forest Service erred where it only considered "no action" and "proposed action" alternatives, and the "no action" alternative did not meet the project's goal of improving the landscape's resilience to fire); *Env't Prot. Info. Ctr. v. U.S. Forest Serv.*, 234 F. App'x 440, 443 (9th Cir. 2007) (Forest Service erred because the EA only evaluated "proposed action" and "no action" alternatives and the agency defined the project's objectives so narrowly that the "proposed action" was the only alternative that could satisfy the objectives); *Hausrath v. United States Dep't of the Air Force*, 491 F. Supp. 3d 770, 800 (D. Idaho 2020), *appeal dismissed sub nom. Hausrath v. United States Air*

Force, No. 20-36036, 2021 WL 2207189 (9th Cir. Jan. 28, 2021) (agency erred because the “no action” alternative did not meet the objectives of the project, and therefore was not a sufficient alternative); *Blue Mountains Biodiversity Project v. U.S. Forest Serv.*, 229 F. Supp. 2d 1140, 1147 (D. Or. 2002); *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 813 (9th Cir. 1999).

Douglas County objects to the Forest Service’s decision not to consider alternatives which would have created fuel breaks and improved safety conditions along roads within the burn perimeter of the 2021 Wildfires. The Forest Service’s acknowledgement that the proposed action would not create a system of fuelbreaks, that approximately 28 percent¹ of the Umpqua National Forest has been affected by wildfire in the past 20 years, that an abundance of dead snags can create a vicious cycle of reburns, that several reburns have occurred over the last 20 years, including within the project area, and that spotted owls are unlikely to use areas of burnt nesting, roosting, and foraging habitat suggests that the Forest Service should have considered alternatives which take a more aggressive approach to alleviating wildfire risk and improving forest safety. Moreover, the “no action” alternative that was evaluated could not meet the project’s objectives of improving safety, road integrity, and fire resilience in the Umpqua National Forest. Therefore, the Forest Service should have considered the alternatives proposed by Douglas County, rather than just considering and evaluating a single action alternative and a “no action” alternative.

In summary, while Douglas County supports the Forest Service treating the project area to reduce the risk of catastrophic wildfire and improve safety within the Umpqua National Forest, the proposals submitted by Douglas County are superior to the proposed action, and well within the bounds of a reasonable alternative, because they would create fuel breaks and improve safety and access across a greater range of the Umpqua National Forest. As such, Douglas County requests that the Deciding Official revise the decision to evaluate and select an alternative which encompasses the proposals submitted by Douglas County.

III. Further Consideration of Douglas County’s Comments is Required.

Douglas County urged the Forest Service to consider a range of alternatives to the proposed action in the EA. The Forest Service did not meaningfully respond to these comments. The EA lacks any information explaining why expanding the buffer created by the 2021 Wildfire Danger Tree Project, removing additional trees, treating additional roads, increasing use of commercial harvest, decreasing use of fall-and-leave, and amending the tree selection criteria would fail to satisfy the purpose and need of the project.

Where an agency is presented with significant comments it must provide a “satisfactory explanation ... including a rational connection between the facts found and the choice made[.]” *Motor Vehicle Mfrs. Ass’n. of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). While Douglas County’s comments presented a range of alternatives relevant to the

¹ The “28 percent” figure used in the 2021 Wildfire Danger Tree Project EA is misleading. In 2020 the Archie Creek Fire Rapid Assessment Team reported that, over the last 20 years, 28 percent of the Umpqua National Forest had burned. This figure did not account for reburned acreage, nor did it account for the 145,000 acres burned in 2021 or additional acreage burned in 2022 and 2023. Thus, the total acreage burned within the Umpqua National Forest within the past 20 years is around 40 percent.

purpose and need of the 2021 Wildfire Danger Tree Project, and explained that the Forest Service's past management of the Umpqua National Forest contributed to the trend of catastrophic wildfires within the Forest, the EA does not address any of Douglas County's comments. Instead, the EA generally acknowledges the existence of some comments and proposed alternatives inconsistent with the proposed action but fails to adequately respond to the comments. The EA points to sections of the analysis in "response" to comments, but the analysis is still limited to a "no action" alternative and a "proposed action" alternative. Therefore, the analysis is non-responsive to Douglas County's comments, which are not encapsulated by either the "no action" or "proposed action" alternatives. As such, Douglas County urges the Deciding Official to evaluate and respond to Douglas County's comments in the manner required by the Administrative Procedure Act.

IV. Request for Resolution Meeting.

Pursuant to 36 C.F.R. § 218.11, Douglas County requests to meet with the reviewing officer to discuss the issues raised in this objection and potential resolution. In the event multiple objections are filed on this decision, the County requests that the resolution meeting be held with all objectors present.

Sincerely,

CAROLLO LAW GROUP LLC

A handwritten signature in black ink, appearing to read 'DMC', with a horizontal line extending to the right.

Dominic M. Carollo
Special Counsel to Douglas County

DMC/kh

CC: Commissioner Tim Freeman