



LAWRENCE COUNTY

SOUTH DAKOTA

"Where Beauty and Adventure Meet"

Lawrence County Commissioners
90 Sherman Street
Deadwood, SD 57732
(605) 578-1941

Website: <http://www.lawrence.sd.us/>

Director, Ecosystem Management Coordination
201 14 th Street SW
Mailstop 1108
Washington, DC 20250-1124.

Re: Land Management Plan Direction for Old-Growth Forest Conditions # 65356

September 12, 2024

Dear Director:

Thank you for the opportunity to comment on the Old Growth Draft EIS.

Lawrence County, SD has been actively engaged in the National Old Growth Planning effort since January 20024. After the Old Growth Notice of Intent was released, we provided numerous comments expressing our concerns. Key points that we made were the USFS's failure to identify a need for change to justify initiating an Environmental Impact Statement (EIS), the USFS determination that the BHNF existing Forest plan needs to be amended when it already provides adequate old growth direction, failure to adhere to the 2012 planning rule, USDA and USFS's position that the same consistent management direction would be effective for all Forests across the Nation. We are also concerned about the motivation for the expeditious schedule of one of the most consequential planning projects in USFS history, which appears to be driven by political reasons rather than actual needs on the ground.

While these concerns have been acknowledged by USFS planning staff during the subsequent on-line cooperator meetings, no clear, implementable solutions have been identified. We are especially concerned that no attempt to evaluate the effectiveness of direction in existing Forest Plans has been pursued as part of this planning process.

For these reasons, we are re-submitting our comments that we provided on January 23, 2024 as comments to the Draft Old Growth EIS along with the additional comments that are attached.

As you are aware through the on-line meetings, the concerns expressed by Lawrence County are very similar to the concerns expressed by numerous other western counties throughout the Nation.

If the USFS desires a national direction about old growth management, it could be addressed through USFS instruction bulletins/memos or development of a conceptual framework such as the watershed framework. Initiation of an EIS and formal decision is unnecessary and will likely trigger well-funded environmental litigation, management delays and confusion with existing forest plan old growth direction that was developed with local input. Our concern about litigation and delays are based on the history of similar large-scale USFS planning efforts as documented in the enclosed comments.

Sincerely,



Chair, Lawrence County Commissioners

enclosure: Lawrence County, SD comments to Draft Old Growth EIS



LAWRENCE COUNTY

SOUTH DAKOTA

"Where Beauty and Adventure Meet"

Lawrence County Commissioners
90 Sherman Street
Deadwood, SD 57732
(605) 578-1941

Website: <http://www.lawrence.sd.us/>

September 12, 2024

RE: Lawrence County, SD Comments to USFS Old Growth Draft Environmental Impact Statement (EIS). Project #65356

Thank you for the opportunity to comment on the Old Growth Draft EIS. We appreciate the effort made to engage the cooperators. We are encouraged that there has been much discussion about the wildfire crisis in the Draft EIS and in meetings with cooperators. We acknowledge that there has been an improvement in the treatment of wildfire and disease especially in the plan components and impacts sections, however we contend that wildfire and disease should be specifically listed as an issue because they are a threat. Timber harvest should be removed as an issue because it is not a threat as described in the USFS evaluation of old growth threats (USFS Pub. 1215a). We would also like to communicate our appreciation for the numerous online meetings that have been held starting in May of this year.

Unfortunately, our initial comments have not been resolved in the Draft EIS. For this reason, we are re-submitting our comments that were submitted on January 23, 2024 as comments to the Draft EIS along with the additional comments below.

Topic: Forest Specific Old Growth Direction.

Lawrence County maintains that the existing Forest Plan direction is adequate for management of old growth. The BHNH is about to undergo a Forest Plan Revision. If more specific Forest Plan direction is needed as a result of the old growth EIS, we strongly encourage the development of this direction during the BHNH Forest Plan Revision. Developing Forest specific old growth direction through a separate planning process would be inefficient and less effective. It would be hard to pull all interested parties together into a separate planning process when their time is already consumed by the Forest Plan Revision meetings.

Topic: Cooperator Involvement.

Comment 1: We would like to reiterate the concern we expressed in our comments that we provided after the Notice of Intent was released. This comment is that counties and other forms of local government were not aware of this project prior to the release of the Notice of Intent

(NOI) even though ongoing discussions had been occurring with various tribes and sovereign nationals well before the NOI was released. This does not comply with the 2012 planning rule requirements (36 CFR 219.4(b)). Please see additional comments about cooperating agency status in the closing remarks section.

Topic: Designation of old growth areas.

Page 13. Comment: We commend the USFS for not carrying the formal designation of old growth areas forward as an alternative as suggested by several groups. We appreciate the discussion about why this would be counter-productive. We recommend additional discussion explaining that formal designations would curtail active management and would not be practical, especially when old growth stands have not been mapped or delineated at any meaningful scale. Moreover, the definition of old growth varies dramatically from region to region. Since there is no simple definition of old growth and a lack of understanding of its spatial extent, designation of old growth areas is not possible.

Topic: Determining if current plans have adequate old growth direction.

Page 14. Early in the planning process, the USFS asked cooperators to look at plans on individual Forests to help determine if the current plan had adequate old growth direction. Unfortunately, we were not provided with any side boards or criteria about what is considered adequate. The information in Appendix C did not address the specifics of what was needed and was not described in any meaningful manner. This appendix focuses strictly on the presence or absence of old growth direction in existing plans. We are concerned that no attempt to evaluate the quality and effectiveness of existing old growth direction on individual Forests was undertaken.

Appendix C evaluates plans on such criteria as “Does the plan have a standard for old growth?” Does old growth desired condition apply Forest-wide?” Do plan component functionality apply Forest wide? A simple yes/no response to these questions does not fully answer the questions of adequacy of the Forest Plan direction to manage old growth. For example, there are very good reasons to not have an old growth direction apply Forest-wide. Some areas cannot produce old growth. If a plan does not have a definition of old growth does not mean it is not managing them through use of other terminology. The definition and use of the term “old growth” is problematic as it varies across landscapes; resulting in the use of alternative terms such as late successional forests in some planning documents in the past.

In Appendix C, the Black Hills National Forest was given a category 3, meaning an amendment is needed but it is not clear if you considered the late successional section of the plan which was developed with old growth in mind. We believe the Black Hills National Forest Plan has adequate old growth direction and we continue to request that the Black Hills National Forest be exempt from this revision. We request that you thoroughly review the late succession section of the BHNH Forest Plan as amended in 2007 for old growth direction.

Forests need side boards to clarify what is adequate direction that include practices that the Forest allows or does not allow in old growth areas such as fire suppression requirements, thinning, mitigation of disease and insects and other management practices. This information along with standards, desired conditions and other criteria in Appendix C should form the basis for determination of adequacy of each Forest Plan. The old growth EIS completion date should be extended past January, 2025 to allow time for this evaluation to be completed. If the USFS would provide the proper side-boards, Lawrence County working with other local governments and UFSF planning staff could provide a thorough evaluation by March 1 st of 2025. We request that the comment period be extended then. If time can be made to allow for this evaluation, then Lawrence County requests that the BHNF be exempted from this planning process. We request a direct response to this request.

Topic: Need for change.

As discussed in our previous comments to the NOI, neither USDA or USFS has provided an adequate reason for the need for change. Responding to an executive order 14072 is not a need for change as many Forests including the Black Hills National Forest (BHNF) already have direction to protect old growth. Page 10 of the Draft EIS describes the USFS recently published Silvicultural Guide for Standardized Silvicultural Prescriptions for Managing Old Growth Forests. This document provides the needed consistency described. Beyond this level, efforts at consistency are counter productive and may hamper efforts to maintain and protect old growth by creating confusion.

USFS' desire for detailed consistency as discussed on page S-6 of the Draft EIS is not possible or desirable as the type of old growth varies dramatically between various areas across the Nation. It is not practical or effective to provide consistent direction for management of old growth in the southeastern US and expect consistency for management of growth in Alaska or old growth in South Dakota. The geographic, climatic and spatial extent of this planning effort requires a different approach for each region and in some cases a different approach within individual Forests.

The excessive focus on consistency has been repeatedly questioned by dozens of cooperating agencies during the old growth zoom meetings. To date, USFS has not explained how the desired consistency would be achieved. A two-step process has been described (national and Forest level) but it is impossible to provide consistency at the first step (EIS national level). Without this consistency in the EIS, USFS will get strong push back when the preliminary final EIS is reviewed by USDA this fall. Because of the repeated references in the NOI and EIS need for change section about the need for consistency, this pushback will be obligatory upon review by USDA. This will result in a last-minute push for a universal, one size fits all approach. Because of the artificially imposed deadline, these types of last-minute changes will happen without input from cooperating agencies.

In the Black Hills, we have different circumstances related to climate and terrain with different management needs of old growth between the northern and southern Black Hills. Other Forests

with major mountain ranges have vast differences in vegetations and climate from one side of the Forest to the next. Why would a consistent approach be attempted for these types of situations? It is not practical or desirable from an ecological standpoint. The discussion in the draft EIS on page S-7 attempts to address this concern and states that this was addressed through meetings with cooperating agencies and agency leaders, but this section only describes that meetings were held and provides no information to address the concern. Consistency is not a reason to embark on a national wide process to amend nearly all Forest Plans in the Nation. This is inconsistent with Forest Service planning direction FSH 1909.12.

Topic: Timber Harvest.

Issues page S-7: Discussion on bullet three describes an issue regarding timber harvest by asking “whether current standards and guidelines provide enough restriction to protect current and future old growth forest from future timber harvest.” Timber harvest was not determined to be a threat in the threat analysis so why is it described as an issue? This does not follow the planning regulations as the “issue” of timber harvest over the past couple of decades was determined to not be a threat. Bullet two also focuses on timber harvest. Refer back to your definition of an issues on the bottom of page 9 of the Draft EIS. Wildfire was determined to be significant threat, yet it is not addressed as an issue even though there are numerous plan components to address wildfire as if it were an issue. Recommend removing timber harvest as an issue in both statements and adding wildfire and disease as issues based on the Threat Analysis completed by USFS and BLM.

S-10 and S-11: Alternative 3 places restrictions that do not allow commercial harvest in old growth stands. Through conversations with Deputy Chief French during the Wyoming field trip we understand that this does not mean commercial harvest is prohibited, it only means that a scheduled timber rotation harvest would not be implemented. We disagree with this approach and the interpretation of what commercial harvest means. Prohibiting commercial harvest would mean just that, no commercial harvest of trees. If the desire is to not implement a planned harvest rotation you should clearly state this in very explicate terms instead of prohibiting commercial harvest. Note that this is not explained in the commercial harvest definition in the glossary or in the timber harvest definition in the glossary. Past litigation on EIS's including litigation about old growth has hinged on glossary definitions. Most importantly, we disagree with this approach because timber harvest was determined to not be a threat. If it is not a threat, then why has an alternative been created to curtail or stop it. Recommend the restriction on commercial harvest be deleted as it does not tie back to an issue or threat and will only create confusion with the public. If your intent is to continue to define commercial harvest as meaning commercial harvest is allowed but no scheduled harvest rotations will be planned, then this should be fully described in the glossary and alternatives section.

S-14: The statement that the amendment would not affect timber harvest because it would not change lands suitable for timber production, overly simplifies the potential impact. The old growth plan would likely result in the delays, increase litigation, and a one size fits all approach defined as consistency that would impact the timber industry. The conclusion and summary of

possible impacts to the timber industry is described at the bottom of S-14 "Thus, because the old growth amendment is unlikely to have major effects on timber supplies from the National Forest System, no effects are expected on traditional timber industry jobs in logging, wood product manufacturing, and pulp production. " This statement is not grounded in understanding of the cause and effect relationship as a result of a large scale sweeping changes to Forest Management. Refer to the comment on project level impacts that have resulted from large-scale planning effort of this nature in the economics below.

Economic: Page S-12. The Draft EIS states all alternatives will contribute to social and economic stability through provision of multiple uses in the areas surrounded by NFS land. This statement focuses on lands surrounding National Forests but does nothing to describe or evaluate the impacts on National Forests System lands. The entire discussion is vague and does not scratch the surface on potential impacts. More information from the socio-economic report should be placed in this section.

The economic report and the summary on page S-12 of the draft EIS provides good numerical information on past and current forest management and timber production but there is nothing quantified in the impacts section. If future impacts cannot be quantified, then this should be stated in the EIS as part of the full disclosure of NEPA requirements.

The Socio-Economic summary section on page S-12 and the Economic report for the draft EIS states that Alternative 2 would not affect the timber industry because it would not change the ASQ, PTSQ, or acres of suitability. We do not agree with this statement. At this point, you cannot know the true impacts of a nation-wide programmatic EIS because Forest Specific direction is not yet developed and there are other factors associated with the old growth planning effort that may influence timber harvest.

One major impact is the wave of litigation that follows such a large planning effort. This will result in delays, additional changes to the proposed action and a number of unintended consequences. Consider the 2004 Sierra Nevada Framework plans which amended Forest Plans in most of California. Litigation took 10 years to settle. A key point in the lawsuits was the protection of old growth forests. In 2011, timber sales and logging were prohibited on 11 million acres in California. Settlement was not reached until 2014. What were the economic impacts of this planning process? It certainly was not addressed in the EIS. This litigation potential and likelihood of delay of projects at a Forest level is both a risk and a reasonably foreseeable impact and should be discussed in the environmental impacts as such. This is not speculation; it is a common pattern with these types of large-scale decisions that will affect millions of acres across the Nation. It is reasonable to predict that this will happen and it should be disclosed as part of the NEPA disclosure requirements.

Like many counties, Lawrence County has concerns that the old growth planning effort will create barriers or delays to timber harvest or limit uses in old growth which will in turn impact economic conditions. The BBNF informed us last spring that all projects on the Forest that are in or near old growth stands must be sent to the Washington Office for review and approval

before projects can be implemented. The potential for delay is already occurring despite the fact that National level NEPA for old growth management is not complete and the Forest already has adequate old growth protections in the current Forest Plan. This is an overreach at the Washington Office level of USFS and USDA. We request this practice be discontinued until the Old Growth EIS is complete.

Indigenous knowledge. Page S-8. While we appreciate the desire to include indigenous knowledge, there is limited documentation about what various tribes did to affect or manage old growth. In addition, tribal involvement has been limited. There are 574 tribes and Alaskan native entities. When the draft EIS was published only two tribes requested government to government consultation and three tribes or tribal organization requested cooperating agency status. This is not even one tenth of a percent of the tribes. We have noted extremely limited participation at meetings and during the field trips held in June.

Page 3: Item 6: "Management must be science based, including indigenous knowledge as a source of best available scientific information." The following comment is based on reading through the 2023 USFS publication, Strengthening Tribal Consultation and Nation to Nation Relationships (USFS Action plan 2023). In this document, we noted that one of the action items (page 12) was to develop an agency wide indigenous knowledge implementation plan. To date, this plan has not been developed. Including indigenous knowledge is an incredibly difficult challenge, especially when Forest Service planning staff have no clear direction about how they will incorporate Indigenous knowledge into the old growth plan. This is a concern from a county standpoint as there has been much fanfare about including indigenous knowledge into the old growth plan, including repeated references in the NOI, draft EIS, press and newsletter releases.

The difficulty of completing this task will likely result in disappointment with tribal nations which in turn will cause delays because USFS will have to go back and address their concerns. It can also result in litigation with the potential to stop current projects until litigation is resolved. For this process to work, tribes must be engaged face to face on their own ground. Many tribes do not respond well to letters or emails. They do not operate in this manner. The EIS touts the inclusion of indigenous knowledge but does not recognize this simple cultural aspect regarding tribal relations.

Lawrence County requests that the use of best available science not be compromised and the action plan item from the Tribal Action Plan be implemented so that future planners have clear direction. This plan needs to address the need to keep the integrity of science intact while incorporating traditional native knowledge and practices to the extent possible. The plan also needs to address differences about how to apply knowledge and practices when two tribes disagree on an approach.

Desired conditions. Page S-10. During the old growth meetings, we have been repeatedly told that desired conditions, goal and objectives are aspirational, they do not have to be obtained or achieved if other higher priorities exist or funding is not adequate - only standards are required. It is with surprise we read on page S-10 that "regardless of standards, desired conditions are

binding" Request clarification on this discrepancy.

Rangelands and Grazing. Page S-13. No discussion or recognition that in many cases, grazing can limit the buildup of fine fuels that contribute to wildfires which are identified as a major threat to old growth. Request that this relationship be described.

Decision Making flow chart (box chart). Page 6. Figure 1. Chronology of decision making process.

This chart does not state who in the Forest Service will be making decisions (responsible official) at each stage in the chart. Will it be the Chief of USFS, Regional Forester, Forest Supervisor? During the field trip we were told by planning staff that Forest Supervisors would make decisions regarding any Forest specific old growth direction on the Forest they supervise.

The draft EIS does not clarify this. As part of full disclosure of NEPA requirements, we request that the decision maker (responsible official) be clearly identified at each stage of the chart. This may seem obvious to USFS but we have experienced unexpected changes to the designation of the responsible official status on projects in the past.

Adaptive strategy. Page 21. Lawrence County is concerned that the adaptive strategy will be implemented at a national level only. While page 21, 1a discusses use of place based and local knowledge, most of the zoom meeting discussion about adaptive strategies seem to focus on the national scale. The only way to effectively implement an adaptive strategy is to through local input.

Monitoring. Page 21. There is much emphasis placed on monitoring in the draft EIS and associated cooperating agency meetings and public field trips. All involved parties seem to agree that without monitoring, the old growth plan will not work. Our concern is that current monitoring on the Black Hills National Forest for Forest Plan implementation is not occurring on a bi-annual basis that is specifically required under the National Forest Management Act. This bi-annual report has not been done in over ten years. The BHNF leadership does not appear to be concerned when questioned about it, stating they are too busy with other priorities to do it. If the Forest cannot comply with this monitoring requirement, how will old growth monitoring be carried out and more importantly how will local information be fed into the overall monitoring report?

The USFS work force shortage crisis that is currently occurring is likely to continue into the foreseeable future across all National Forests. The Draft EIS states "identify a program of work and partnerships that can support effective delivery of plan monitoring of old growth." How would this be accomplished? There is no basic framework or funding streams to do so over the long term. Lack of monitoring will lock up implementation and drag USFS into court which in turn will adversely impact the counties. Recommend that more emphasis and funding be directed to partnerships related to remote sensing and providing individual forests funds and staff to complete inventory and monitoring on the ground. Please identify this in the EIS.

Affected Environment and Environmental Impacts Chapter 3. We appreciate the discussion of fire impacts and risks of wildland fire. However there is not an adequate discussion about risks and trade offs between the action alternatives for other resources.

Nearly all discussions about the degree or magnitude of impacts are listed in narrative forms with terms such as "increased, decreased, more, or less". At an EIS level there should be some quantification of impacts. In some cases, impacts are listed as absolutes such as "there would be no impacts to forest products industry from Alternative 2". These types of statements about impacts are extremely generalized. They lack the discussion needed about differences in impacts in different regions. We recognize that in some cases, there is an impact that cannot be clearly quantified but if there is a risk of such an impact it should be discussed.

This impact section is detailed and provides good background information but does not address the toll that planning and implementation of old growth EIS take on USFS personnel and other priorities. For example, there is no discussion about how many key mid to upper-level Forest Service staff are now focused on this effort instead of completing other mandated duties. How will the old growth implementation affect the workloads of numerous USFS employees across the nation in the future? It is likely to be significant but is not addressed.

The potential economic impact from the litigation created by this effort is not addressed as described in the economic section of these comments. The intense litigation and projects delays that will result is not speculation. They are extremely likely as documented in the Sierra-Nevada Framework example in the previous comment under economics. We understand that the Chief and Deputy Chief believe this effort will reduce litigation about projects in old growth but we caution you that that this is exactly what the R-5 Regional Forester said in the 1990's when he initiated the Sierra-Nevada Framework to amend most Forest plans in California.

Again, a major part of the litigation revolved around concerns about old growth protection.

Please keep in mind that NEPA requires disclosure of the impacts to the human environment, not just environmental, economic and social impacts. The risk of the delay of forest and fuel projects on the ground and the subsequent secondary impacts from the delay of these projects should be disclosed. Again, this is not hypothetical but based on past experience with similar planning efforts as discussed on the zoom calls and in the impacts section of these comments.

For this reason, a conceptual framework with some basic guiding principles would be a much better approach than an EIS and formal decision. The planning staff has repeatedly stated that at least old growth protection was not implemented through a formal rule-making process.

While we appreciate this, we would like to point out that nowhere in the EIS or website has the possibility of a framework with basic guiding principles been considered. If a framework is not utilized as requested, we request this be discussed with a rationale.

Closing remarks

We appreciate the effort made by the USFS at the National Level to engage cooperating agencies in a meaningful manner. The exchange of ideas and concerns during zoom meetings was beneficial. We recognize hosting and preparing for these meetings created a tremendous amount of work for the USFS planning staff. Their work to discuss thorny, complex problems in an open manner with cooperators has been extremely beneficial not just with the old growth plan, but also in terms of building relationships that at times have been strained.

We are very concerned that that subsequent implementation of the old growth planning project will be hampered by Black Hills National Forest leadership and their alternative view of cooperating agency relationships. We are perplexed that there is a completely different perspective about cooperating agency involvement on the Black Hills National Forest compared to the USFS National Office. At every turn the Black Hills National Forest has laid out arbitrary obstacles, barriers and extremely limiting conditions when Lawrence County has tried to work with them. None of which are based on laws, regulation or policy.

Many of the statements and rationale limiting coordination made by the Black Hills Forest leadership are in direct contrast to what has been said by national USFS planners and the Deputy Chief French about cooperating agency relationships.

As an example in October 2023, the County was told by Forest leadership that cooperating agency status does not provide any more benefits than that given to the general public. We have heard different from the Deputy Chief and USFS National Office.

Moreover, the Black Hills National Forest leadership questions the special expertise of the County and its Natural Resource Committee even though it is represented by foresters, a range scientist, a land surveyor, retired federal employees that worked at the GS13 to GS 15 level, two ranchers that previously held USFS grazing permits, and a fisheries biologist formerly employed by SD Game Fish and Parks.

While we sometimes disagree with the Black Hills National Forest, we have always been respectful in our dialogue with them. The County and the Black Hills National Forest cannot continue to operate in this manner if we are to provide productive implementation of old growth protection after the EIS is complete.

Again, thank you for the opportunity to comment.

A handwritten signature in black ink, appearing to read 'Bob Ewing', with a stylized, flowing script.

Bob Ewing, Chairman
Lawrence County, South Dakota



LAWRENCE COUNTY

SOUTH DAKOTA

"Where Beauty and Adventure Meet"

Lawrence County Commission
90 Sherman Street, Deadwood SD
(605)722-4167

*Website: <http://www.lawrence.sd.us/>

January 23, 2024

Director, Ecosystem Management Coordination
201 14th Street SW
Mailstop 1108
Washington, DC 20250-1124.

Re: Federal Register Notice FR 88, No. 243 88042 – 88048

Dear Director:

On behalf of Lawrence County, South Dakota, we appreciate this opportunity to comment on the above captioned Federal Register Notice.

Lawrence County has a long history of involvement with the US Forest Service, beginning in the mid-1990s during the first Black Hills NF Forest Plan Revision. Lawrence County was also heavily involved in the 2006 Phase II Amendment for the Black Hills NF Forest Plan and has continued to be deeply involved in the implementation of the Forest Plan through participation in project level activities. Currently, Lawrence County has Cooperating Agency status with Black Hills NF for the second Forest Plan Revision and for all NEPA projects on the Forest.

Executive Summary

The NOI describes the Need for Change as the need to create a consistent plan and direction. However, the NOI Need for Change statement is incompatible with the cited 36 CFR 219.13(b)(1) which addresses the requirements for a Need for Change for land use plan amendments. 36 CFR 219.13(b)(1) does not discuss consistency as a basis for a Need for Change of existing Forest Plans. The NOI Need for Change is incompatible with these regulations in every aspect. As noted in 36 CFR 219.13(b)(1), the Need for Change is driven by new information which can be in the form of an "an assessment; monitoring report; or other documentation of new information, changed conditions or new circumstances". The NOI Need for Change statement does not provide this basis. The list of threats and the preliminary findings of the Old Growth and Mature Forests Publication FS-1215a¹ that was hastily put together to satisfy Executive Order 14072 are not adequate reasons to develop a Need for Change to initiate an effort to amend Forest Plans across the entire nation. The rationale is provided below.

The list of threats provided in the NOI are not new, have been understood for decades, and have already been addressed in most Forest Plans as documented in the NOI which identified 2,700 plan components in existing Forest Plans to manage, protect, and/or recruit old growth forests.

Considering that the existing 128 forest plans contain 2,700 plan components directly related to old growth, it's clear that the Forest Service understood the need to provide management direction. This fact alone nullifies the NOI Need for Change. We are especially concerned that there is no discussion or any analysis of the effectiveness of these existing plan components before USDA embarked on proposing sweeping changes to existing management.

The NOI is largely based on the Mature and Old Growth Publication FS-1215a. As noted throughout the report, it is a preliminary, coarse inventory of old growth and mature forests. This report was clearly put together in great haste to satisfy Executive Order 14072. We find that it is of such a broad, coarse scale that it has limited value for planning purposes and informing the public. As noted on page 26 of Publication FS-1215a, the use of FIA data for this report is imperfect, classification errors were not tested, and some references did not come from peer reviewed sources. Our review of the spatial information tied to this report shows some national forests covered by three-to-four-pixel shaped polygons for the entire Forest. The viewer can interpret this to mean that most, or only a limited amount of a national forest, has old growth present. These maps are so coarse that they only create confusion.

1-Lawrence County does not support amending all NFS Forest Plans as proposed by the Secretary of Agriculture for the following reasons:

a-The proposed amendment is not necessary. The Black Hills NF Forest Plan, like other NFS Forest Plans, already addresses old growth forests. Neither the Secretary nor the Forest Service have presented any information suggesting that the current old growth direction is not adequate. In fact, the NOI discloses that over 2,700 specific plan components already exist across the National Forest System to protect and manage old growth. This direction was developed at the Forest level taking into account the different conditions and ecosystem dynamics of each Forest. In addition, there is no indication that the effectiveness of the existing direction was fully considered. There are currently over 24 million acres of old growth on the forested acres of the NFS (17%), of which 54% are in areas permanently protected from timber harvesting.

b-The fact that old growth direction is not 100% consistent between the 128 NFS units is not, in and of itself, an adequate reason to amend all the Forest Plans. One of the underlying premises of national forest planning is that the Plans are developed locally, with local involvement, to address individual National Forest issues and needs. Different national forests have very different conditions and ecosystems. Management direction developed at the national level would undermine existing direction that was developed with consideration of local conditions on each national forest. The USDA is working at the wrong scale to develop direction for old growth forest conditions. As noted in the NOI, there are differences in threats across the National Forest System. Working at a national scale with a top-down approach as proposed in the Notice of Intent will limit the ability of the public and state, local, and tribal governments to provide meaningful input based on the specific conditions that exist in each national forest.

c-The proposed amendment will create confusion and uncertainty about implementation of the existing BHNF Forest Plan. According to the 5th paragraph of the Purpose of the Amendment, “This proposal is not intended to replace existing direction in plans but rather to add language that provides consistency across all plans”. The result will be conflicting Desired Conditions, Standards, and Guidelines, which will create chaos and uncertainty for the Forest Service and the public during project implementation.

d-The proposed amendment process does not conform to the 2012 Forest Planning Rule. According to 219.3(a), “Except as provided in paragraph (c) of this section, a plan amendment is required to add, modify, or remove one or more plan components, or to change how or where one or more plan components apply to all or part of the plan area ...”. 219.13(c) addresses administrative changes, such as correcting clerical errors, conformance to new statutory or regulatory requirements, and changes to other content.

The second step of the proposed plan amendment process will indeed make changes “to how or where one or more plan components apply to all or part of that plan area”. For example, the proposed Management Approach requires individual national forests to “identify criteria used to indicate conditions where plan components will apply” and to “prioritize areas for the retention and recruitment of old-growth forest conditions”. Guideline 1(a) then builds on those requirements by establishing new requirements for proactive stewardship in areas “that have been identified in the ‘Adaptive Strategy for Old-Growth Forest Conservation’”. The Secretary proposes that these steps be completed as an appendix to the broader scale monitoring strategy or the biennial monitoring report without NEPA analysis and disclosure of effects for public review. This proposed second-step will require an additional plan amendment subject to NEPA for each national forest.

The Secretary’s proposed process fails to meet the public participation requirements of the 2012 Planning Rule (which the Secretary himself approved 2012). One of the eight stated purposes and needs of the 2012 Planning Rule is “Provide for a transparent, collaborative process that allows effective participation”. According to 219.4 “The Responsible Official shall provide opportunities to the public for participating in the assessment process, developing a plan proposal ... commenting on the proposal and the disclosure of its environmental effects...” According to the 2012 Rule Preamble “Engaging the public early and throughout the process is expected to lead to better decisionmaking and plans that have broader support and relevance.” Unfortunately, the Secretary has elected to minimize public participation in violation of the Rule that the Secretary approved in 2012. As displayed in FSH 1909.12, 21.12, Exhibit 01^{iv}, there are two related, but separate, processes, forest plan development and NEPA analysis, proceeding concurrently, and there is a requirement for public engagement at every step of both processes.

e-The proposed process to amend all NFS Forest Plans would violate NEPA. NEPA serves the dual purpose of informing agency decision-makers of the environmental effects of proposed federal actions and ensuring that relevant information is made

available to members of the public. An EIS must include a discussion of alternatives to the proposed action, and the agency must rigorously explore and objectively evaluate all reasonable alternatives in response to a specified purpose and need.

The Secretary has proposed a 2-step scheme to add old-growth direction to every forest plan. The Secretary is planning to prepare an EIS for step #1 – the forest plan amendments to add Desired Conditions, Standards, Guidelines, a Goal, and additional language for the Statement of Distinctive Roles and Contributions. However, the Forest Service will not have any data at all about numbers or located of acres affected, effects on timber outputs, effects on other desired conditions, or effects on other multiple uses to use in analyzing or disclosing the effects of the proposed action to the public. For step #2, the Secretary intends to require every NFS unit create an “Adaptive Strategy for Old-Growth Forest Conservation” as an Appendix to the monitoring program, without any NEPA analysis or public disclosure of the effects on the millions of affected acres. The upshot of this scheme is that the Forest Service will never analyze and disclose the effects of the Secretary’s 2-step scheme to the public in violation of NEPA.

This process will have far-reaching impacts across the entire National Forest System. The Department of Agriculture failed to consult with any state or local governments in developing this significant amendment. The schedule for the NOI and the EIS is on a fast-track schedule that is not appropriate for such wide sweeping, dramatic changes.

f-The old growth NOI identifies wildfire, insects, and disease as major threats to old growth forests but does not propose forest plan direction to proactively address these threats. The proposed amendment process does not protect Old Growth in areas where forest management is not allowed. The 13 million acres that are off limits to timber harvesting are not in protected condition because the most significant risk to destruction is from wildfire and insects. Over the past 25 years the Black Hills National Forest has lost a significant amount of its Old Growth in areas where timber harvesting was not allowed or severely restricted. It is important for the administration to understand that the Old Growth structural stage, along with overstocked mature structural stage, in drier, fire influenced forests are a transitory and unstable structural condition at high risk to being destroyed by catastrophic wildfires and insect epidemics. Creating large landscapes of Old Growth in National Forests, like the Black Hills, will carry with it a high to very high risk of loss of this structural condition from wildfire and insects. The best approach is to spatially locate small stands or areas (say less than 200 acres) of Old Growth across the landscape surrounded by forest structural conditions that have low to moderate risk to loss by wildfire and insects.

The NOI lists insects and disease as a major threat to old growth and mature forest but does not address this threat in the proposed standards or guidelines. By imposing more restrictions on management of old growth areas, the proposed nationwide plan amendment threatens to make an already bad situation even worse. Many older forests on the NFS, including the Black Hills NF, are experiencing widespread mortality from catastrophic wildfires and insect epidemics that are leading to forest cover loss, habitat destruction, and significant carbon emissions. Currently every state where national forests

make up the majority of timberland are net forest carbon emittersⁱ. Carbon emissions from wildfires in the United States (not all of which are forest fires) increased by more than seven-fold between 2005 to 2018, from 20.5 million metric tons per year to 141.1 million metric tons per year.ⁱⁱ

According to the Forest Service's Initial Findings, since 2000, 689,000 acres of old growth were lost to fires and 134,000 acres of old growth were lost to insects or diseases. For comparison, only 10,000 acres of old growth, or about .1% of total old growth lost, were lost to tree cutting, yet the proposed amendment is more focused on protecting old growth conditions from timber harvesting than proactive management to reduce the risk of catastrophic fires and insect epidemics. Neither the proposed components in the proposed Amendment nor the proposed Management Approach describe how the agency will go about "improving durability, resilience, and resistance to fire, insects and disease within old growth conditions". In particular, that's true for "proactive stewardship". This once again demonstrates that any effort to conserve or restore any successional stage of forests is best accomplished through local level planning, which can recognize the needs of specific forest types, local indigenous knowledge, and design projects that the local NFS unit is capable of implementing.

g-The proposed amendment violates the language of Executive Order 14072. The old growth plan amendment states that the action is tied to E.O. 14072 but does not follow the E.O. in terms of engagement and cooperation with local state and tribal governments. There is no clearly developed goal articulated in the NOI for protection and maintenance of old growth forests. The only goal listed for this NOI is to actively engage the Indian Tribes in the management of Old Growth and the implementation of their cultural forest treatments.

2-Lawrence County recommendations

For the reasons outlined above, Lawrence County recommends that the Secretary withdraw the proposed amendment of all NFS Forest Plans. However, if the Secretary decides to proceed with the proposed amendment, which, again, Lawrence County opposes, we recommend the following:

- That the US Forest Service provide Forest Plan monitoring data to the public regarding results of implementing existing forest plan components for old growth to determine their effectiveness before proceeding further.

- Publish the updated inventory data so that Lawrence County, and others, will be able to submit better-informed comments.

- Make the development and adoption of the Adaptive Strategy for Old-Growth Forest Conservation through a forest plan amendment, in conformance with the 2012 Rule and with NEPA analysis, disclosure, and public review and comment opportunities.

-Consult and collaborate with state and local governments and tribes using Cooperating agency status and government to government consultation.

-Be clear that the proposed amendment conforms to the following description of old growth conditions - “A stand may contain some trees that meet the criteria for old growth but the stand as a whole could lack the functions and interactions of an old-growth ecosystem and would not be considered old growth”.ⁱⁱⁱ

-Do not circumvent the objection process as proposed. Allow for the full public involvement process to play out by allowing an objection process. Large scale efforts such as this proposal are often heavily litigated. Allowing an objection period would likely reduce litigation and allow for healthy discourse and discussion about an effort that has major ramifications for the Nation.

-Rewrite the proposed plan components as follows, including complying with the requirement in FSH 1909.12, 22.1 that “Plan components are written clearly and with clarity of purpose and without ambiguity so that a project’s consistency with applicable plan components can be easily determined”:

Goal - The only Goal listed for this NOI is to actively engage the Indian Tribes in the management of Old Growth and the Implementation of their cultural forest treatments. We recommend that you delete the proposed Goal. Plan components “should not simply repeat Agency policies applicable to all National Forest System units”. Requirements for tribal consultation with tribes are already well-established in law, treaties, regulations, and USDA and USFS policy.

Distinctive Roles and Contributions – we recommend deleting all but the first sentence of the Distinctive Roles and Contributions for two reasons – 1) the length and detail of proposed language is out of proportion to existing language in various Forest Plan descriptions of Distinctive Roles and Contributions, and 2) the last sentence of the second paragraph, i.e., “For millennia, Tribal and Indigenous practices have maintained resilient forest structure and composition of forests that harbor high structural and compositional diversity, with particular emphasis on understory plants and fire-dependent wildlife habitat”, seems to presume that the FS simply needs to adopt tribal and indigenous burning practices to return the national forests to resiliency and desired composition. That simplistic presumption is neither accurate nor possible for all national forests. Barrett and Arno (1982)^{iv} concluded that Indian ignitions increased fire frequency in lower elevations in and near major valleys in western Montana, in other words the high frequency/low severity fire regimes. Indian ignitions were much less frequent in remote areas that we would generally describe as low frequency/high severity fire regimes. Related to the Black Hills NF, Murphy et al (2017) concluded that “it is unlikely that Native Americans burned the denser Black Hills forests at all”^v. Shepperd and Battaglia (2002) described evidence of a large-scale fire in 1842

which was confirmed by accounts from Native Americans that the “entire Black Hills were ablaze”^{vi}.

Prescribed burning is considerably more complex in 2024 than it was prior to European settlement. Because of limitations such as proximity to human developments, air quality restrictions, and workforce capacity, the use of fire will probably continue to be limited^x. Even where prescribed burning can be done successfully, it often requires pretreatment to thin overstories and remove ladder fuels.

-Definition of “Proactive Stewardship” – several of the proposed plan components and other plan content include references to “proactive stewardship”, but there is no definition of “proactive stewardship”. Standard #2 suggests that it would be proactive vegetative management. However, according to Desired Condition #2 it includes “natural succession”. We recommend adding a definition of “proactive stewardship” and that you exclude “natural succession” from the definition. Alternatively, we recommend you simply delete the use of the term altogether.

-Guideline 1- First, Guideline 1, in its entirety, does not meet the 2012 Planning Rule definition of Guideline (see 219.7) and should be a Desired Condition. It is extremely important that the Secretary make this change before embarking on NEPA analysis and disclosure.

Guideline 1(a) seems to be saying that loss of old growth conditions due to natural disturbances will not be considered as a loss of old growth conditions. We do not believe this makes sense. For example, if there are 10,000 acres of old growth in a 100,000-acre landscape, and 5,000 acres of old growth is completely killed in a crown fire, there won’t be any reduction in the amount of old growth in that 100,000-acre landscape? This is not clear and is ambiguous. We recommend that this wording be clarified in future documents.

Guideline 1(b), (c), (d), (e), (f) and (g) individually and collectively will require a huge expansion of lands managed for old growth conditions, with no limitation other than the imagination of Responsible Officials. Collectively, these would have tremendous impacts on numerous other forest plan components to meet multiple use objectives and Forest Plan outcomes and outputs. Guideline 1 is not clear and is ambiguous, and must be clarified.

Desired Conditions – add one or more Desired Conditions to reduce the risk to old growth conditions from catastrophic fires and insect epidemics in areas where forest management is not allowed.

Rewrite the Desired Conditions to conform to the 2012 Rule definition, in particular, “described in terms that are specific enough to allow progress toward their achievement to be determined”.

-Develop a range of alternatives and analyze and disclose the effects of the alternatives on management of the national forests and various resources, as follows:

-Include Deputy Chief Chris French's letters of April 18, 2023 and December 18, 2023 as part of the No Action Alternative.

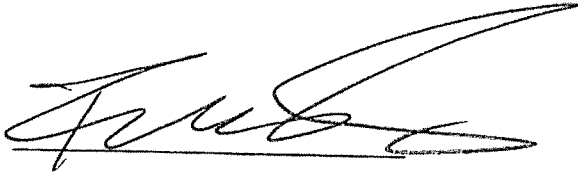
-Allow national forests, such as the Black Hills NF, which are already in the process of revising their forest plans, to update plan components related to old growth as part of the revision process instead of the proposed amendment process.

-Develop an alternative that prioritizes proactive vegetative treatments to reduce the risk of catastrophic fires and insect epidemics.

It is important for the administration to know that Lawrence County does support managing and protecting portions of the Black Hills National Forest for Old Growth. However, we are firmly opposed to this top down, one size fits all management approach of Old Growth on all National Forests. Thank you for this opportunity to comment and thank you for your consideration.

Sincerely,

Chair, Lawrence County Commissioners



ⁱ Forest Service and Bureau of Land Management, Publication 1215a. Mature and Old Growth Forests: Definition, Identification, and Initial Inventory on Lands managed by Forest Service and Bureau of Land Management. April 2023.

ⁱⁱ Forest Service Handbook 1909.12, Land Management Planning

ⁱⁱⁱ Greenhouse Gas Emissions and Removals from Forest Land, Woodlands, and Urban Trees in the United States, 1990–2019. Northern Research Station Resource Update FS–307 April 2021

^{iv} Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2018 US Environmental Protection Agency April 2020

^v Mehl, Mel S., 1992. Old Growth Descriptions for the Major Forest Cover Types in the Rocky Mountain Region. Presented at Old-Growth Forests in the Rocky Mountains and Southwest Conference, Portal, AZ, March 1992.

^{vi} Barrett, S.W. and S.F. Arno. 1982. Indian Fires As an Ecological Influence In the Northern Rockies. J. For. Oct 1982, 647-651.

^{vii} Murphy, Shannon K. 2017. Fire regimes of ponderosa pine communities in the Black Hills and surrounding areas. In: Fire Effects Information System, [Online]. U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Missoula Fire Sciences Laboratory (Producer). Available:

https://www.fs.fed.us/database/feis/fire_regimes/Black_Hills_ponderosa_pine/all.pdf

-
- ^{viii} Shepperd, W.D., and M.A. Battaglia. 2002. Ecology, silviculture, and management of Black Hills ponderosa pine. Gen. Tech. Rep. RMRS-GTR-97. USDA Forest Service, Rocky Mountain Research Station. Fort Collins, CO.
- ^{ix} Reynolds, R.T., et al. 2013. Restoring Composition and Structure in Southwestern Frequent Fire Forests. USDA Forest Service, Rocky Mountain Research Station. RMRS-GTR-310.