



September 3rd, 2024

Mr. Thomas J. Vilsack
Secretary of Agriculture
United States Department of Agriculture
1400 Independence Ave. SW
Washington, DC 20250

Submitted via Federal eRulemaking Portal <https://cara.fs2c.usda.gov/Public/CommentInput?Project=65356>

RE: United States Department of Agriculture Forest Service Amendments to Land Management Plans to Address Old-Growth Forests Across the National Forest System Draft Environmental Impact Statement (Federal Register Vol.89 No. 120/Friday, June 21, 2024/Notices/Page 52039)

Dear Secretary Vilsack:

The Crook County Natural Resource District (“CCNRD”) respectfully submits this comment letter for the United States Forest Service (USFS) National Old-Growth Amendment (NOGA) Draft Environmental Impact Statement (DEIS). The United States Department of Agriculture is proposing to amend all land management plans for units of the National Forest System (128 plans in total) to include consistent direction to conserve and steward existing and recruit future old-growth forest conditions and to monitor their condition across planning areas of the National Forest System. The intent of NOGA is to foster the long-term resilience of old-growth forest conditions and their contributions to ecological integrity across the National Forest System (88 FR 88042). The amendment will have a significant impact on the socioeconomics, customs and cultures of Crook County and the State of Wyoming. Crook County’s economic viability is highly dependent on federally managed lands for timber production and harvest, energy development, livestock grazing, wildlife, tourism, and recreation.

Wyoming Conservation Districts are statutorily constructed with jurisdiction by law to provide for Wyoming’s natural resources and serve as cooperating agencies engaged in the National Environmental Policy Act (NEPA) processes to assist our federal partners (W.S. § 11-16-122(b)(viii)). The CCNRD takes our responsibility as a cooperating agency seriously and strives to engage productively with our federal partners to ensure Crook County is an economically vibrant, safe, and healthy place to live, work, and recreate.

The Black Hills, in western South Dakota and northeastern Wyoming, consists of 1.2 million acres of forested hills and mountains, approximately 110 miles long and 70 miles wide. Crook County, Wyoming comprises varying percentages of federal, state, and private land, which requires thoughtful management at each jurisdictional level. Specifically, Crook County lands contain approximately 9.26% of *federal surface* managed by the USFS is part of the Black Hills National Forest (BHNF). The BHNF is included as one of the forest units subject to this NOGA planning effort. The natural resources provided on BHNF lands are important for the livelihoods of residents and the attraction of those traveling through our area.

The CCNRD has an active Long-Range Plan with a forestry goal to promote the importance of forest management on both private and public lands to ensure forest health, resiliency, and future sustainability. The CCNRD feels strongly that well managed forests are a crucial component to achieving our Long-Range goals and objectives. Executive Order 14072 *"Strengthening the Nation's Forests, Communities and Local*

Board of Supervisors

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Economies" (EO) recognizes this relationship and expressly connects local economies with forest management activities.

As partners, the CCNRD works diligently to support the work of our federal land managers to overcome shared challenges and achieve mutual goals. The CCNRD actively participates with Wyoming USFS Bearlodge Ranger District, as well as three adjoining South Dakota Ranger Districts and the Forest Supervisor's Office, on National Environmental Policy Act (NEPA) projects, meetings, and special initiatives. Although NOGA is a substantially different planning effort than has been contemplated by the USFS, we have committed to participate as a cooperating agency with the USFS and have provided comments.

The CCNRD supports sustaining and protecting some appropriate amount of old growth forests in the national forest units in Wyoming through proactive stewardship. However, the failures in the NOGA NEPA process have created an unworkable and legally tenuous amendment for all the national forest units across the country. The CCNRD does not support the USFS conducting nationwide forest planning to address old growth direction in the unique forests and communities across the country. Therefore, the only alternative that the CCNRD supports is the **No-Action Alternative**, which would allow individual forest units to revise or amend their forest plans as necessary to address contemporary challenges with old growth forests.

Decisions should be Locally Led

The CCNRD implores the USFS to set aside political objectives and focus on the actual ecological and management needs of individual forests. This would require the USFS to abandon its nationally driven NOGA planning effort and encourage and strengthen individual forests' ability to revise and amend their plans to address old growth forests. In Wyoming, there are three forest units that are already in the beginning stages of revision that could benefit from additional USFS resources. Unfortunately, the NOGA planning effort has redirected USFS personnel from the Mountain Planning Service Group, amongst other regional planning groups, to spend time and money on the NOGA.

The NOGA is a top-down, one-sized approach that does not promote the best management for our distinctive forests or produce maximum results for our unique communities. By the USFS's own admission in the preamble to the 2012 Planning Rule, "...more specific requirements were not included in the final rule, because these issues are best identified and determined at the forest or grassland level, reflecting ecosystems and plant and animal communities on the unit." The CCNRD agrees with this approach in the Planning Rule. A localized planning approach recognizes the vast differences between our national forests and the communities that live in and around them.

As the USFS knows, forest plans are required to balance a multitude of challenges, priorities, and interests on our forested lands. Existing plans were established in good faith with the cooperation, data, and input from counties and other cooperating agencies. Each of the forest units within the state of Wyoming have old growth direction in their existing plans. Forcing a national old growth agenda layer on top of our existing plans does not strengthen them, it undermines them.

It is our request that any forest unit in Wyoming that is starting or is currently undergoing a plan revision process be excluded from the NOGA in its entirety. These forest units, namely the Bridger-Teton, Black Hills, and Medicine Bow-Routt, may, in consideration with cooperating agencies, and based on their own forest needs, incorporate whatever plan components they deem appropriate for that forest unit. A nationally led directive should not derail the work of our forest planning efforts.

As proposed, the NOGA will inevitably disrupt and negatively impact the revision processes being done across the forests in Wyoming and others around the country. Unlike the NOGA, our Forest Supervisors have been largely successful in communicating the upcoming process with cooperating agencies and the



public. Forcing these forest units to also undergo the “required” optional content to create an old growth strategy will take away necessary resources, time, and adds a layer of confusion that is completely unnecessary. None of the overarching goals of the NOGA are unable to be accomplished in an individual forest plan revision if that unit desires. Additionally, keeping any possible changes to old growth direction within a plan revision will ensure that old growth management is integrated with other plan components.

Beyond being required, this integration and consistency with other plan components will allow our forests to continue the necessary work of active management. Layering new plan components on to forests that have not evaluated them for consistency and have not integrated them into their plan, will create at best confusion and at worst substantial litigation for all ongoing projects.

Unfortunately, the NOGA process is far from the EO’s goal of collaborative, locally led conservation. Instead of collaboration, it has cut local governments out of the conversation. Instead of being locally led, the NOGA is being driven from the Secretary of Agriculture, the highest bureaucratic position over the USFS and the furthest from the ground. Instead of a conservation solution, the NOGA creates more work for the USFS to address a perceived problem of harvest within old growth forests. Ultimately the NOGA is a solution in search of a problem that does not exist.

The comprehensive locally led approach to forest plan amendments envisioned by the 2012 Planning Rule helps maintain the multiple use and sustained yield mandate. Without the ability to integrate plan components, the NOGA’s selective focus on old growth forests will be detrimental to other forest age classes and other uses, including timber harvest, water, range, recreation, and wildlife.

Cooperating Agencies are Partners

The CCNRD sought to actively engage with the USFS on the NOGA after the Notice of Intent (NOI) was released in December of 2023.¹ The CCNRD has a history of supporting the USFS in developing, revising, and amending forest plans, providing special expertise on socioeconomic issues, including how amendments will affect jobs and the tax base.

The CCNRD has a long history of partnering with the USFS and we continue to work together through on-the-ground projects and advisory groups to assist with plan implementation. The CCNRD has made substantial investments to strengthen the working relationships we enjoy with the USFS and currently has two active cooperating agency Memorandum of Understandings (MOUs) between the CCNRD and the USDA USFS Black Hills National Forest (BHNF); has had previous cooperating agency MOUs with the USFS BHNF; works closely with the USFS BHNF on Community Assistance Funding on Adjacent Lands (CAFA) and has two active project areas that benefit both federal and private land; and has an employee who serves on the USFS BHNF National Forest Advisory Board.

The incredibly aggressive timeline the USFS set to complete NOGA did not allow for early and meaningful local government participation in the development of the NOGA. Instead of early engagement and a robust cooperating agency process, the USFS chose to completely skip cooperating agency work until after the Draft NOGA and Environmental Impact statement was already published in the Code of Federal Regulations on June 21, 2024. Although the USFS has defended its cooperating agency process by listing every communication, public information meetings, or conversations with State of Wyoming partners and fellow Conservation Districts – none of these meetings contained any cooperating agency work. Scheduling meetings on a calendar does not constitute compliance with NEPA if those meetings failed to contain any of the expressed requirements for lead agencies. The Council on Environmental Quality (CEQ) has set

¹ The USFS has clarified that it’s removal of local governments from the list of entities encouraged to seek cooperating agency status was done in error.



minimum requirements for what a lead agency shall do in a cooperating agency process in CFR § 1501.7(h) and (i)². The USFS, as Lead Agency with respect to cooperating agencies, shall:

CFR § 1501.7(h)

- (1) Request the participation of each cooperating agency in the NEPA process at the earliest practicable time.
- (2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent practicable.
- (3) Meet with a cooperating agency at the latter's request.
- (4) Determine the purpose and need, and alternatives in consultation with cooperating agency.

-and-

CFR § 1501.7(i) The lead agency shall develop a schedule, setting milestones for all environmental reviews and authorizations required for implementation of the action, in consultation with any applicant and all joint lead, cooperating, and participating agencies, as soon as practicable.

The USFS failed to meaningfully meet the minimum requirements from CEQ. Prior to the release of the draft NOGA, the USFS did not have any meetings with cooperating agencies to create a timeline, develop the purpose and need, create alternatives, or give cooperating agencies an opportunity to provide environmental or socioeconomic data or analysis. Prior to the public release of the NOGA, the USFS did not share any documents or discuss any proposed language, analysis, or alternatives for the NOGA with cooperators. The USFS finally met with cooperators two times before the publication of the NOGA, and even though the content of NOGA had already been developed by the USFS (without the assistance of any cooperators), the USFS chose not to discuss any of the NOGA draft content with cooperating agencies in these meetings. Cooperators were not allowed to see or discuss NOGA before the alternatives were created for the release of a public draft and there was no meaningful opportunity to work with the USFS on NOGA prior to its release. Cooperators raised concerns that the process was not appropriate and the choice to elevate the NOGA decision to the secretarial level further eliminates cooperating agencies and the public from the ability to file objections. CEQ's guidance warns: "Misuse of the NEPA process to justify decisions already made is counterproductive and can result in litigation that could delay and ultimately prevent a proposed action from proceeding." (Improving the Process for Preparing Efficient and Timely Environmental Reviews Under the National Environmental Policy Act, CEQ, 2012). The USFS failed to comply with the requirements set by CEQ for meaningful cooperation with local governments. This procedural flaw has restricted our participation in the development of the NOGA and the required analyses under NEPA. "NEPA should not become an after-the-fact process that justifies decisions that have already been made." 40 C.F.R. § 1502.2(g).

Unnecessary New Standards & Guidelines for Local Forests

The USFS has not identified a need for "consistent" management of old growth forests across the United States and has not articulated a need for change of the existing old growth direction in the Black Hills National Forest. The 2012 Planning Rule requires the USFS to identify its need for change on a new assessment, monitoring report, or other documentation, changed conditions, or changed circumstances. 36 C.F.R. § 219.12(b)(1). Unfortunately, the threat assessment associated with the NOGA effort was released after the NOI and after the NOGA had already been drafted.

Furthermore, the threat assessment identifies fire, insect and disease as the primary threats to old growth, yet the NOGA focuses on restricting old growth harvest through the creation of standards and guidelines. Substantial portions of old growth forests across the forest systems are already within designations that extremely limit or prevent active management, namely Roadless Areas, Wilderness Areas, and National

² Code of Federal Regulations referenced in this document align with the draft EIS timeframe before regulations changed on 07/01/2024.



Monuments. Regardless of the new standards and guidelines NOGA will impose upon local forests plans, these areas will continue to be unmanaged.

NOGA Violates the 2012 Planning Rule

A Forest Plan is the guiding document for actions and projects within a forest unit boundary. They are developed and amended with the help of cooperating agencies, as well as the public, through the NEPA process as set forth in the Council of Environmental Quality's regulations for implementing NEPA.

Under the 2012 Planning Rule, the USFS may include optional content in its forest plans. "A plan may include additional content, such as potential **management approaches** or **strategies** and partnership opportunities or coordination activities" 36 CFR § 219.7(f)(2). However, the Forest Service's Planning Handbook cautions that optional content should never be worded to suggest they are plan components. Further, the Planning Handbook provides that any optional content may be changed administratively, without going through NEPA.

The NOGA includes two layers of optional content, by writing a "management approach" that requires the creation of a "strategy" in the next two years. The management approach forces the USFS to create a strategy that will change a plan's desired conditions and where plan components are implemented. Management Approach 1.a(v) requires the USFS to *identify and prioritize areas* for recruitment, retention, and promotion of old growth forests. On Page 117, the USFS (poorly) states that "The purpose of amendment is to establish a baseline for OG management, not dictate which areas are managed. These are determined through local definitions and Adaptive Strategies."

The CCNRD is concerned that the strategy is designed to change how and where projects will be prioritized and implemented. Proposed Guideline 1 on page 33 requires that "In areas that have been identified in the Adaptive Strategy for Old-Growth Forest Conservation as compatible with and prioritized for the development of future old growth forest, vegetation management projects should be for the purpose of developing those conditions."

This Adaptive Strategy does not align with the 2012 Planning Rule and the Planning Handbook. The planning rule clearly states that "...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 (including management areas or geographic areas).**" 36 C.F.R. § 219.13(a). NOGA Adaptive Strategies are designed to change "where plan components will apply" by identifying and prioritizing areas for old growth forests and the USFS would be required to complete an additional amendment process and comply with NEPA. The NOGA does not contemplate additional NEPA taking place in its Management Approach 1.a. This approach bypasses the required forest plan amendment process including plan integration, NEPA analysis, co-creation of alternatives with cooperating agencies, and public input. Additionally, since optional content can be changed administratively, any forest supervisor can, by themselves, change the strategy at will.

The optional content strategy opens a substantial threat to litigation for current and proposed projects. Since strategies are not plan components under the 2012 Planning Rule, they should not require project or activity consistency. However, since the NOGA strategies are clearly designed to change the location and purpose of projects, then project and activity consistency would be required. Every national forest has a plethora of projects in the early developmental stages and ongoing projects. Beyond initial uncertainty, this could immediately halt projects, create a significant effect on new project development (waiting 2 years to create and comply with a strategy), and open every existing project to litigation. This is especially concerning considering the substantial investment being made and the important work being done with Good Neighbor Authority (GNA)—projects that we take pride in partnering with the USFS and Wyoming State Forestry. Beyond the importance of these projects to our communities and local economies, stopping work "mid-



stream” would be devastating, in terms of accomplishing on-the-ground work, as well as the relationship between the USFS and partnering entities. For these reasons and more, the CCNRD implores the USFS to identify the **No-Action Alternative** as the **preferred alternative** and allow the process to continue through the proper legal and regulatory channels.

Socioeconomic Impacts to Private Property and Communities

CCNRD’s 2020-2025 Long Range Plan “conveys actions the Crook County Natural Resource District takes to support the broad mandate districts have under Wyoming’s conservation district law and policies. A political subdivision of the State, the CCNRD has express authority to address resource management issues in cooperation with landowners, local, state and federal agencies on private lands as well as state and federally managed lands. The CCNRD addresses resource conservation and management through a variety of mechanisms including offering outreach and education activities, conducting research and resource monitoring, and offering technical and financial assistance to landowners. Statements of policy outlined in the Crook County Natural Resource Management Plan (NRMP) are also utilized in the development of the CCNRD’s Annual and Long-Range Plans. As such, other state and federal agencies are required to recognize the CCNRD’s responsibilities as management plans, policies and other resource management documents are developed, including actions that trigger the environmental review process outlined in the National Environmental Policy Act (NEPA). Intergovernmental cooperation and coordination authorized through NEPA and other state and federal laws provide a mechanism for the CCNRD to meet its mission for developing, protecting, and conserving the natural resources that have shaped the heritage of Crook County (page 4-5).

Private property rights are the cornerstone of Crook County and must be protected to ensure that our continued customs and culture remain intact. Agency decisions or proposed actions can instill negative impacts to the current use of neighboring private lands and federal undertakings may not be supported by local stakeholders or partnering entities. Crook County’s socioeconomic ties align with timber harvesting and production, farming, ranching, energy development, tourism and recreation, which all contribute heavily to the heritage of the County. Federal agencies should consider the effects their decisions have on neighboring private lands, as well as access to, or restrictions from, crossing federal, state, or county managed lands should not entail encumbrances or constraints on private property. Changing circumstances in management prescriptions can impact surrounding non-federal property which can impact authorized multiple uses. The CCNRD requests the USFS acknowledge and analyze the cumulative effects management restrictions to access would have to adjacent private and state land, as well as socioeconomic impacts to communities. The USFS’s socioeconomic analysis should describe the human interests and values shaping public lands management, identifying effects of proposed actions on communities and economies, and promote the economic and social sustainability of communities near public lands.

Access to federally administered lands and resources are critical to ensure the socioeconomic well-being, custom, culture and stability of our communities. In Crook County, lands under federal or state control and decisions made for public land management agencies can directly impact the service and non-service industries, public accessibility, and the demographics of an area. Effective coordination and consultation between the County, federal and state agencies is critical to ensuring that land management agencies thoroughly consider the effects that proposed actions have on custom, culture, and economic stability, conservation and use of the environment and natural resources in the County. Counties receive revenue from federal lands in many ways, including mineral leasing and development, agriculture, recreation, travel and tourism, etc. Any curtailment of access to public lands will directly impact the socioeconomics of the County.

The County cannot state clearly enough the importance of our ability to access federal lands to drive vibrant economic communities. The USFS significantly undervalued and under-analyzed the mineral and timber contributions to the counties and state in the socioeconomic section. The USFS must include a robust



socioeconomic analysis clearly demonstrating the differences between management prescriptions in the Alternatives, which includes impacts to the tax base (royalties, rents or bonus bids, severance taxes, ad valorem taxes, sales and use tax employment income, and direct and indirect employment.)

Additionally, the CCNRD remains concerned that NOGA’s identification process for old growth forests (and individual trees) will ultimately be treated as a form of designation. The designation of wilderness, roadless areas and now old growth in our national forests will have significant impacts on our ability to access those federal lands; thereby impacting the economics of our communities. The USFS must also consider the cumulative impacts of existing and proposed management restrictions on the local economics, custom and culture. For example, while the CCNRD does support proactive stewardship of our forests, management decisions must be balanced with other resource uses and generally the CCNRD does not support overly restrictive management directives such as these.

The “Draft Social, Economic and Cultural Impacts Analysis Report for the Draft EIS for Amendments to LMPs to Address Old-Growth Forests Across the NFS” lacks appropriate details in the socioeconomic analysis needed to determine impacts of this landscape scale planning amendment. The USFS must analyze for the cumulative impacts to counties specific to the management decisions under each Alternative and how they will affect local and state economic well-being along with impacts to state and private adjacent lands. In addition, the analysis should consider increased costs to state and local communities associated with a higher risk for fire management, disease and insects due to limited management direction for Old Growth areas. The County can assist in providing the most up-to-date information available for the Forest Service analysis.

“No Action Alternative” for the Final EIS & Record of Decision

In conclusion, the decision by the USFS to hastily push this national plan amendment through the NEPA process in a condensed timeframe that excluded Wyoming Conservation Districts as cooperating agencies in a crucial part of the planning process will be unsuccessful. The CCNRD implores the Secretary and the USFS to select the “**No Action Alternative**” for the Final EIS and Record of Decision. That decision will allow old growth forest direction to be appropriately crafted in local planning efforts as envisioned by the 2012 Planning Rule.

The CCNRD remains committed to continuing our engagement as a cooperating agency to assist the USFS to work through these important issues.

Respectfully,

Wayne Garman, Board Chairman
Crook County Natural Resource District

CC: Holly L. M. Kennedy, Wyoming Association of Conservation Districts Executive Director