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September 19, 2024

Submitted electronically at: <https://cara.fs2c.usda.gov/Public//CommentInput?Project=65356>

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Ecosystem Management Coordination
U.S. Department of Agriculture
Forest Service
201 14th Street SW
Washington, DC 20250-1124

RE: Land Management Plan Direction for Old-Growth Forest Conditions Across the National Forest System – Draft Environmental Impact Statement
RDCC Project No. 86113

Dear Director Walker:

The state of Utah (“State”), through its Public Lands Policy Coordinating Office (“PLPCO”), has reviewed the Department of Agriculture, U.S. Forest Service (“USFS”) draft environmental impact statement (“DEIS”) dated June 2024. The proposal is to amend management plans for 128 units of the National Forest System to “include consistent direction to conserve and steward existing, and recruit future, old-growth forest conditions and to monitor their condition across the planning area” (hereinafter the “Proposed Plan Amendments”). The State encourages the responsible and appropriate development/use of natural resources to promote economic development for the benefit of its citizenry¹ and to support the State’s Resource Management Plan.²

¹ See Resource Development Act, Utah Code § 63M-5-102(1)(a), available at: <https://le.utah.gov/xcode/Title63M/Chapter5/63M-5-S102.html>.

² See Utah State Resource Management Plan, pp. 70–71, available at: <https://rmp.utah.gov/state-of-utah-resource-management-plan/> (2018).

As such, in collaboration with the Division of Forestry, Fire and State Lands (“FFSL”) and the Division of Wildlife Resources (“DWR”), the State appreciates the opportunity to comment on the DEIS, and accordingly submits the following comments and recommendations for the USFS’s review and consideration. These comments are in addition to comments the State submitted by letters dated August 15, 2022, and February 2, 2024, which are incorporated herein by reference.

I. Utah’s Public Lands Policy Coordinating Office

By way of introduction, this comment letter begins with a brief description of the commenter’s mission and areas of expertise. Here, the commenter, PLPCO, is a State agency whose broad mission is “to coordinate, promote, and implement Utah’s public land priorities.”³ In addition to “develop[ing] and coordinat[ing] the State’s public lands policy initiatives”⁴ PLPCO is also involved in many different facets of public land management policy, including overseeing the State’s Resource Development Coordinating Committee (“RDCC”) which is “responsible for commenting on development and conservation proposals on Utah’s public lands” as well as assisting in resource management planning at the State and County levels.⁵

Because of PLPCO’s broad mission and expertise, the agency is involved in various issues and projects that involve (among other things) agriculture, wildlife, grazing, forestry, energy development, and other multiple uses both on Bureau of Land Management (“BLM”) and National Forest System Lands (“NFSL”).

Division of Forestry, Fire and State Lands

FFSL values the collaboration and partnerships that FFSL has formed with various United States Forest Service (USFS) district offices across Utah. FFSL encourages USFS to coordinate with FFSL on the management of wildland fires, forests, and state lands.

On page 74, the DEIS states “[f]or example, a recent meta-analysis found overwhelming evidence that mechanical thinning combined with prescribed burning was effective at reducing subsequent wildfire severity by 72 percent compared to 27 percent reduction for thin only treatments (Figure 10).” Alternative 3 does not consider this finding by removing the use of commercial timber harvest as a management tool for proactive stewardship. FFSL encourages providing greater flexibility for management actions in old-growth forests, including actions

³ PLPCO, *About the Public Lands Office*, Utah’s Public Lands Policy Coordinating Office, available at: <https://publiclands.utah.gov/about/> (2021).

⁴ *Id.*

⁵ PLPCO, *Resource Management Plans*, Utah’s Public Lands Policy Coordinating Office, available at: <https://publiclands.utah.gov/current-projects/resource-management-plans/> (2021).

needed to achieve hazardous fuel reduction and other wildfire management objectives in areas that meet the definition and associated criteria for old-growth forests as proposed in Alternative 4. FFSL urges USFS to allow for flexible management options that may be exercised at the local level.

On page 99, the DEIS recognizes that 25% of old-growth exists in the wildland-urban interface and states “modifying fire behavior will remain a priority in the wildland-urban interface (WUI), which is typically, but not always, compatible with stewardship of old-growth ecosystems.” The DEIS also includes exceptions under Standard 2.c, which allows for management other than proactive stewardship when needed. FFSL supports the exceptions in Standard 2.c. to allow for wildfire risk management activities that do not meet the definition of proactive stewardship, within municipal watersheds or the WUI. These exceptions are necessary to provide flexibility and also meet the [National Cohesive Wildland Fire Management Strategy](#) and the Forest Service’s [Wildfire Crisis Strategy](#).

Division of Wildlife Resources

Since 2006, DWR has collaborated with many conservation partners through Utah’s Watershed Restoration Initiative (WRI). The goals of WRI are to improve watershed health, biological diversity, water quality, and yield, and to provide opportunities for sustainable uses of natural resources. WRI is a partnership-based program in which natural resource experts from various state, federal, and local governments, conservation non-profit organizations, and conservation-minded individuals work collaboratively to improve ecosystems like old-growth forests. USFS has been a critical partner in the WRI, and DWR has worked closely with staff from the agencies on dozens of projects within forest ecosystems. DWR recommends that future resource management planning, amendments, or rulemaking regarding old-growth forest management on federal lands in Utah utilize this partnership-based program. Utah’s WRI partnership can provide technical assistance to USFS in many areas, including identifying existing and emerging threats, conducting ecosystem diversity and condition planning, filling data gaps, and planning and implementing restoration activities on the ground. We recommend that all management actions, such as mechanical and hand treatments within old-growth forests, be allowed to ensure balanced management of all age classes/phases to ensure wildlife habitat and other natural resource values can be maintained, restored, or improved.

DWR recommends that USFS consider the need for active management of all age classes of forest ecosystems, including old-growth forests, to promote habitat requirements for any federally listed Endangered Species Act (“ESA”) candidate, threatened and endangered species, along with “species of greatest conservation need” (“SGCN”)s as identified in the [Utah Wildlife Action Plan](#) (“UWAP”). UWAP is a state of Utah plan used to prevent ESA listings and was developed by state, federal, and local governments, including USFS, along with

conservation non-profits. UWAP identifies threats and data gaps to Utah’s native wildlife species and should be considered for conservation and management decisions or rulemaking efforts in forest ecosystems, including old-growth forests.

DWR does not support alternatives that prohibit proactive management in old-growth forests. Timber harvest and other tree-thinning techniques are management tools to achieve the early, mid, and late forest habitats that different wildlife species need for food or shelter. As data gaps are filled or DWR learns more about wildlife species' life histories, active management in old-growth forests will be needed for wildlife population health.

As directed in EO 14072, consultation with state government agencies, such as the DWR, which has extensive experience in habitat restoration, partnerships, and wildlife management, will help strengthen the nation’s forests. DWR requests that the above wildlife-related information be added to resource plans or rulemaking created or amended under this DEIS. If you have questions, please contact Eric Edgley, Wildlife Program Chief, at 801-503-4392.

II. Coordination / Consistency Requirements of Resource Management Planning

On a further introductory note, it is important to highlight the fact that under the National Forest Management Act, Forest plans must be “coordinated with the land and resource management planning processes of State and local governments and other Federal agencies.” [footnote 16 U.S.C. §1604(a)]. This coordination process is a separate process from cooperation and must occur regardless of whether state or local governments were designated as Cooperating Agencies in accordance with the National Environmental Policy Act (NEPA). Thus, even if the State is not a Cooperating Agency in any given planning process (which it often is), the agency would still be required to make efforts in drafting land use plans that are coordinated with state and local plans.

The Forest Service Planning Rule of 2012 contains requirements for public participation and further defines this coordination process.⁶ This section requires a FS review of State and local government plans with the results of this review displayed in the EIS for the Forest plan. This review is to consider the objectives of these State and local plans, the compatibility and interrelated impacts of these plans, opportunities for the Forest plan to address these impacts or to contribute to joint objectives, and opportunities to resolve or reduce conflicts.

⁶ 2012 Planning Rule § 219.4

In the past, there were no formal state or local plans with which to ensure consistency. However, as of 2018, the State of Utah⁷ has adopted a State Resource Management Plan (“SRMP”) and all twenty-nine (29) counties in the State have adopted County Resource Management Plans (“CRMPs”)⁸. The effort to adopt the SRMP and CRMPs “was a first-of-its-kind effort not only in Utah but nationwide. The state and the counties frequently use their plans to coordinate management actions with the Bureau of Land Management and U.S. Forest Service.”⁹ All these plans include locally adopted objectives and policies for many aspects of not only federal land management but also include findings, provisions, and policies relating to natural resource development and environmental quality.

While not a direct response to the USFS’s Proposed Plan Amendments, the State now specifically requests that under the coordination and consistency requirements discussed above, any and all land-use actions that occur on federally managed land as a result of, or in cooperation with, the USFS’s Proposed Plan Amendments be consistent with the Utah SRMP and the Utah CRMPs. Additionally, although not part of the USFS’s Proposed Plan components and plan content, the DEIS fails to adequately recognize state sovereignty in the development of management plans. There is only minimal reference to state-specific collaboration. As discussed below, the Tenth Amendment requires that the federal government treat the state as a sovereign entity. Any proposed plan amendments and/or related documents must be more explicit in recognizing the State’s sovereignty and allowing for state-specific information to inform management actions within the State’s borders. Several related suggestions are outlined below.

III. The Draft EIS

With this introductory information in mind, the State now turns to specific comments regarding the USFS’s Draft Environmental Impact Statement (DEIS). Our comments are substantially in alignment with those of the American Forest Resource Council as articulated in their June 20, 2024 news release found at: <https://amforest.org/politically-driven-nationwide-old-growth-amendment-fails-to-address-primary-threats-to-old-forests-harms-efforts-to-address-wildfire-crisis/>

A. Unintended Consequences. The EIS and plan amendments provide additional ammunition for litigious NGOs to continue their assault on proactive forest

⁷ Utah State Resource Management Plan (“Utah SRMP”), pp. 1, available at: <https://rmp.utah.gov/state-of-utahresource-management-plan/> (2018).

⁸ PLPCO, *Resource Management Plans by County*, Utah’s Public Lands Policy Coordinating Office, available at: <https://rmp.utah.gov/county-resource-plans/> (2021).

⁹ PLPCO, *Resource Management Plans*, Utah’s Public Lands Policy Coordinating Office, available at: <https://publiclands.utah.gov/current-projects/resource-management-plans/> (2021).

management. This will perpetuate the wildfire crisis and enlist judges to be the forest managers.

NGO litigants will use text found in the NEPA analysis and plan components as weapons to prevent proactive forest management and promote their “let nature take its course” or “hands off” forest management philosophy. While the newest and best-available science indicates that tree thinning and prescribed burns are the best way to ensure the long-term health and resiliency of forests (see: <https://research.fs.usda.gov/rmrs/products/sycu/alchemy-addition-cutting-and-burning-together-most-effective-reducing-fuels-and>) many NGOs focus on the short-term impacts of thinning and burning and overlook the long-term benefits. There are many recent examples where NGOs have litigated proactive forest management projects proposed to promote forest health by reducing tree density. See list below:

<https://abc7.com/big-bear-forest-thinning-us-service-tree-cutting/13649376/>

<https://news.bloomberglaw.com/litigation/one-california-forest-thinning-project-upheld-another-rejected>

<https://forestpolicypub.com/2022/07/12/conservation-groups-sue-forest-service-for-evading-analysis-and-disclosure-of-commercial-thinning-projects-environmental-impacts/#:~:text=The%20organizations%20allege%20the%20Forest%20Service%20violated%20the,Warner%2C%20Bear%20Wallow%2C%20and%20Baby%20Bear%20logging%20projects.>

<https://forestpolicypub.com/2024/02/05/public-lands-litigation-update-through-february-2-2024/>

<https://www.courthousenews.com/ninth-circuit-halts-feds-tree-thinning-project-over-its-vague-science/>

https://www.eastvalleytribune.com/news/lawsuits-stall-forest-thinning/article_9e900755-2c18-5a50-900b-94e32d20df51.html

<https://news.bloomberglaw.com/environment-and-energy/green-groups-continue-fight-over-california-tree-thinning-plan>

<https://www.perc.org/2022/01/04/managing-forest-litigation/>

<https://www.perc.org/2021/04/12/fix-americas-forests-reforms-to-restore-national-forests-and-tackle-the-wildfire-crisis/>

<https://www.latimes.com/environment/story/2022-06-09/forest-thinning-proposal-fuels-controversy-at-big-bear-lake>

https://www.vcreporter.com/news/judge-rules-in-favor-of-usfs-over-reyes-peak-project-environmental-groups-consider-appeal-to/article_53696478-2bd7-11ee-b5ad-5f7c5ab2f4c6.html

<https://climatecasechart.com/case/bark-v-us-forest-service/>

<https://news.bloomberglaw.com/environment-and-energy/forest-service-sued-for-approving-plumas-forest-logging-project>

<https://wildearthguardians.org/press-releases/coalition-sues-for-old-growth-protections-in-willamette-national-forest/>

<https://data.fs2c.usda.gov/objections/displayDoc.php?doc=V1dwS1MyTldjRmhVYWtKb1ZucHNNVmt6Y0hwbFJURnhZVE53VUZaRlZUaz0=>

<https://data.fs2c.usda.gov/objections/displayDoc.php?doc=V1dwS1MyTldjRmhVYWtKb1ZucHNNVmt6Y0hwbFJURnhXVE5zVGxaRlJUaz0=>

<https://data.fs2c.usda.gov/objections/displayDoc.php?doc=V1dwS1MyTldjRmhVYWtKb1ZucHNNVmt6Y0hwbFJURnhZVE53VGxaSF16az0=>

<https://defenders.org/newsroom/conservation-groups-reach-settlement-requiring-bureau-of-land-management-abandon-rule>

<https://biologicaldiversity.org/w/news/press-releases/us-forest-service-scraps-logging-project-in-utahs-ashley-national-forest-2024-07-05/>

Please consider some examples of the DEIS and proposed plan components that could act as ammunition for litigants attempting to thwart active forest management:

Page S-2: “*The intent of this amendment is to foster the **long-term resilience** of old-growth forests and their contributions to **ecological integrity** across the National Forest System.*”

NGOs will use this intent language to litigate arguing that disturbance caused by thinning and prescribed burns will harm certain species, which will adversely impact ecological integrity.

Page S-3: “*Proactive stewardship – a major objective of the old-growth amendment – aims, in part, to improve the quality of old-growth forests to ensure **long-term persistence** on the landscape*” and Page 7: “*Create a consistent framework to manage for the long-term persistence, distribution, and recruitment of old-growth forests across the National Forest System (NFS) in light of the interacting biophysical and social factors that threaten the **persistence** of older forests on NFS lands across the Nation.*”

NGOs will use this intent language to litigate that disturbance caused by thinning and prescribed burns will not allow for the long-term persistence of each and every tree in an old-growth forest.

Page S-4: “*However, past management practices, including timber harvest and fire suppression, contributed to current vulnerabilities in the distribution, abundance, and resilience of old-growth forest characteristics*” and Page S-5: “*Past management – such as*

fire suppression, previous vegetation management, and/or reforestation – and natural succession or regeneration may have created mature forest or species distribution/composition that does not support desired ecological functions and conditions.”

Here, the USFS should recognize that, while past management practices and fire suppression have contributed to the unhealthy state of today’s old-growth forests, litigious NGOs are also to blame for current vulnerabilities and are a continued threat to the resilience of old-growth forests as they pursue their hands-off approach to forest management. The list of links above provides ample evidence of this truth.

*Pages S-6 and 7: “Foster ecologically focused management across the National Forest System by maintaining and developing old-growth forests while improving and **expanding their abundance** and distribution and **protecting** them from the increasing threats posed by climate change, wildfire, insects and disease, encroachment pressures from urban development, and other potential stressors, within the context of the National Forest System’s multiple-use mandate.”*

NGOs will use this purpose and need language to litigate that disturbance caused by thinning and prescribed burns is destructive (not protective) and will reduce the abundance of trees in old-growth forests.

*Pages S-6 and 8: “The proposed plan components and direction focus on providing consistency for interrelated topic areas, including • Improving the **retention** and recruitment of old-growth forests;”*

NGOs will use this plan component and direction focus to litigate that old-growth forests must be retained in their natural condition, rather than proactively managed to enhance forest health.

*Page S-8: “Interdisciplinary team members assigned to this effort also held numerous discussions with various regional and forest/grassland subject matter experts to better understand the **implications** of some of the language/terminology proposed in the Notice of Intent for plan components/content and how this would be **interpreted and applied** when proposing and implementing activities on the ground.”*

Local forest officers have expressed concerns to our agency that once these plan amendments are approved, forest service units will be less able to move forward with forest health projects as the plan amendments give even more ammunition for NGOs to litigate against proactive forest management and that interpretations will need to be increasingly made by courts as opposed to professional forest managers.

Pages S-10 and 103: *“This suite of plan components, along with other plan content common to all action alternatives, is designed to encourage management actions that maintain or restore the structure, function, and composition of old-growth forests, reduce **vulnerability to disturbance**, contribute to the promotion of **ecological integrity**, and increase climate resilience. This will enhance the resiliency and adaptability of old-growth and foster its occurrence, **stability**, and connectivity. As such, all action alternatives will support **ecosystem integrity** and ecosystem services associated with old-growth forests such as biodiversity, **carbon storage and stability**, and water quality.”*

NGOs will force courts, rather than professional forest managers, to interpret and decide whether proactive forest management projects with short-term impacts, but long-term benefits will provide these desired conditions.

Page S-13: *“Ecosystem Services: All plan components in the action alternatives are intended to **conserve the characteristics and functions of old-growth forests** that provide a variety of ecosystem services and associated values for people.”*

NGOs will use this plan component to argue that thinning and prescribed burns will adversely impact the character and functions of old-growth forests due to the disturbance and short-term impacts.

Page 5: *“As shown in the following diagram, the Secretary of the U.S. Department of Agriculture will first decide how to amend land management plans (LMPs) to institutionalize climate-smart management and **conservation** strategies that address threats to mature and old-growth forests on National Forest System lands. The Forest Service will then [sic] make decisions on projects and management activities that **conserve** old-growth forests.”*

Page 7: *“Facilitate the development of geographically informed adaptive strategies for old-growth **forest conservation** to support the effective implementation of this amendment and enable co-stewardship with Tribes and Alaska Native Corporations and collaboration with States, local governments, industry partners, and public stakeholders.”*

Using the words “conservation” and “conserve” here in the intent language will give NGOs grounds to litigate that the goal of the plan amendments is the conservation of existing conditions in the forest as opposed to the proactive management that is desperately needed to combat the wildfire crisis and improve forest health.

Page 9: *“Issues serve to highlight effects or **unintended consequences** that may occur from the proposed action or alternatives, giving opportunities during the analysis to reduce adverse effects and compare tradeoffs for the decisionmaker and public to understand.”*

The DEIS fails to consider perhaps the most serious unintended consequence, which arises from the ammunition this EIS and the associated plan amendments will give to litigious NGOs to stop proactive forest management.

Page 53: Section 2.4.1.: *“These plan components/content would serve to emphasize proactive stewardship in old-growth forests and mature forest that has been identified and prioritized to be managed for future old growth but **would not constrain management actions** as standards and guidelines would.”*

While this may technically be true, some of the terminology in these plan components will invite litigation by NGOs who oppose proactive stewardship and support letting nature take its course.

Page 64: Section 3.2.1.: *“Conserving rare ecosystems, which often contain unique and vulnerable ecological elements and are frequently of special interest to local communities, presents a particularly noteworthy opportunity for conservation efforts in the United States.”*

Portraying old-growth forests here as a rare ecosystem that must be “conserved” will invite litigation from NGOs who believe conservation requires a “hands-off” approach that lets nature take its course. Leaving such statements in the DEIS will hamper Forest Service efforts to proactively manage old-growth forests.

Page 72: Section 3.2.1.: *“Suppression and the absence of frequent cultural burning and other Indigenous stewardship practices **have led to** dense forests of today that are vulnerable to drought, forest insects and diseases, and wildfires (Eisenberg et. al. 2024, Clark et. al. 2024).”*

While fire exclusion is one factor that has led to the dense forests of today, litigation by NGOs has also been a major factor as such litigation has prevented many proactive stewardship projects from thinning forest areas. It would be more accurate to state that fire exclusion has contributed to the dense forest conditions we see today in many areas.

Page 76: Section 3.2.1.: *“Climate change can amplify and interact with many of the disturbances and stressors described in the Ecological Impacts Analysis Report; an increase in **drought risk, wildfire potential, severe storms, and increasing tree mortality from insects** are all expected under a range of future climates”* and Page 77: Section 3.2.1.: *“Many of the mature and old-growth forests in the US remain vulnerable to severe disturbance and chronic climate trends without active management for beneficial disturbance dynamics.”*

If these climate change assumptions come to pass, they provide a powerful reason why the Forest Service should abandon this effort and refrain from giving NGOs more ammunition to litigate against proactive stewardship projects.

Page 99: Section 3.3.1.: *“To that end, by providing direction for the promotion of **ecological integrity**, the proposed amendment is complementary and consistent with the Wildfire Crisis Strategy and the Forest Service will continue to implement the Wildfire Crisis Strategy and related hazardous fuels reduction activities under all alternatives.”*

NGOs will point to this language and litigate that disturbance caused by thinning and prescribed burns will harm certain species, which will adversely impact ecological integrity.

Page 100: Section 3.3.1.: *“NOGA-FW-DC-01 uses terms “amount”, “representativeness”, “redundancy”, and “connectivity” to guide measurable progress toward achievement of the desired condition in a manner that is consistent with planning rule requirements for ecological sustainability and ecosystem integrity.”*

Plan components calling for “an increasing trend towards appropriate amounts, representativeness, redundancy, and connectivity of old-growth forests” will invite litigation from NGOs who believe that this desired condition can be met only by a “hands-off” approach to forest management.

Page 109: Section 3.3.1.: *“All old-growth amendment action alternatives encourage **retention** or restoration of old-growth and associated **naturalistic conditions**.”*

NGOs will use this DEIS text to litigate that old-growth forests must be retained in their naturalistic condition, rather than proactively managed to enhance forest health.

Page 109: Section 3.3.1.: *“Such management actions may benefit forest health overall, and benefit most at-risk species, **but may not always benefit all at-risk species present**.”*

Despite the long-term benefits to forest health and most species, NGOs will point to the short-term negative impacts on at-risk species (typically migratory birds) and litigate to stifle proactive management projects.

Page 115: Section 3.3.2.: *“...demonstrated abundant public support for national-level action to address threats to old-growth forests” and “All action alternatives demonstrate responsiveness to public interest in and support for the **conservation** of old-growth forests...”*

The reason there was such support for national-level action to address threats was because NGOs rallied their membership thinking that the plan amendments would promote the *conservation* of old-growth forests in their natural state rather than promote proactive

management of these forests. Now, as has been stated by Forest Service officials during recent public meetings; those same NGOs are claiming that the DEIS and plan components “leave loopholes large enough to drive a logging truck through.” If the Forest Service does not close these perceived loopholes, these entities will certainly continue their litigious ways.

Page 116: Section 3.3.2.: *“ However, proactive stewardship is likely to be at odds with values that prioritize the naturalness or wildness of old-growth forests as unmanaged, self-determined landscapes.”*

This statement sums up the reasons why NGOs will litigate proactive stewardship projects. The Forest Service should abandon this effort to avoid giving these groups more ammunition to stop forest health projects.

Page 119: Section 3.3.2.: *“At the same time, NOGA-FW-STD-02b allows for the removal of trees in old-growth forest for purposes other than proactive stewardship when “(1) incidental to the implementation of a management activity not otherwise prohibited by the plan, and (2) the area – as defined at an ecologically appropriate scale – continues to meet the definition and associated criteria for old-growth forest after the incidental tree cutting or removal”.*

These two exceptions call for a judgment call by a local forest official. The Forest Service should provide clear and objective criteria for making these decisions rather than subjective criteria that will be subject to objection and legal challenge.

Page 119: Section 3.3.2.: *“Alternative 4 is expected to result in fewer beneficial effects for ecological integrity and ecosystem services than Alternative 2 because Alternative 2 sets explicit expectations for proactive stewardship activities to promote the resilience old-growth forests.”*

If everyone were to recognize the long-term benefits of proactive stewardship, this statement would be true. However, since a segment of society is against any form of proactive stewardship and disturbance in old-growth forests, the provisions in Alternative 2 will facilitate more litigation that will reduce the beneficial effects when compared to the No Action Alternative or Alternative 4.

B. The EIS and plan components fail to recognize state sovereignty and the role of traditional ecological knowledge. Co-stewardship opportunities are offered to tribes but not to states.

Throughout the document, (see for example, Pages 3, items #5, 7 and 9; Pages 7, 8, and all of Section 3.2.3) the USFS promises consultation and co-stewardship with Tribes and Alaska Native Corporations but only collaboration with States, local governments, industry partners, and

public stakeholders. The State of Utah, as noted in the Utah Code section below, is a sovereign entity:

63G-16-101. State sovereignty and rights of set-off.

- (1) Pursuant to the Ninth and Tenth Amendments of the Constitution of the United States of America, the state of Utah does solemnly affirm its state sovereignty and fully and unconditionally reserves and asserts all rights and powers, directly and indirectly related to those rights and powers.*
- (2) This affirmation, reservation, and assertion includes rights and claims of set-off by the state of Utah for any amounts it claims to have been inequitably or unlawfully caused or imposed by the federal government.*

Consequently, consultation and co-stewardship opportunities must be given to the State as well. While the DEIS stresses the importance of Indigenous Knowledge, there is no recognition of Traditional Ecological Knowledge, obtained from the many generations who have worked and stewarded the forests since the 1800's. The knowledge of state forestry agencies is also not recognized in the DEIS.

Page S-12: *“Compared to the no-action alternative, all action alternatives are anticipated to result in more beneficial effects for Tribal interests on National Forest System lands because they include plan components that direct units to incorporate Indigenous Knowledge as an equal with Western science in the management of old-growth forests; develop an Adaptive Strategy for Old-Growth Forest Conservation in **consultation** with Tribes and Alaska Native Corporations; determine old-growth based on a unit- or regional-level definitions; perform proactive stewardship to promote resilient old growth forests, including associated culturally significant species or values; and initiate at least one **co-stewardship** project with interested Tribes within two years of the record of decision.”*

Since states are also sovereign entities, the plan amendments must call for co-stewardship projects with not just tribes, but also with willing state agency partners.

C. The Plan Amendments Constitute a Top-Down; One-Size-Fits-All Framework Nationwide; Which May Not be in the Best Interests Of Forest Health

Page S-9: *“This plan-by-plan revision or amendment approach would not provide a **consistent framework** for managing old-growth across the National Forest System.”*

Page 3: “**Nationally consistent direction** for conserving, stewarding and recruiting old-growth forests is connected to and should complement related Forest Service policy and direction, including the Wildfire Crisis Strategy and Climate Adaptation Plan.”

Page 8: “The U.S. Department of Agriculture is proposing to amend land management plans to establish a consistent framework for old-growth forests across the National Forest System.”

Page 115: Section 3.3.2.: “Under the no-action alternative, the need for revised or additional plan direction for old-growth forests would be **identified at the local level** and pursued through individual land management plan amendments or revision.”

Page 116: Section 3.3.2.: “This approach has potential impacts to public trust in the procedures for public involvement in land management planning established by Forest Service planning regulations. The perception that amendments can be made relatively quickly at the national level may **erode belief that local, interested parties can influence planning** for the management of National Forest System lands in their area.”

Page 116: Section 3.3.2.: “However, relative to other plan revisions or amendments at the unit or multi-unit scale, the national scale of this amendment – as well as it being developed in response to EO 14072 – provides **fewer opportunities for meaningful engagement** by individuals, organizations, and local, State, and Tribal governments in the development of the purpose and need, plan components, and alternatives. Based on sentiments shared in public comments submitted during scoping, a national-level amendment will have **consequences for public attitudes about Forest Service land management planning**.”

Establishing a consistent framework or nationally consistent direction across a diverse mixture of forest types across the country, as described in the paragraphs above, is not desirable unless the USFS is solely focused on getting these plan amendments approved during the current administration to appease NGOs. As stated on Page 4, “Each region recognizes important ecological variation by defining unique old-growth criteria for different vegetation types.” A better approach would have been to provide the direction or framework at the forest unit level or, at most, at the regional level.

D. Alternatives.

Page S-11: “As such, the rate of progress towards desired conditions under this alternative [Alternative 4] would likely be second fastest only to Alternative 2 because **all management tools are available**, but not all vegetation management in old-growth is necessarily optimized for proactive stewardship purposes.”

Page 16: *“For Alternative 4, Standards 2.a and 2.c would be removed, **providing greater flexibility for management actions** in old-growth forests, which can include actions needed to achieve hazardous fuel reduction and other wildfire risk management objectives in areas that meet the definition and associated criteria for old-growth forests.”*

Alternative 4 should be selected because all management tools would be available. This alternative most closely aligns with the Organic Administration Act of 1897, under which most national forests were established. The Act states: “No national forest shall be established, except to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States...”

Alternative 4 would be most consistent with the National Forest Management Act Of 1976, in which Congress found: “to serve the national interest, the renewable resource program must be based on a comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from the Nation's public and private forests and rangelands, through analysis of environmental and economic impacts, coordination of multiple use and sustained yield opportunities as provided in the Multiple-Use, Sustained-Yield Act of 1960 (74 Stat. 215; 16 U.S.C. 528-531), and public participation in the development of the program;”

Alternative 4 would be most consistent with the State and county resource management plans, which call for timber production from USFS lands to increase after decades of curtailment.

Page 106: Section 3.3.1.: *“...NOGA-FS-STD-03 in Alternatives 2 and 3 removes the option for most commercial timber harvest. It is therefore assumed that the small commercial sales would not occur under Alternatives 2 and 3...”*

Alternatives 2 and 3 are inconsistent with State and county resource management plans in Utah because of the negative impacts on the ability to harvest timber.

Page 107: Section 3.3.1.:

The final paragraph on this page provides a good case against using Alternative 3 to manage our national forests.

Page 127: Section 3.3.5.: *“Agency funds will go further under Alternatives 2 and 4 and treat additional acres of old-growth with the sales of commercial products covering a portion of restoration costs or “goods for services” unlike Alternative 3 where appropriated funds will be needed to treat acres.”*

If the Forest Service is serious about proactive management, Alternative 3 should not be selected for the reason noted in this paragraph. There will never be enough

appropriated funds to do the amount of proactive management that is needed nationwide. Losing the ability to trade goods for services would be disastrous.

E. Negative Impacts on New Recreation Opportunities Needed to Serve the Nation's Growing Population.

Page S-14: *“Projects which are in areas characterized by old-growth forest may need to survey the project area for old-growth, and associated survey burdens may be incurred by the forest or project proponents. In instances where the activities are not compliant with NOGA-FW-STD-02b and deviations in NOGA-FW-STD-02c do not apply, a project-level plan amendment may be necessary for the project to proceed. In some cases, the deciding official may decide not to pursue a project level plan amendment and **forego the project altogether, with potential consequences for recreation and loss of economic benefits**”* and Page 120: Section 3.3.2.: *“While some administrative burden associated with **Alternatives 2 and 3 may impact new developed recreation sites**, there is no indication that those challenges would be disproportionately experienced by communities with environmental justice concerns.”* Page 122: Section 3.3.2.: *“Some projects may not comply with Standard 2.b and in instances where projects cannot be mitigated, a project-level forest plan amendment may be necessary. In some cases, the deciding official may choose not to pursue project-level plan amendments and **forego the project**, with potential consequences for recreation and economic benefits.”*

The proposed plan amendments will make it more difficult to site new recreation facilities within old-growth forested areas. Forest Service. According to the *U.S. Forest Service National Visitor Use Monitoring Survey Results National Summary Report* dated September 2023 (see: <https://www.fs.usda.gov/sites/default/files/2022-National-Visitor-Use-Monitoring-Summary-Report.pdf>) the two most common primary recreational activities on the nation's forests are hiking/walking and downhill skiing [see Page 4]. Total NF site visits have increased from an estimated 191,578,000 in FY 2014-2018 to an estimated 209,780,000 visits in FY 2018-2022 [see Table 1b, Page 11]. Restricting access to old-growth forest areas runs counter to increasing public demand for forest recreation such as hiking, skiing, and mountain biking. These plan amendments will make it easier for litigants to challenge needed recreation projects due to their perceived impact on old-growth forest conditions.

F. Socio-economic Impacts.

Page S-14: *“The old-growth amendment is unlikely to create a shortfall in the national supply of timber but may increase pressure to harvest additional Forest Service acres. The majority of wood consumed in the United States originates from state and private lands and imports (Johnston et al. 2023). As of 2019, only 3 percent of national timber*

consumption originated from Forest Service lands. In addition, based on FIA remeasurement analysis, areas of old-growth where tree cutting occurred, was only 4.7 percent of the total tree cutting across all Forest Service lands from 2000 to 2020. Thus, because the old-growth amendment is unlikely to have major effects on timber supplied from the National Forest System, no effects are expected on traditional timber industry jobs in logging, wood product manufacturing, and pulp production” and Page 106:

“Specific to Region 10, in contrast to Alternatives 1 and 4, Alternatives 2 and 3 would effectively halt larger commercial old growth timber sales on the Tongass NF, leaving commercial harvesting to occur within young or secondary growth areas.”

It is a sad statistic that national forests, which were envisioned by the Organic Act “to furnish a continuous supply of timber for the use and necessities of citizens of the United States” are supplying only 3 percent of the national timber supply today. Unfortunately, the proposed plan amendments will guarantee that this percentage cannot increase in the future; especially with the Tongass NF being removed from consideration for timber sales in old growth. The Tongass is one of only two forests in the nation that contains more than 50 percent old growth (see Page 61).

Page 85: Section 3.2.2.: Attitudes, beliefs, and values: *“Social analysis for Forest Service actions should consider the feelings, preferences, and expectations people have for forests and their management, or their values, attitudes, and beliefs (FSH 1909.17 (33.22)).”*

One study that is applicable here, but does not appear to have been utilized in the socio-economic analysis, is the study conducted by Richard Krannich of Utah State University, dated December 2008 (see: <https://extension.usu.edu/apec/files/uploads/environment-and-natural-resources/public-lands/General-Population-Final-Report.pdf>). Note on Pages 95-96 of this study that a vast majority of survey respondents believed that timber harvest on Utah’s public lands should stay the same, have a moderate increase or a major increase. The percentages were higher in counties with some semblance of a timber economy (see Table 35 and Figure 33 of this study).

Page 86: Section 3.2.2.: *“For example, decreases in manufacturing and non-services related employment has been accompanied by increases in services related employment (Table 8).” “In addition, places with natural amenities attract skilled workers and contribute to employment (McGranahan et al. 2007).”*

While the above is true, what’s not stated is that the conversion of an economy from manufacturing (timber) jobs to service-related employment reduces the number of family-wage jobs and replaces them with minimum-wage jobs. As people are attracted to places

with natural amenities, the price of land and housing in those areas increase and local service workers are priced out of the housing market.

Page 87: Section 3.2.2.: *“In addition, livestock grazing on national forests and grasslands contributed about 13,700 jobs and \$598 million to the Nation’s GDP, in large part supporting agriculture-related sectors and private operations enabling continued cultural traditions and a sense of place valued across the Nation.”*

The other contribution of livestock not mentioned here is the reduction in fuel loads in the forest, whose value is significant although difficult to monetize.

Page 118: Section 3.3.2.: *“NOGA-FW-DC-03 would specifically orient future Forest Service actions towards the provision of ecosystem services from old-growth forests, including but not limited to long-term stability of forest carbon, clean water and soil stabilization, plant and animal habitat, spiritual and cultural heritage values and education, and recreational and tourism experiences.” “All plan components in the action alternatives are intended to conserve the characteristics and functions of old-growth forests that provide a variety of ecosystem services and associated values for people.”*

This desired condition is among the plan components that elevate the provision of ecosystem services above the provisioning services and material values associated with old-growth forests. The Forest Service must amend these plan components to provide a more balanced approach that allows proactive management to occur before more old-growth forests burn in uncharacteristic wildfires.

Page 121: Section 3.3.2.: *“In Alaska, under Alternative 3, no small and micro-commercial old-growth sales would occur for the Tongass. The timber industry in southeast Alaska could contract as mills dependent on old-growth timber curtail operations or shut down from lack of old-growth timber supply.”*

Alternative 3 is not an acceptable alternative due to these socio-economic impacts on southeast Alaska.

G. Flaws in the Public Process.

Page S-15: *“Plans amendments proposed by the Secretary of Agriculture are not subject to the pre-decisional administrative review procedures set forth in 36 CFR 219 Subpart B. A decision by the Secretary constitutes the final administrative determination of the U.S. Department of Agriculture (36 CFR 219.51(b)).”*

This section should be clarified to clearly state to the reader that there will be no opportunity for objections to the Secretary’s decision and no Governor’s Consistency

Review opportunity to demonstrate how the plan amendments are consistent with state plans. The inability to object is mentioned later in the DEIS, on Page 8.

Page 1: *“The Forest Service has prepared this environmental impact statement in compliance with the National Environmental Policy Act (NEPA) and other relevant Federal and State laws and regulations.”*

This is a questionable statement as the USFS did not offer Cooperating Agency MOUs to stakeholders until May 24, 2024, which is about six months after the NOI to prepare an EIS was published in the federal register on December 20, 2023. Many local governments were not allowed to review and sign MOUs (see letter from Margaret Byfield, Executive Director, American Stewards of Liberty, dated April 23, 2024). Cooperators should have been allowed to participate in the formulation of alternatives and an opportunity to review an administrative draft EIS prior to the DEIS being released for public comment.

The process being followed by the USFS seems inconsistent with 36 CFR 219.4, which provides:

§ 219.4 Requirements for public [participation](#).

(b) Coordination with other public planning efforts.

(1) The [responsible official](#) shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments.

(2) For plan development or revision, the [responsible official](#) shall review the planning and land use policies of federally recognized [Indian Tribes](#) (43 U.S.C. 1712(b)), Alaska Native Corporations, other Federal agencies, and State and local governments, where relevant to the [plan area](#). The results of this review shall be displayed in the [environmental impact statement \(EIS\)](#) for the plan (40 CFR [1502.16\(c\)](#), [1506.2](#)). The review shall include consideration of:

(i) The objectives of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, as expressed in their plans and policies;

(ii) The compatibility and interrelated impacts of these plans and policies;

(iii) Opportunities for the plan to address the impacts identified or to contribute to joint objectives; and

(iv) Opportunities to resolve or reduce conflicts, within the context of developing the plan's desired conditions or objectives.

(3) Nothing in this section should be read to indicate that the responsible official will seek to direct or control management of lands outside of the plan area, nor will the responsible official conform management to meet non-Forest Service objectives or policies.”

Page 12: *“The Forest Service has requested that each Cooperating Agency provide applicable planning documents or policies related to forest management and any information regarding specific areas of conflict between their plan or policy and the proposed National Old Growth Amendment, and suggestions to address those conflicts.”*
and Page 55: Section 3.1.1.: *“Commenters provided a range of information: States and counties provided state and county-level information from their county land management plans, natural resource management plans, and Community Wildfire Protection Plans.”*

The State submitted scoping comments on the proposed plan amendments by letter dated February 2, 2024, which is incorporated herein by reference. This letter raised concerns about the process and inconsistencies with state plans. The State agrees with the process concerns expressed by the Wyoming County Commissioners Association, in a letter to Secretary Vilsack dated May 28, 2024.

Duchesne County, Utah raised similar concerns during scoping by letter dated January 22, 2024, which is also incorporated herein by reference. This letter listed the county’s forest management objectives and policies from its resource management plan and asked the USFS to demonstrate in the DEIS how the plan amendments are consistent with these objectives and policies. The USFS failed to address consistency with state and local plans in the DEIS.

Page 116: Section 3.3.2.: *“This approach has potential **impacts to public trust** in the procedures for public involvement in land management planning established by Forest Service planning regulations. The perception that amendments can be made relatively quickly at the national level **may erode belief that local, interested parties can influence planning** for the management of National Forest System lands in their area.”*

Page 116: Section 3.3.2.: *“However, relative to other plan revisions or amendments at the unit or multi-unit scale, the national scale of this amendment – as well as it being developed in response to EO 14072 – provides **fewer opportunities for meaningful engagement** by individuals, organizations, and local, State, and Tribal governments in the development of the purpose and need, plan components, and alternatives. Based on sentiments shared in public comments submitted during scoping, a national-level amendment will have **consequences for public attitudes about Forest Service land management planning.**”*

Establishing a consistent framework or nationally consistent direction across a diverse mixture of forest types across the country is not desirable unless the USFS is solely

focused on getting these plan amendments approved during the current administration to appease NGOs. As stated on Page 4, “Each region recognizes important ecological variation by defining unique old-growth criteria for different vegetation types.” A better approach would have been to provide the direction or framework at the forest unit level or, at most, at the regional level. The process being followed has indeed eroded confidence that the Forest Service is listening to local voices but ramming through plan amendments before the current administration comes to an end.

H. Mischaracterization of the Threats to Old-growth Forests.

Page 2: “However, past management practices, including timber harvest and fire suppression, contributed to current vulnerabilities in the distribution, abundance, and resilience of old-growth forest characteristics.” Page 125: Section 3.3.4.: “Past actions that have impacted old-growth forest on National Forest System (NFS) lands include many that resulted in loss or degradation of old-growth habitats, such as human population growth, commercial timber harvest, silvicultural manipulation to favor tree species preferred for timber production, and wildfire suppression. Unplanned but human-caused actions, such as human-ignition wildfire and introduction of tree-killing insect and fungal pests, have also contributed to the loss or degradation of old growth on National Forest System lands.”

Here, the USFS should recognize that, while past management practices and fire suppression have contributed to the unhealthy state of today’s old-growth forests, litigious NGOs are also responsible for current vulnerabilities and are a continued threat to the resilience of old-growth forests as they pursue their hands-off approach to forest management. The list of links above provides ample evidence of this truth. Also, in these sections, the impacts of wildfire from natural ignitions (lightning strikes) is not recognized as a threat that has impacted old-growth forests.

Page 72: Section 3.2.1: “Suppression and the absence of frequent cultural burning and other Indigenous stewardship practices have led to dense forests of today that are vulnerable to drought, forest insects and diseases, and wildfires (Eisenberg et. al. 2024, Clark et. al. 2024).”

While fire exclusion is one factor that has led to the dense forests of today, litigation by NGOs has also been a major factor as such litigation has prevented many proactive stewardship projects from thinning forest areas. It would be more accurate to state that fire exclusion has contributed to the dense forest conditions we see today in many areas.

I. Plan Amendments will Hamper Implementation of the Wildfire Crisis Strategy.

Page 10: *“The Forest Service’s Wildfire Crisis Strategy calls for reducing wildfire risk through strategic all lands, all-hands, science-based action that focuses on the most at-risk landscapes. Under this strategy, the agency and partners are increasing the pace and scale of forest restoration treatments to begin to reduce wildfire risk to communities, critical infrastructure, and natural resources.”*

The State has been participating in and fully supports efforts under the Shared Stewardship program to accelerate forest restoration treatments across jurisdictional boundaries. However, litigation continues to be an issue (see, for example: <https://biologicaldiversity.org/w/news/press-releases/us-forest-service-scraps-logging-project-in-utahs-ashley-national-forest-2024-07-05/> and local forest personnel have recently admitted that they see the pace and scale of such treatments decreasing if and when the proposed plan amendments are enacted. The DEIS finds that 25% of the old-growth forests exist within the wildland-urban interface (WUI). The unintended consequences of the proposed plan amendments will likely impact our ability to reduce hazardous fuels in the WUI areas.

J. Plan Components (Table 1) for the Preferred Alternative (2).

1. Page 19: Statement of Distinctive Roles and Contributions.
 - a. The term “old tree” is not defined in the glossary and is thus not appropriate for use in a plan component.
 - b. Plan components supporting “ecological integrity” and “long-term storage of carbon” may be used by litigants to oppose forest health treatments due to the short-term impacts on forest ecology and reducing the density of trees that store carbon.
2. Page 20: Goal 1: The goal focuses on Indigenous Knowledge but makes no mention of other sources of knowledge and science, such as Traditional Ecological Knowledge possessed by those individuals and local or state agencies who have helped manage forests since the 1800s.
3. Pages 21 and 26: Management Approach 1.a. and Objective 1: The intent to consult with tribes but collaborate with states is a slap in the face to sovereign states.
4. Page 23: Management Approach 1.b. (vi) Using the term “retain” in this purpose statement invites litigation from NGOs who want the current conditions in old-growth forests to be retained and let nature take its course.
5. Page 25: Desired Condition 2: Using the term “persist” will facilitate NGO litigation that disturbance caused by thinning and prescribed burns will not allow for the long-term persistence of each and every tree in an old-growth forest.

6. Page 26: Desired Conditions 3 and 4: **Plan components calling for the long-term abundance, distribution, and resilience of old-growth forests and the preservation of their ecological integrity will invite litigation from NGOs who believe that those desired conditions can be met only by a hands-off approach to forest management.**
7. Page 27: Objective 2: **Please clarify that the objective to initiate at least three proactive stewardship projects pertains to each forest service unit; not nationwide.**
8. Pages 27 and 116: Objective 3: **Please clarify that one co-stewardship project is proposed in each forest service unit. In addition, co-stewardship projects should also be offered to sovereign states.**
9. Page 27: Objective 4: **Plan components calling for “an increasing trend towards appropriate amounts, representativeness, redundancy, and connectivity of old-growth forests” will invite litigation from NGOs who believe that this objective can be met only by a hands-off approach to forest management.**
10. Page 29: Standard 1: **If a “consistent framework” is being developed and all forest plans are being amended to include this consistent framework, there shouldn’t be any “incomplete or non-existent definitions and associated criteria” for determining where old growth forests occur.**
11. Pages 30 and 104: Standard 2.b: *“The cutting or removal of trees in old-growth forest for purposes other than proactive stewardship is permitted when (1) incidental to the implementation of a management activity not otherwise prohibited by the plan, and (2) the area – as defined at an ecologically appropriate scale – continues to meet the definition and associated criteria for old-growth forest after the incidental tree cutting or removal.”*

Cutting or removal of trees to protect public health and safety should be included here rather than being a deviation under Standard 2.c. Also, there is a lot of room for interpretation here regarding whether the cutting of trees would be “*incidental to the implementation of a management activity not otherwise prohibited by the plan*” and whether “*the area – as defined at an ecologically appropriate scale – continues to meet the definition and associated criteria for old-growth forest after the incidental tree cutting or removal.*” These interpretations by local forest officials are likely to be litigated by NGOs who assert that no trees should be cut in old-growth forests. Clear, objective standards should be provided instead.

12. Page 31: Standard 2.c: *“vi. in cases where it is determined – based on best available science, which includes Indigenous Knowledge – that the direction in this standard is not relevant or beneficial to a particular species or forest ecosystem type.”*

This standard is not clear and objective. What constitutes “best available science” is always debatable. Indigenous Knowledge does not come with scientific data. It is anecdotal at best, based on practices and stories passed down over generations. These practices may not be the best way to manage the landscape based on current conditions in the forests. Traditional Ecological Knowledge and the latest peer-reviewed Western science should be recognized in the DEIS as being on par with Indigenous Knowledge. Whether a deviation is not relevant or beneficial to a particular species or forest ecosystem type is also a matter of opinion and such interpretations by local forest officials are likely to be litigated by NGOs who assert that no trees should be cut in old-growth forests. Clear, objective standards should be provided instead.

13. Pages 32 and 103: Standard 3: *“Proactive stewardship in old-growth forests shall not be for the purpose of timber production as defined in 36 CFR 219.19.”*

Text in Standard 3 should be consistent with the stated intent that “Proactive stewardship in old-growth forests shall not be for the SOLE purpose of timber production as defined in 36 CFR 219.19.” This standard must not be amended as proposed under Alternative 3 as prohibiting commercial timber harvest in old-growth forests would financially constrain the Forest Service from being able to accomplish the level of proactive stewardship necessary to return our forests to healthy conditions.

14. Page 33: Guideline 1: *“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.” “The intent of this guideline is to support the recruitment and development of future old-growth forests by **constraining vegetation management projects**...”*

An adaptive strategy for old-growth forest conservation implies that forests will be conserved rather than managed. The adaptive strategy should be re-named to reflect the intent to manage rather than conserve. The intent to constrain vegetation management projects also implies that the plan amendments intend to constrain rather than pursue needed vegetation management projects. This intent to constrain will likely produce an unintended consequence reducing the amount of proactive management that is sorely needed to combat the wildfire crisis and impacting not only future projects but current projects in the NEPA process and approved projects that have been challenged by litigants.

The plan amendment and record of decision should make clear that there is no intent to apply these plan amendments retroactively.

15. Pages 34 and 102: Guideline 2: *“Where there are additional land management plan components for old-growth that existed prior to the old-growth amendment and these provide more restrictive direction for old-growth forests, the more restrictive direction should be adhered to.”*

This guideline should be amended to recognize that this “more restrictive direction” should not be adhered to if such direction is contrary to existing strategies, agreements, or projects (see a list of examples on Page 21 of the DEIS, associated with Management Approach 1. a).

16. Page 34: Guideline 3: *“To preserve the cultural and historical value of **old trees** occurring outside of old-growth forests, vegetation management projects should retain and promote the conservation and survivability of **old trees** that are rare when compared to nearby forested conditions that are of a noticeable younger age class or unique in their ability to persist in the current or future environment and are not detracting from desired species composition or ecological processes.”*

Since the term “old trees” is not defined in the glossary, the term should not be used in a Guideline. This becomes a subjective term that invites litigation.

17. Pages 36 and 102: Plan Monitoring 2: *“Within the biennial monitoring evaluation report, provide monitoring questions and associated indicators to assess the resilience of old-growth forests and inform adaptive management; include regular updates on actions taken pursuant to this amendment; **identify unintended consequences...**”.*

During plan monitoring, the Forest Service should identify how NGOs have been able to utilize these plan components as weapons to litigate against proactive management of old-growth forests. The State urges the Forest Service to be cautious of third-party monitoring as special interest groups may seek to perform monitoring in a manner that promotes their agendas. Effective long-term monitoring has been a problem in some areas due to frequent turnover in Forest Service staff.

K. Improper Use of Optional Plan Content in the National Old Growth Amendment (NOGA) (Utah supports these comments from Micah Christensen, Wyoming County Commissioner’s Association).

Under the 2012 Planning Rule, the USFS may also 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).*

The Forest Service's Land Management Planning Handbook (Handbook) clarifies that optional content should never be worded to suggest it is a plan component. Further, the Handbook provides that any optional content may be changed administratively, without conducting a NEPA process. Specifically, the Handbook states:

“This optional content must not be labeled or worded in a way that suggests it is a plan component. In addition, optional content must not include, or appear to include, a “to do” list of tasks or actions... If used, management approaches would describe the principal strategies and program priorities the Responsible Official intends to employ to carry out projects and activities developed under the plan. The management approaches can convey a sense of priority and focus among objectives and the likely management emphasis... Optional plan content can be changed through administrative changes.” Planning Handbook, 1909.12.22.4.

Therefore, looking at the 2012 Planning Rule and the Handbook we know that optional content differs in significant ways from required plan components. First, forest plans are not required to contain any optional content (such as management approaches, strategies, partnership opportunities, etc.). Second, optional content does not offer plan direction. Third, optional content must be consistent with a forest unit's existing plan components and cannot amend plan components. Fourth, optional content cannot be used to force the USFS to take a particular action. Fifth, optional content can be created, amended, or erased administratively. Finally, optional content does not require NEPA or any public engagement because it does not make any decisions for USFS lands or resources.

The NOGA includes two layers of optional content. NOGA utilizes optional content (a management approach) to create optional content (a strategy) within the next two years.

NOGA makes it clear in proposed Management Approach 1.a that it is mandatory for forests to *“develop and adhere to an Adaptive Strategy for Old-Growth Forest Conservation to accomplish”* a list of eight different pieces of information. Beyond making the creation of a strategy a requirement, Management Approach 1.a provides a to-do list of things that the Adaptive Strategy must accomplish. This directly conflicts with the FSH1909.12, Section 22.4: *“This optional content must not be labeled or worded in a way that suggests it is a plan component. In addition, optional content must not include, or appear to include, a “to do” list of tasks or actions.”*

Additionally, the Management Approach forces the USFS to create a strategy that will change plan components. Specifically, Management Approach 1.a (v) requires the USFS to identify and prioritize areas for recruitment, retention, and promotion of old growth forests. Tiering to this Management Approach 1.a., proposed Guideline 1 then 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.” In other words, the strategy is designed to change how and where projects will be prioritized and implemented.

On page 117, NOGA provides further confirmation that the Adaptive Strategies are intended to dictate which areas are managed for old-growth forests. *“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.”*

Not only does this Adaptive Strategy fall outside of the 2012 Planning Rule and the Handbook, but this optional content (which should not require NEPA) would necessarily require additional NEPA analysis. 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). Because the Adaptive Management Strategies are designed to change “where plan components will apply” by identifying and prioritizing areas for old growth forests, the USFS would be required to complete an additional amendment process and comply with NEPA.

Other plan components are also inappropriately tiered to the Adaptive Strategy, including standards and monitoring. Specifically, Standard 3 states *“Proactive stewardship in old-growth forests shall not be for the purpose of timber production as defined in 36 CFR 219.19.”* Since the identification of old-growth forests will occur as the Adaptive Strategy, the Adaptive Strategy will again amend existing forest plans and change management areas without the appropriate NEPA process and analysis.

In summary, NOGA is utilizing optional content (e.g. a management approach that requires the creation of a strategy) as a plan component (identifying areas and changing management in those areas). 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 completely change the strategy with the stroke of a pen.

This approach can only exacerbate the politicization of forest management at the expense of integrated and comprehensive management decisions being made during the plan amendment/revision process with the help of governmental partners (state, tribal, and local governments) inside of a defined NEPA process. NEPA strengthens the voices of those who are most intimately connected to individual forests, possess regulatory oversight, and regularly serve as partners with the USFS.

Additionally, the optional content strategy opens a substantial threat to litigation for current and proposed projects. Since strategies are not plan components, 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 host of ongoing projects, projects in the works, and projects in the early developmental stages. Beyond initial uncertainty, this could immediately halt projects, create a chilling effect on new project development (waiting 2 years to create and comply with a strategy), and open up every existing project to litigation. This would hamper efforts to improve forest health and address the wildfire crisis.

L. General Concerns.

1. Page 74: Section 3.2.1.: *“Whereas high-grade logging preferentially removed large, old trees from historically fire-maintained forests and savannas, today, **ecological silviculture** can be a valuable tool, alongside prescribed fire and cultural burning, to maintain and restore resiliency in old-growth.”*

While the text on Page 74 of the DEIS attempts to explain what these terms mean, the terms “silviculture” and “ecological silviculture” should be defined in the DEIS Glossary.

2. Page 77: Section 3.2.1.: *“A total of 123 national forest or national forest/national grassland LMPs, collectively referred to as national forest LMPs, were reviewed to determine current old-growth management direction (Table 5).”*

Appendix A, Page A-1, states that there are 128 national forest unit plans. Why were only 123 reviewed?

3. Page 81: Section 3.2.1.: *“The National Wildfire Cohesive Strategy underscores that extreme wildfire fire behavior poses a threat to more **houses** in the Wildland Urban Interface (WUI), leading to a greater emphasis on suppression and proactive vegetation management to mitigate this threat.”*

The threat extends beyond houses to other structures, infrastructure, and personal property.

4. Page 100: Section 3.3.1.: *“NOGA-FW-DC-03 underscores that managing for the ecological integrity of old-growth forests will in turn provide valuable ecosystem services, such as **water provisioning** and carbon uptake, storage, and stability.”*

The DEIS should emphasize the importance of thinning the forest to enhance water yields to offset the impacts of drought and a growing population’s demand for water. Many studies have found that reducing tree densities will increase water yields. See, for example

<https://onlinelibrary.wiley.com/doi/abs/10.1002/eco.1838>,
<https://www.sciencedirect.com/science/article/pii/S2214581824001101>, and
<https://www.sciencedaily.com/releases/2016/06/160601132623.htm>.

5. Page 106: Section 3.3.1.: *“Vegetation management and incidental tree cutting and/or removal can still occur for the reasons listed in the exceptions while still meeting old-growth objectives, meaning in these cases no exceptions would need to be invoked.”*

This sentence is confusing. If incidental tree cutting or removal requires a “deviation” (see Page 104), why would no exceptions need to be invoked? It is suggested that the Forest Service use the term “deviation” or “exception” but not both.

6. Page 107: Section 3.3.1.:

There are two references to NOGA-FW-STD-2 that should be NOGA-FW-STD-2a.

7. Page 125: Section 3.3.4.: *“While some treatments could be accomplished by using prescribed burning only, it is generally very risky in the wildland-urban interface and expensive, leading to fewer acres treated.”*

Prescribed burning is risky anywhere; not just in the wildland-urban interface. Two 2022 USFS-prescribed burns that were started nowhere near the WUI spread into one of the largest fires in New Mexico history (see: <https://www.boisestatepublicradio.org/politics-government/2024-07-17/forest-service-prescribed-fire-gao-hermits-peak-new-mexico>).

8. Page 126: Section 3.3.4.: *“Reasonably foreseeable Forest Service actions that could further impact old-growth forests include development, amendment, or revision of Forest Service management strategies, policies, and regulations.”*

Another reasonably foreseeable Forest Service action, which does not seem to be mentioned here, is the implementation of the Wildland Fire Mitigation and Management Report recommendations.

9. Page 127: Section 3.3.5.: *“Unavoidable Adverse Environmental Effects. No unavoidable, adverse environmental [effects] were detected when analyzing the impact of the old-growth amendment. Irreversible or Irretrievable Commitment of Resources. There will be no irreversible or irretrievable commitment of resources as a result of the old-growth amendment.”*

These two findings are conclusory in nature and further elaboration should be included in the EIS to support these findings.

10. Page 136: Chapter 5:

It appears that The Wilderness Society would best fit under the Conservation category rather than the Recreation category. The Rural Voices for Conservation Coalition would best fit under the Conservation category rather than the Industry category. Please elaborate or define what is meant by the “Denver Group.”

11. Pages A-1 and A-2 (Acronyms):

Acronyms that appear in the DEIS but are not included in the list are AMMA, FACTS, and MAST (see Appendix D, Page D-2), and OG (see Page 117).

12. Appendix B. Page B-1: *“The Northern Region is comprised of 9 National Forests spread across North Idaho, Montana, and a sliver of northeastern Washington and National Grasslands in North Dakota and northwestern South Dakota.”*

Figure 1 does not show any lands in NE Washington within Region 1. Also, there appear to be 10 forests listed in Table 1 (not 9). Why is there no Region 7 shown in Figure 1?

13. Appendix B. Page B-3: *“The Southwestern Region is comprised of 6 national forests in Arizona, 5 national forests and a national grassland in New Mexico, and one national grassland each in Oklahoma and the Texas panhandle.”*

Figure 1 does not show any lands in Oklahoma or Texas being part of Region 3.

14. Appendix C. Page C-1: *“Appendix B, State, Forest, and Region Crosswalk for the Draft EIS provides helpful information for understanding the spatial distribution and location of the national forests and grasslands.”*

Appendix B appears to have a different title: “National Forests and Grasslands and Forest Service Regions.”

15. Appendix C. Page C-2:

Table 1 does not appear to include all of the national grasslands listed on Page B-2 in Region 2.

16. Appendix D. Page D-1:

Consider moving the three definitions in the footnotes to the Glossary page of the DEIS.

IV. Conclusions

In summation, the citizens of the State of Utah, as well as the United States as a whole, will continue to benefit as the USFS fulfills its mission “to sustain the health, diversity, and productivity of the nation’s forests and grasslands to meet the needs of present and future generations.”¹⁰ As an overarching goal, “the State supports the wise use, conservation, and protection of public lands and their resources, including well-planned management prescriptions.”¹⁸

Thus, “it is the State’s position that public lands be managed for multiple uses, sustained yields, prevention of waste of natural resources, and to protect the health, safety, and welfare of the public. It is important to the State economy that public lands be properly managed for fish, wildlife, livestock production, timber harvest, recreation, energy production, mineral extraction, water resources, and the preservation of natural, scenic, scientific, and historical values.”¹⁹

Managing old-growth forests like a museum- the hands-off approach advocated by many “conservationists”- is not the answer. Instead, the State encourages the USFS to focus on active forest management, forest stewardship, and vegetation treatments, to produce the desired old-growth forest conditions and achieve the required consistency with the State SRMP and county CRMPs.

The State has a significant amount of forest land in various stages of maturity (see: <https://experience.arcgis.com/experience/37cb7e33db6949c79f1f87f87968e51a>). Mature and old-growth forests should be managed for tree characteristics instead of designating specific areas or boundaries for mature and old-growth forests. Mature and old-growth forest characteristics should be considered when actively managing forest ecosystems but should not impede the ability to actively manage and restore forest ecosystems. Ecosystem resiliency is in part dependent on having a range of various tree age classifications within a forested ecosystem.

The State opposes federal designations for mature and old-growth forests based on specific boundaries rather than forest characteristics.

In sum, the cornerstone of proper management of this state’s resources is the coordination and cooperation between the State and Federal land management agencies. Accordingly, I thank you for your consideration of the State’s comments. The State looks forward to working with the USDA and the USFS as this plan amendment process moves forward. The State appreciates your

¹⁰ USFS, *Meet the Forest Service*, Forest Service – U.S. Department of Agriculture, *available at*: <https://www.fs.usda.gov/about-agency/meet-forests-service#:~:text=The%20mission%20of%20the%20Forest,of%20present%20and%20future%20generations.> (2023). ¹⁸

Utah SRMP at 8.

¹⁹

Id.

September 19, 2024

Page 32

invitation to participate in this effort as a Cooperating Agency and asks for meaningful opportunities to influence the planning effort.

Please direct any written correspondence to the Public Lands Policy Coordinating Office at the address below or call to discuss any questions or concerns.

Sincerely,

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

Redge B. Johnson
Director