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September 19, 2024

The Honorable Thomas Vilsack
United States Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250

Re: LMP Direction for Old-Growth Forest Conditions Across the National Forest System

Honorable Secretary Vilsack,

I am Carla Keene, Chairman of the Cow Creek Band of Umpqua Tribe of Indians. I write to share our perspectives on the National Old Growth Amendment Draft Environmental Impact Statement (NOGA DEIS). Our Tribe's deep connection to the land emphasizes the importance of incorporating Indigenous knowledge into forest management, especially concerning old-growth forests.

We understand the proposed amendment aims to provide consistent guidance for conserving old-growth forests in a rapidly changing climate. For us, true conservation requires active stewardship. The health of our forests is inseparable from our cultural practices, and active management has always been central to our way of life.

Our Tribe's land in southwest Oregon is adjacent to the Umpqua National Forest, where we've witnessed firsthand the impacts of climate change through catastrophic wildfires. Over the past three decades, these fires have destroyed tribal resources, severely impacted air and water quality, and devastated the plants and animals essential to our culture. Only 25% of the areas affected by wildfires were outside of reserves.

We believe these fires were worsened by an unmanaged landscape shaped by conservation policies that excluded fire and prohibited necessary management. The current fire suppression and hands-off conservation strategies have created overgrown forests vulnerable to fire. Western conservation, which sets land aside in reserves, has often led to neglect. We can no longer afford to "love our forests to death."

Our stewardship model—partnering with the forest to ensure its health for future generations—has guided our land management for centuries. The Creator entrusted us with caring for the

forest, and in turn, the forest cares for us. A neglected forest cannot sustain future generations. Therefore, we advocate for active management to restore the health and resilience of these forests.

The USDA must adopt an integrated approach to conservation, blending Indigenous knowledge with Western science. This includes recognizing natural fire intervals, maintaining healthy forest densities, and utilizing silvicultural techniques to enhance resilience. True collaboration with Tribes, who have generations of forest management experience, is essential.

We have several comments and concerns regarding the NOGA DEIS that need clarification to protect tribal rights and resources while ensuring the long-term resilience of these ecosystems. Below are key issues for further review and discussion:

Key Issues:

Tribal Consultation: It is crucial to recognize that the USDA has a duty to engage the Cow Creek Tribe in meaningful consultation. Executive Order 13175, issued in 2000, directs federal agencies to engage in “regular and meaningful consultation and collaboration with tribal officials.” This Executive Order mandates that consultation must ensure that tribal officials have the opportunity to provide “meaningful and timely” input.

In alignment with this directive, on January 26, 2021, President Biden issued a Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, which acknowledges that Tribal Nations are sovereign governments. The Memorandum emphasizes that federal agencies are required to engage in “regular, meaningful, and robust consultation with Tribal officials.” It states that the federal government is dedicated to “honoring Tribal sovereignty and including Tribal voices.”

The Federal Land Policy and Management Act (43 U.S.C. § 1712 (b), (c)(9)) mandates that the Secretary of Agriculture “coordinate” land use plans in the National Forest System with those of Indian tribes, taking into account approved tribal land resource management programs. This requirement goes beyond mere consultation; it necessitates active consideration of specific tribal forest management and planning approaches.

We believe the Forest Service must engage in direct, government-to-government consultation with each Indian tribe potentially impacted by the Draft Environmental Impact Statement (DEIS) in relation to individual forest plans. This engagement requires a thorough understanding of our specific resource management plans and a genuine responsiveness to them.

We feel that this coordination is best achieved at the forest level through amendments or revisions to forest plans, leading to the development of site-specific plans. While the agency has generally offered tribal consultation, it is important to emphasize that tribes require capacity assistance for this process to be meaningful. Simply offering consultation does not fulfill the statutory requirement for coordinated land use plans. Therefore, we request further clarification on the agency’s understanding of its obligations and its strategy for fulfilling them.

Old Growth Definition: We appreciate the emphasis on local discussions regarding the definition of old growth. A key question remains: when does “old growth” stop being considered

as such? Recent catastrophic fires have devastated old-growth areas, often leaving no surviving trees. From a silvicultural perspective, the age of these stands is effectively reset to zero, with the age clock beginning anew once natural or artificial reforestation is successfully established. The DEIS does not clearly outline how these stands will be categorized and managed.

The DEIS notes that “areas currently meeting the definition of old growth may not meet that definition in the future due to natural disturbances such as wildfires or pest outbreaks.” If this occurs, those areas will no longer fall under the old-growth amendment. We urge clearer guidelines on how to de-designate old-growth forests following catastrophic fires. This process should be straightforward and allow for post-fire restoration options. Time is of the essence in post-fire scenarios, as dead wood deteriorates quickly, and invasive vegetation can take over.

Impacts to Tribal Resources Due to Lack of Management: The DEIS states that “all action alternatives promote proactive stewardship in old-growth forests on National Forest System lands.” However, in areas where such activities are currently limited, these alternatives could negatively impact areas of Tribal significance, sacred sites, and culturally important species tied to old-growth forests when implemented at the unit level. It is important to note that the amendment does not authorize specific projects; consultation will be necessary for all alternatives at the project level to assess the potential adverse effects of any ground-disturbing activities in these forests.

As a tribe, we are more concerned about the effects of reduced forest management on culturally important resources than we are about the impacts of increased management. Overall, we believe that more active management is essential to restore historic stocking densities and fire regimes. These actions are likely to be more effective in fostering resilient old growth than imposing site-specific restrictions in current and anticipated future old-growth areas. However, we note that the amendment also proposes constraints on non-old-growth forests identified for future recruitment, and we request the removal of this guideline.

Establishing a Dedicated Funding Source to Support Integration of Tribal Knowledge: We appreciate that the DEIS encourages “units to incorporate Indigenous Knowledge alongside Western science in managing old-growth forests.” However, we urge the Forest Service to establish a dedicated funding mechanism to support this integration and ensure that our knowledge systems are effectively utilized in this process.

Clarification Regarding the Standards and Guidelines Outlined in the DEIS: Standard 2.a allows for proactive stewardship in old-growth stands, which may lead to areas “no longer meeting the definition of old growth immediately after vegetation management” but could enhance resilience and adaptability to stressors and changing environments. We would like the agency to provide specific example scenarios to illustrate this point. While we support the idea of management flexibility, it is important that these guidelines are clearly articulated.

We also urge that post-fire environments be addressed, especially when some old-growth traits remain but the stand is at greater risk from future fires due to the accumulation of fire-killed wood. Standard 2.a restricts vegetation management in old-growth forests to activities necessary for proactive stewardship. We recommend that eco-cultural objectives be explicitly included as a category of proactive stewardship or that eco-cultural stewardship be recognized alongside

proactive stewardship. This change would highlight the potential for tribal co-stewardship and the importance of integrating our knowledge and values into forest management. Currently, the standard merely references “culturally significant species or values, including key understory species.”

Additionally, we seek clarity on what proactive stewardship entails in the aftermath of large, catastrophic fire events. The agency should define when an old-growth forest ceases to function as such due to wildfire or other natural disturbances. For instance, if 90% of an old-growth stand is destroyed by fire, would the removal of fire-killed trees to mitigate re-burn risk be considered proactive stewardship? Or would that stand no longer be classified as old growth, thus exempting it from the associated management restrictions? Clarifying these points is essential for effective forest management and tribal involvement.

Regarding Standard 2.b, which permits the cutting or removal of trees in old-growth forests under certain conditions, it is essential to emphasize that this standard should not restrict tribal rights. Specifically, the language should clearly state that the standards and restrictions outlined in this amendment do not interfere with tribal rights under 25 U.S.C. 3055, which allows the Forest Service to provide trees, portions of trees, or forest products from National Forest System lands for traditional and cultural purposes. Tribes should be able to gather trees, parts of trees, or forest products from old-growth stands or potential old-growth recruitment areas without being hindered by this amendment or its implications for old-growth criteria.

Standard 2.c permits deviations from the restrictions on timber cutting or removal under specific circumstances. It allows for such deviations if “the responsible official determines that vegetation management actions or incidental tree-cutting or removal are necessary for the following reasons and includes the rationale in a decision document or supporting documentation.” These reasons include compliance with other statutes and “for culturally significant uses as informed by tribes.”

However, this could create unnecessary regulatory obstacles for our Tribe when seeking to exercise our rights under existing statutes. We urge the Forest Service to clearly state that the standards in this EIS do not apply to situations governed by 25 U.S.C. 3055. It should not require a “decision document” that could be subject to appeals or litigation for tribes to assert their established rights.

Additionally, we believe that greater flexibility should be afforded to forest management activities conducted under the Tribal Forest Protection Act. We propose that Subsection (i) be amended to state: “In cases where this standard would hinder the achievement of wildfire risk management objectives within municipal watersheds, a Tribal Forest Protection Act project area, or the wildland-urban interface (WUI)...”

In Subsection (vi), we support the agency’s inclusion of “Indigenous Knowledge” in determining what practices are beneficial for specific species or forest types. This recognition is vital for effective management and the integration of our traditional ecological knowledge.

Standard 3 and Timber Production: Standard 3 specifies that “proactive stewardship in old-growth forests shall not be for the purpose of timber production.” We appreciate the clarification

that both commercial and non-commercial timber harvests may be necessary for proactive stewardship, similar to stewardship contracting, which often relies on the sale of commercial timber to fund these activities.

We suggest that this standard be further clarified to state that proactive stewardship shall not be for the sole or primary purpose of timber production. This distinction would help ensure that stewardship efforts prioritize ecological health and resilience alongside any timber-related activities.

Guidelines for Vegetation Management: We note that Guideline 1 restricts vegetation management activities to those that promote future old-growth conditions. We find this contradictory to the agency's intent to avoid establishing an old-growth management designation and its stance on not regulating "mature" forests. Such restrictions could effectively create old-growth reserves, where any management action might face legal challenges based on potential impacts to hypothetical future old-growth conditions.

Guideline 2 states that existing management plans for old growth will take precedence if they are more restrictive. We oppose this guideline. Many past plans, including the Northwest Forest Plan, were created without fully understanding the devastating effects of wildfire on old growth and specific forest habitats. While we commend the DEIS for recognizing the need for active stewardship to protect against fire, outdated management plans could undermine these efforts.

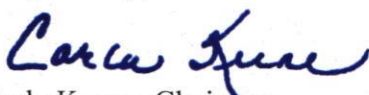
We recommend a management direction focused on enhancing the resilience of forests against fire and other threats. We agree with the Forest Service's assessment that the most significant threats to old-growth forests are wildfires, followed by insect infestations and diseases. However, we are concerned that the proposed action may introduce new obstacles to effective management.

Securing the future of old-growth forests requires large-scale restoration that addresses historic forest density, integrates eco-cultural practices, and restores natural fire regimes. Passive neglect is not an option. Blending Indigenous stewardship with Western science, backed by meaningful consultation, is crucial to the success of this initiative.

Our Tribe remains committed to actively managing and protecting all resources essential to maintaining tribal lifeways, including old-growth forests. We hope the USDA will consider our comments and feedback and work closely with our Tribe to ensure future generations inherit resilient, healthy, and flourishing forests.

Thank you for your time. We look forward to further discussions.

Respectfully,



Carla Keene, Chairman
Cow Creek Band of Umpqua Tribe of Indians