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September 16, 2024

Ms. Linda Walker

Director, Ecosystem Management Coordination United States Forest Service

201 14th Street SW, Mailstop 1108

Washington, DC 20250-1124

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

Re: Technical Comments on Amendments to the LMP to Address Old-Growth Forests Across the National Forest System and Draft Environmental Impact Statement

Dear Ms. Walker,

My name is Cristina Eisenberg, and I am the Associate Dean for Inclusive Excellence and Director of Tribal Initiatives in the College of Forestry at Oregon State University. I am a Native American (Raramuri and Western Apache heritage) forest community ecologist with expertise in fire, Indigenous Knowledge (IK), and public policy. I appreciate the opportunity to provide comments as a United States citizen on the Forest Service's proposed amendments to land management plans to address old-growth forests across the National Forest System and the supporting Draft Environmental Impact Statement (DEIS). I am the first author of a report published in 2024 for the Forest Service, Braiding Indigenous and Western Knowledge for Climate-Adapted Forests: An Ecocultural State of Science Report https://depts.washington.edu/flame/mature_forests/pdfs/BraidingSweetgrassReport.pdf, which helped inform the drafting of the NOGA DEIS. I work regularly with the Forest Service on projects involving IK and Tribal partnerships. For example, over the past four months, I have been convening Forest Service Tribal

Roundtables ecoregionally regarding old-growth forest conservation.

I strongly support Alternative 2 - Modified Proposed Action (Preferred Alternative). I believe Alternative 2 best reflects IK and Western Science (WS) braided together and aligns with the findings of our Braiding Indigenous and Western Knowledge report. However, as written, the preferred alternative will be difficult to implement because of lack of clarity. My comments have to do with improving the clarity of the preferred alternative. I focused them on federal policies regarding National Forests and Tribal Nations, organized into three areas of concern:

I. Definitions and Need for Clarification; II. Provisions Regarding Old-Growth Proactive Stewardship; and III. Provisions for Engagement with Tribal Nations.

I. Definitions and Need for Clarification

1.

1. As defined below, co-stewardship as a term to inform forest policy lacks clarity. Co-stewardship is foundational to the Tribal engagement material in the DEIS. Lack of clarity in defining co-stewardship can lead to situations where it could be interpreted in a manner that does not support or respect Tribal sovereignty and self-determination, and federal Tribal trust and treaty responsibilities.

"Co-Stewardship: Collaboration with Indian Tribes, Alaska Native Corporations, or Native Hawaiian Organizations, with respect to their shared interests in the management, conservation, and protection of Federal lands, waters, and associated resources in a manner that seeks to protect treaty, religious, subsistence, and cultural interests; is consistent with the nation-to-nation relationship between the United States and federally recognized Indian Tribes; and fulfills the United States' unique trust obligation to federally recognized Indian Tribes and their citizens (adapted from Joint Secretarial Order Number 3403). Tribal co-stewardship is focused on meaningful and continued engagement that allows for Tribal guidance in the development and implementation of management plans, rather than merely consultation on discrete issues, incorporates listening to what is important to Tribes as defined by Tribes rather than Federal agencies, engages Tribes as primary partners in planning and implementation, seeks to ensure that management decisions reflect and integrate tribal knowledge, and is defined by the Forest/Grassland and Tribal co-stewards within their relationship. Also see the definitions of "stewardship" and "proactive stewardship" (DEIS G-1).

"Meaningful and continued engagement" needs to be defined. "Allows for Tribal Guidance" is weak and vague. Because of Tribal sovereignty rights and federal Tribal trust and treaty responsibilities, Tribes must be able to be equal partners in the planning process. The way this is written, the federal government is not obligated to follow through on guidance received from Tribes. This makes co-stewardship, based on its current definition, a weak and flawed policy. Co-stewardship does not give Tribal nations decision-making authority.

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1. The definition of proactive stewardship lacks clarity and detail:

"Proactive stewardship: Refers to vegetation management that promotes the quality, composition, structure,

pattern, or ecological processes necessary for old-growth forests to be resilient and adaptable to stressors and likely future environments. (Definition is also included in NOGA-FW-STD-02a) Also see the definitions of "co-stewardship" and "stewardship)" (DEIS G-1)

"Vegetation management" needs to be described. I suggest something like, "(e.g., prescribed fire, cultural burning and other Tribal cultural stewardship practices, timber harvest, timber or biomass removal, hazardous fuel reduction, wildlife habitat improvement, and other mechanical/non-mechanical treatments used to achieve silviculture or other management objectives, including returning forest stands to pre-Euro-American settlement and pre-fire suppression conditions)." I suggest using the term "proactive adaptive stewardship" instead, which allows for place-based flexibility consistent with IK principles.

1.

1. Prescribed fire and cultural burning are two different things. They need to be defined separately and cannot be used interchangeably. I suggest adding these terms to the glossary.

Cultural burning, also known as "good fire," is more holistic, and is not based on lines on a map. Optimally, cultural burning is implementable on short notice, in order to be responsive to rapidly changing conditions, as was historically the case for applications of IK during the pre-Euro-American settlement period.¹

1.

1. The term "Memorandum of Understanding" (MOU) (DEIS, 97), is used once, but not defined. The terms "Memorandum of Agreement" (MOA), "Data Sovereignty" and "Data Sharing Agreement" (DSA) do not appear in the DEIS. I suggest that these terms be defined and used as appropriate in the text, because they are essential to implementation of co-stewardship or co-management. MOUs, MOAs, and DSAs are used to formally describe partnerships with Tribal Nations.²

2. Use of the word "integrate" is inappropriate, because of its deep historical racist context in the United States. I suggest using the word "incorporate" instead here and throughout the DEIS (DEIS G-1; 95, 96, 121).

3. The word "Tribal" should always be capitalized. There are places in this document where it appears in capitalized form, and others where it does not.

II. Provisions Regarding Old-Growth Adaptive Stewardship

1.

1. In defining old-growth forest for adaptive co-stewardship purposes, please acknowledge that Tribal Nations historically and today do not have a definition of old-growth forest. Because Indigenous Peoples, intrinsic to their world view, see humans as embedded in nature, not separate from nature (as is typical of the Western settler-colonial worldview), to them forests are a community of trees, understory plant species, and faunal inhabitants. There are elder trees, and there are young trees. Pre-Euro-American settlement, most forests were far more open-canopied than today—maintained that way by Indigenous Peoples through cultural burning.³ Today's Forest Service definition of old-growth forest would not fit Indigenous historical perspectives on old forests, nor does it fit Tribal Nations' current perspectives on old forests. To partner with Tribal Nations in conserving old-growth forest, it is necessary to acknowledge these different cultural perspectives on what old-growth forest used to be and is today. Please clarify that in the definitions of old-growth that appear within the text of the DEIS.

2. Categorizing forests as those with frequent fire vs. infrequent fire is a false dichotomy. For millennia, most NA forest types had frequent cultural burning. I suggest revising to acknowledge most current best WS and IK on fire history.[4]

1.

1. The DEIS lacks specificity about how existing old-growth conditions will not be degraded through proactive stewardship. Preferred alternative 2 calls for active management of old-growth forests, when such treatments are essential to its conservation, e.g., to remove elements, such as ladder fuels, that increase vulnerability to high-severity wildfire. To help ensure that proactive stewardship does not degrade old-growth forests, I suggest that such treatments be formally vetted by the Tribal Nations for whom a specific stand being assessed for treatment is part of their ancestral homelands. Tribal natural resource and culture leaders will help guide active management of old-growth forests in keeping with IK principles, which include reciprocity.

2. Please describe why WS alone may be insufficient to restore climate resilience to our nation's forests and conserve old-growth forests.

1.

1. Please elucidate who determines what is "best science," and the process for making that designation as part of the LMP process. Who decides what the value of IK is when considered alongside WS? Determining what is "best science" when working on LMPs can be subjective, based on the judgement of the individuals involved. To ensure that IK is treated fairly as equal to WS, there need to be protocols in place so there is some consistency on a national scale.⁵

III. Provisions for Engagement with Tribal Nations

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1. As written, the DEIS lacks clarity regarding federal policies for working with Tribal Nations and IK. Please reference federal guidance for working with Tribal Nations and IK. (<https://www.whitehouse.gov/wp-content/uploads/2022/12/OSTP-CEQ-IK-Guidance.pdf>), and please include material on each of the elements of that document. The CEQ-IK Guidance memo provides the following key principles:

1. Acknowledge Historical Context and Past Injustice.
2. Practice Early and Sustained Engagement.
3. Earn and Maintain Trust.
4. Respect Different Processes and World Views
5. Recognize Challenges
6. Consider Co-management and Co-stewardship Structures.
7. Pursue Co-Production of Knowledge

To the above principles, I suggest adding the following principles developed by the Oregon State University College of Forestry in 2023:

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1. Provide ample funding to Tribal Nations and Indigenous Peoples for involvement at each step of partnership
2. Share power and decision-making authority with partnering Tribes and Indigenous Peoples.

Recommended resources are the Forest Service Office of Tribal Relations Strengthening Tribal consultation and Nation-to-Nation Relationships; the Care Principles for Indigenous Data Governance; and Oregon State University College of Forestry's Principles and Best Practices for Working with Indigenous Knowledge and Partnering with Tribal Nations and Indigenous Peoples.⁶

1.

1. Timelines provided in the DEIS are too short for Tribes, as expressed in DEIS, 100, 125. Tribal Nations and Indigenous Peoples in the US have difficulty adhering to tight timelines, primarily because of lack of capacity (staff, funding), but also because tight, linear timelines are a settler-colonial construct, and not part of their traditional cultures. Tribes prioritize family and community over timelines.

"NOGA-FW-OBJ-03 further guides the initiation of at least one co- stewardship project with interested Tribes for the purpose of proactive stewardship within two years. Goals are optional content to include in a land management plan; however, once included they are not optional to follow. Including this goal as part of the proposed amendment fosters tribal inclusion in the interpretation and implementation of all aspects of the old-growth amendment leading to better and more sustainable ecological outcomes." (DEIS, 100.)

Other reasons for Tribal difficulty with DEIS timelines have to do with trust, which takes time to build, as do the sort of relationships that lead to partnerships in co-stewardship or co- management, or even sharing of IK. Relationships between individual Tribal Nations and the Forest Service vary, based on many factors, such as: how severely Tribes were impacted by Euro-American settlement; how much land (if any) they were given by the federal government during the treaty era; the level of trauma within a Tribal community; the size of the community; and previous experiences with federal agencies.

1.

1. The Preferred Alternative is directionally vague about Tribal engagement, e.g., "consultation," which often has limited actual Tribal engagement, and historically has frequently been done late in the process of creating federal policies or LMPs (e.g., the Northwest Forest Plan had very late consultation of Tribal Nations). I recommend more specific language, such as "early inclusion of and engagement with Tribal Nations via consultation and roundtables."

2. "Engagement of Tribes" in developing management plans is too general. Which Tribes? Those for whom the LMP involves ancestral land? Federally recognized Tribes that have treaty reserved rights? Please be more specific and descriptive.

3. Collaboration: Tribes are sovereign nations. One does not "collaborate" with a sovereign nation, one "partners" with one, and such partnerships are formally described via documents such as MOUs, MOAs, and DSAs. Use of the word "collaboration" regarding Tribal Nations is widespread throughout the NOGA DEIS. Please replace the term "collaboration" with the term "partnership." Alternatively, use "collaborate and partner."

4. Cultural competency: To successfully and respectfully include Tribal Nations in the LMP process, it is necessary for all involved who are not Indigenous to have cultural competency training. I suggest stating this in the EIS. Such cultural competency training would be at a "next level" to build on current cultural competency training provided by the Forest Service to its employees, and would be specific to Tribal engagement in the LMP process.

1.

1. To help support a successful outcome in Tribal partnerships regarding the LMP, I suggest having a broad, nation-wide Tribal partnership strategy co-created by Tribes, the Forest Service, and academic and NGO partners. While each Tribal Nation is unique, Indigenous Peoples in the United States and other countries share similar values about the natural world, their communities, and the decision-making process. I further suggest, because of sovereignty rights and self-determination, enabling Tribes to have equity at every step of creating the implementation strategy. This will need to be done as early as possible after finalizing the FEIS and ROD, or even earlier than that.
2. I suggest forming a White House CEQ or USDA Tribal Advisory Board, to help guide NOGA EIS implementation. Given that NOGA EIS implementation will be at least a 10-year process for each national forest, and NOGA EIS policies are expected to be in place through 2040, to help ensure durability of effort, I recommend putting a robust committee in place composed of Tribal forestry and culture leaders.
3. Please describe in greater detail how Tribal access for subsistence practices (e.g., hunting and gathering) will be provided via treaty rights and reserved treaty rights. The text below does not provide sufficient detail, or examples of, what such treaty rights might mean. For example, does this include access to a site that has been historically used as a traditional patch of a culturally significant plant species? How might this patch be protected from active management applications? How might this site's location be protected from discovery by public recreationists?

"Honoring Tribal sovereignty, the trust responsibility, Treaty Rights, and compliance with Federal regulations pertaining to federally-recognized tribes is required for all Forest Service activities that have the potential to affect treaty resources, Tribal access to treaty resources, areas of Tribal importance, or sacred sites.

Under all action alternatives, the amendment represents a statement of policy and change in management direction that will inform future projects, but the amendment itself does not propose actions for timber, recreation, land uses, etc. When individual Forest Service units begin planning projects to implement activities on the ground, management and line officer decisions pertaining to these activities should first consider Treaty Rights because those rights supersede federal law, regulation, or policy." (DEIS, 121)

1.
 1. Recognize and respect Indigenous data sovereignty regarding culturally significant sites. Expand the definition of "culturally significant" to include sites containing populations of culturally significant plants used for medicines, food, and cultural crafts (e.g., basket weaving). Acknowledge Indigenous data sovereignty regarding the IK of those sites and their locations.
 2. Tribal Capacity: Tribal Nations have a severe lack of capacity to engage with external partners in forestry, because of lack of staffing and funding for such efforts. Please describe how the Forest Service would build Tribal capacity for participation in EIS implementation, including consultation, planning, implementation, monitoring, and research, and would provide federal funding for such partnerships and related activities. It is important to discuss this in the EIS, or it may not be actionable moving forward into implementation.
 3. Please elucidate and emphasize the need for cultural burning and other forms of Tribal ecocultural stewardship. I suggest prioritizing and supporting Indigenous-led cultural burning (which differs from prescribed burning), with funding and rapid and timely implementation through agreements rather than permits. Agreements respect Tribal sovereignty.

1.
 1. I suggest including terms such as cultural keystone and ecocultural restoration, which are important WS concepts on IK inclusion in old-growth forest restoration efforts.⁷
 2. I suggest supporting Tribal co-management as well as Tribal co-stewardship. Many Tribal Nations prefer co-management, which allows inclusion in decision-making. Some prefer co-stewardship, which is simpler to implement and more flexible. There is a time and place for each of these partnership types.

IV. Conclusion

To be an effective and durable conservation policy, the NOGA must include clear forest proactive stewardship guidelines for old-growth forests. This requires early and ongoing involvement from Tribal Nations in planning, designing, and implementing proactive stewardship practices based on IK, such as cultural burning and other cultural activities. As written, the DEIS contains a lack of clarity on proactive stewardship methods and the role of Tribal Nations and IK. This raises concerns about whether National Forest planning process policies being developed will uphold Tribal sovereignty and self-determination rights, and uphold federal Tribal trust and treaty responsibilities. Because Tribal partnerships and IK are key elements in the DEIS and in implementing the FEIS and ROD, these relationships must be clarified in a manner that they are enforceable. The above vagueness adds to the lack of specificity in the DEIS about how proactive stewardship will not degrade existing old-growth conditions.

I sincerely appreciate the opportunity to provide comments in response to the Forest Service's proposed national old growth forest plan amendment. I look forward to continuing to work with the Forest Service to conserve and restore old-growth forests across the National Forest System and help support Tribal engagement. If you have any questions about my comments, please contact me at cristina.eisenberg@oregonstate.edu or 406-270- 5153.

Respectfully,

Cristina Eisenberg, PhD

Oregon State University

cc. Meryl Harrell

Sean Babington

Chris French

1 Clark, S.A., B. Tripp, D. Hankins, C.E. Rossier, A. Varney, and I. Nairn. 2024. Good Fire II Current Barriers to the Expansion of Cultural Burning and Prescribed Fire Use in the United States and Recommended Solutions; Johnston, J. D., Schmidt, M. R., Merschel, A. G., Downing, W. M., Coughlan, M. R., & Lewis, D. G. (2023). Exceptional variability in historical fire regimes across a western Cascades landscape, Oregon, USA. *Ecosphere*, 14(12), e4735.

2https://www.fs.usda.gov/sites/default/files/fs_media/fs_document/Strengthening-Tribal-Relations.pdf

3 Eisenberg, C., Prichard, S., Nelson, M., Hessburg, P., . . . et al. (2024) Braiding Indigenous and Western Knowledge for Climate- Adapted Forests: An Ecocultural State of Science Report https://depts.washington.edu/flame/mature_forests/pdfs/BraidingSweetgrassReport.pdf

4 Long, J. W., Lake, F. K., & Goode, R. W. (2021). The importance of Indigenous cultural burning in forested regions of the Pacific West, USA. *Forest Ecology and Management*, 500, 119597; Greenler, S. M., Lake, F. K., Tripp, W., McCovey, K., Tripp, A., Hillman, L. G., ... & Bailey, J. D. (2024). Blending Indigenous and western science: Quantifying cultural burning impacts in Karuk Aboriginal Territory. *Ecological Applications*, e2973. Respect Different Processes and World Views.

5 DOA FS 36 CFR Part 219 RIN 0596-AD60 Planning Final rule <https://www.govinfo.gov/content/pkg/FR-2024-05-06/pdf/2024-09624.pdf>

6 https://www.fs.usda.gov/sites/default/files/fs_media/fs_document/Strengthening-Tribal-Relations.pdf; Carroll, S., Garba, I., Figueroa-Rodríguez, O., Holbrook, J., Lovett, R., Materechera, S., ... & Hudson, M. (2020). The CARE principles for indigenous data governance. *Data science journal*, 19; <https://www.forestry.oregonstate.edu/sites/default/files/Principles%20and%20Best%20Practices%20Volume1%20Final.pdf>

7 Cuerrier, A., Turner, N. J., Gomes, T. C., Garibaldi, A., & Downing, A. (2015). Cultural keystone places: conservation and restoration in cultural landscapes. *Journal of Ethnobiology*, 35(3), 427-448; Kimmerer, R. (2011). Restoration and reciprocity: the contributions of traditional ecological knowledge. *Human dimensions of ecological restoration: Integrating science, nature, and culture*, 257-276.

ATTACHMENT: Eisenberg_Technical_Comments_NOGA_DEIS_09-16-24_FINAL.pdf - This is the same text as coded above. letter was included as an attachment and text was entered.