



Intertribal Timber Council

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Yurok Tribe

February 2, 2024

Director, Ecosystem Management Coordination
U.S. Forest Service
201 14th St. SW, Mailstop 1108
Washington, DC 20250-1124

RE: Notice of intent to prepare an environmental impact statement (EIS) on Land Management Plan Direction for Old-Growth Forest Conditions across the National Forest System, 88 Fed. Reg. 88,043 (December 20, 2023).

To Whom It May Concern:

On behalf of the Intertribal Timber Council, I am submitting these comments in response to the Notice of Intent (NOI) to prepare an environmental impact statement for land management plan direction for "old growth" forest conditions across the National Forest System. Please also refer to ITC's August 12, 2022, letter regarding the Forest Service's Request for Information (RFI) on Federal Old-growth and Mature Forests, associated with provisions of Executive Order (E.O.) 14072: Strengthening the Nation's Forests, Communities, and Local Economies, issued April 22, 2022.

Established in 1976, the ITC is a nonprofit nation-wide consortium of Indian Tribes, Alaska Native Corporations, and individuals dedicated to improving the management of natural resources of importance to Native American communities. ITC and our member tribes and organizations are actively working with the Department of the Interior and the U.S. Forest Service to improve forest health conditions and reduce the threat of catastrophic wildfire across the landscape. Many tribes have treaty and reserved rights, and subsistence or ceremonial interests for plants, fish, and wildlife on federal lands. E.O. 14072 does not apply to lands held in trust for Indian tribes but does potentially affect federal lands to which tribes maintain active interests.

SCOPE, TIMELINE

The ITC is concerned about the extraordinary scope of the proposed amendment and how that could create significant conflict with the Forest Service's statutory responsibility to consult and coordinate with Indian tribes on forest plan amendments.

The Federal Land Policy and Management Act (43 U.S.C. § 1712 (b), (c)(9)) requires the Secretary of Agriculture to “coordinate” land use plans in the National Forest System with those “of and for Indian tribes” by considering approved tribal land resource management programs. This goes beyond simple consultation with tribes and requires active consideration of site-specific tribal forest management and planning approaches.

The ITC believes that the Forest Service must therefore have direct, government-to-government consultation with each Indian tribe potentially affected by the proposed EIS as it applies to individual forest plans. This requires more than seeking comments from tribes – it means the Forest Service must fully understand specific tribal resource management plans and be responsive to them in this process.

This requirement would be better accomplished at the forest level through forest plan amendments or revisions. This request echoes our August 2022 letter that requested consultation with individual Indian tribes to capture site specific recommendations for old growth management and protection, and to develop site-specific plans.

The ITC requests legal clarification about the nature of the proposed EIS. The NOI refers to the development of a place-based “strategy” that would not be a final agency action. It appears that the “strategy” would be implemented via 36 C.F.R. § 219.7(f)(2), which addresses “other content in plan” as part of a plan development or plan revision. The NOI, however, appears to be an amendment rather than a new plan or plan revision. The ITC would like to better understand how the proposal fits within existing regulations.

APPROPRIATENESS OF PROPOSED ACTION

ITC member tribes strongly believe that the most pressing threat to old growth forests is wildfire, followed by insects and disease. This observation is substantiated by Forest Service monitoring and assessments.

Increasing complexity of Forest Service plans make it difficult for the agency to respond to these threats and the ITC is concerned that the proposed action will add even more obstacles to forest management actions needed to reduce threats to old growth. One illustrative example comes from the Sequoia National Forest.

In 2008, the Tule River Tribe submitted a proposal to the Sequoia National Forest for a Tribal Forest Protection Act (“TFPA”) project in the Western Divide Ranger District located in the Southern Sierra in California. The project included a mix of shaded fuels, planted stand treatments, under burning, and prescribed burning including maintenance within the Giant Sequoia National Monument, managed by the Sequoia National Forest. The project’s intent was to protect large, old sequoias from the threat of fire. The Regional Forester quickly accepted the proposal, and the forest issued a Notice of Intent for the Environmental Impact Statement (EIS).

The TFPA project, named the “Tule River Reservation Protection Project” (aka the “Black Mountain Forest Protection Project”), went forward for NEPA analysis. After years of little movement on the EIS on the Sequoia NF’s side of the boundary, due in part to the controversies associated with active management within the Giant Sequoia National Monument, a draft EIS was published in 2014, six years after the original proposal. The project had not yet been fully implemented when the Pier Fire swept through the 2,830-acre project area in 2017, burning a total of 36,556 acres.

Nearly a decade later, the Forest Service and Members of Congress are discussing new and expedited management measures needed to protect the sequoias from fire. This serves as an example of the critical importance of heeding tribal input in the active management and protection of old growth stands from wildfire, as well as the need to expedite these processes and not further constrain them.

The ITC is also concerned that the proposed strategy is not limited to maintenance of existing old growth and instead requires each National Forest to establish specific areas to retain and promote old growth. This potentially created a new land allocation without site-specific tribal consultation. This is particularly concerning when the 2023 inventory of mature and old growth noted that 64% of all NFS forested acres meet the USFS definition.

Such new allocations could severely affect Indian tribes. They could further limit Forest Service management flexibility in borderlands with Indian reservations, forestlands, and lands of territorial affiliation, where tribes are actively working with the agency to reduce the threat of fire, insects, and disease across boundaries. New land allocations could also reduce management options for treaty, reserved, and retained resources, such as big game and other traditional foods.

At the very least, the NOI/EIS must analyze the impacts to nearby Indian lands and to tribal treaty and retained cultural and subsistence activities on Forest Service lands.

CULTURAL BURNING FALLS UNDER TRIBAL SOVEREIGN AUTHORITY

Cultural burning is separate and distinct from prescribed fire. Cultural burning must be rooted in Tribal sovereignty, including the rights of self-determination and self-governance. As political entities, Tribes have retained sovereignty, or the authority to govern themselves. Cultural burning is a Tribal right, retained by Tribes similar to hunting, gathering, coppicing, and other stewardship and subsistence/sustenance rights. Federal agencies can and should create enabling conditions for the Tribal revitalization of cultural burning and accommodate cultural burning on federally administered lands, but **cultural burning, and any regulation of the practice thereof, falls under Tribal authority.** It does not fall under federal jurisdiction or authority.

Cultural burning is referenced in the proposed action Goal on page 88047 of the Federal Register (Vol 88, No. 243). We agree with the first portion which states the goal that “interpretation and implementation is grounded in recognition and respect of tribal sovereignty, treaties, Indigenous Knowledge, and the ethic of reciprocity and responsibility to future generations.” However, the second sentence of the Goal states that “Implementation should enable co-stewardship, including cultural burning, prescribed fire, and other activities, ...” This is problematic.

Given that current definitions of co-stewardship reference collaborative or cooperative arrangements between public agencies and Tribes in which the federal agency retains decision-making authority, cultural burning must be removed from any reference to co-stewardship. It should only be referenced within a co-management context, where Tribal decision-making is prioritized or where federal agencies simply acknowledge and accommodate the sovereign rights of Tribes to engage in this practice. This is the only way that this goal can do what it purports to do to recognize and respect Tribal sovereignty.

Additionally, per the proposed goal to enable cultural burning and recognize and respect Tribal sovereignty, the EIS should explicitly acknowledge cultural burning to be part of baseline conditions, given cultural burning’s role in shaping ecosystem (and socio-ecosystem) resilience, and also explicitly acknowledge that cultural burning falls within the sovereign authority of Tribes and Tribal law.

FIRE REGIMES AND INDIGENOUS BURNING

Both Indigenous Knowledge (IK) and Western Science recognize the importance of restoring fire regimes in order to protect and foster mature and old growth forest conditions (see USFS GTR 966 Synthesis of Science to Support the Northwest Forest Plan Area). As mentioned above and within the Federal Register notice, wildfire is the biggest threat to old growth forests. A major reason for this is the cessation of Indigenous burning and fire exclusion/suppression policies. Therefore, restoration of fire regimes based on Indigenous Knowledge and restoration of conditions conducive to the Tribal revitalization of cultural burning should be included within the desired conditions.

Additionally, in order to emphasize the important ecocultural role of fire as a process on the landscape in addition to the important ecocultural role of old growth forest structure, we would recommend including the following question to plan-level monitoring programs: “How close is the current fire regime (including pattern, frequency, intensity, fire return intervals, etc.) to pre-colonization fire regimes (as described by Indigenous peoples and through Indigenous Knowledges)?”

CONCLUSION

Thank you for considering the ITC’s comments and I encourage the agency to take seriously its responsibility to fully engage with tribes subsequent to both the letter and spirit of the law.

Sincerely,



Cody Desautel
President