BUTTE COUNTY FOREST ADVISORY COMMITTEE

August 26, 2019— Meeting Minutes

ITEM NO.

1.00 Call to order – Butte County Public Works Facility, 44 Bellarmine Ct, Chico, CA

2.00 Pledge of allegiance to the Flag of the United States of America

2.01 Roll Call – **Members:** Nick Repanich, Teri Faulkner, Trish Puterbaugh, Dan Taverner
Alternates: Vance Severin, Frank Stewart, Carolyn Denero
Guests: Thibault Hoppe-Glosser (Butte County Fire Safe Council Timber and Biomass Project Manager), David Brillenz (District Ranger, Feather River Ranger District (FRRD), Plumas National Forest), Clay Davis (NEPA Planner, FRRD); Peggy Moak,
Public: Kevin Wright, Doug Laurie, MIchael August

2.02 Self-introduction of Forest Advisory Committee Members, Alternates, Guests, and Public – 5 Min.

3.00 **Consent Agenda**

3.01 Minutes of 7-22-2019 were approved. M - Faulkner, 2nd - Puterbaugh, Approved 4-0

4.00 **Agenda**

4.01 Economic/Tourism Management Alternate – Welcome aboard Carolyn Denero of Explore Butte!
Reminder: We have another Alternate vacancy: Watershed Environment – Peggy has reached out to Sac/River Watershed group for referrals

4.02 Tree Removal Plans and Grant Updates - Butte County Fire Safe Council – Thibault Hoppe-Glasser 45 Min.
(see presentation, attached)

4.03 Forest Projects Review – Current Quarter: Discussion & required FAC action for USFS projects affecting Butte County residents' forest management, recreational, environmental, socio-economic interests(Chair)

- Plumas NF Feather River Ranger District, Clay Davis (District Planner): Report and Q & A on pending, proposed and modified projects, SOPA and Non-SOPA and Collaborator's Meeting Update:
  - Chris Carlton has been appointed as the new Forest Supervisor for the PNF
  - Next Collaborative Meeting is September 19 from 5 – 7 in Oroville at the District Ranger office, preceded by a tour of planned prescribed fire and restoration activities for the Concow Basin
  - Big Bar Project surveys are done, waiting for PNF Sup to sign off on plan
  - Harvest Plans for Magalia and Concow have bid periods starting next week
  - Granite Basin: RCD working on environmental analysis
  - Mooreville Ridge and Strawberry are forest health projects that got pushed to next fiscal year
  - Golden Trout Bridge temporary bridge placement is a new project on SOPA
  - French Creek wildfire resilience project to create defensible space along ridge lines should be ready by October 1

- Lassen NF Almanor Ranger District- Russell Nickerson (District Ranger): Report and Q & A on prescribed fire plans, pending, proposed and modified projects, SOPA and Non-SOPA – NO REPORT MADE, NO NEW ACTIONS PER RUSSELL NICKERSON

4.04

4.05 Plumas National Forest OSV Decision – Objection Period – Discussion – NO ACTION TAKEN.

USFS and SPI Potential Land Swap: Maps and Roads identified thus far – Sharing and Discussion

4.06 New Business – Considerations for upcoming meetings. Next meeting is September 23, 2019 - Chico, 5:00 PM

- CA Mechatronics Center FRoomba!! (Nick R.)
- Access to evacuation routes, traffic studies, in the event of wildfire (CalFire, PW, BCFSC, Nick R.)
- South Feather Water & Sewer District - Recreation and Water Projects
- Fish & Wildlife
- BLM: Mining Claims and how it all works

4.06 Public Comment: Open Discussion (THE COMMITTEE IS PROHIBITED BY STATE LAW FROM TAKING ACTION ON ANY ITEM PRESENTED IF IT IS NOT LISTED ON THE AGENDA.)

Meeting Adjourned at 6:55 PM

CAMP FIRE RECOVERY AND RESTORATION EFFORT

Butte County Fire Safe Council

August 26, 2019

PRESENTATION OVERVIEW

- Fire Damage Assessment
- Pilot Tree Removal Program
- Outreach
- Chipper Program
- Current Grant Funding
- Observations
- Questions

TREES IMPACTED BY THE CAMP FIRE

- Sierra Timber Services conducted an inventory of fire impacted trees within South Magalia and Paradise.
- Approximately 10,226 acres have trees damaged by Camp Fire that immediately affect public safety.
- Around 400,000 trees are safety hazards and need to be removed (over 44,000 truckloads).
- At least 200,000 trees are likely to not meet saw log specifications and will need alternate disposal options.

OUTREACH

- Tree Safety and Usage Working Group
- Timber and Biomass Committee
  - Geographical Subcommittee: Newsletter and Portal
- In Consultation with the Office of Emergency Services
- Website (Updating early next month)
- Newsletter (Being developed)
- Camp Fire Tree Safety and Usage Facebook Page

CHIPPER PROGRAM

- Program is in its 14th year of operation facilitating active residential fuels management to County residents
- Currently grant funded for the Camp Fire Footprint.
- Countywide Program to resume in the fall.

GRANT FUNDING

- Current grant funding:
  - CAL FIRE (CCI-FP): $3.7M ($1M for tree removal)
  - Six additional CCI: Forbestown, Berry Creek, Paradise Ridge and Forest Ranch (Chipper and FireWise
  - FireWIse: Education via CCI – becoming a certified FireWise Community
- Additional grants in play:
  - Butte Strong - $2.9M (submitted and pending)
  - FEMA Hazard Mitigation Grant - $7M ($1.5M for tree removal)
  - USDA Community Facilities Grant Program
  - USDA-FS Forest Health Handbook WUI (Overarching)
  - Sierra Nevada Conservancy
    - Implementation BCCER (1,500 CEQA and 7,862 FHMP)
    - Planning grants: Cohasset, and CEQA Countywide WUI

PILOT TREE REMOVAL PROGRAM

- In order to facilitate cost effective removal of fire damaged trees, the BCFSC is working within residential neighborhoods to aggregate operations for efficient and safe tree falling and removal.
- Right of Entry forms are collected from property owners to facilitate commercial logging operations within a neighborhood.
- An RFP is issued for a Licensed Timber Operator to conduct operations. Once selected the LTO is deployed and managed by Registered Professional Foresters.
- Sawlogs are marketed to area sawmills. Value of sawlog sales help to mitigate logging costs.
- Urgency Ordinance has helped alleviate short-term bottlenecks but long-term

WHERE WE ARE NOW

- Urgency Ordinance allowed processing ( )

- Need for **short-term, mid-term, and long-term** solutions.

  -Short-term: Air Curtain Burners

  -Mid-term: Green Waste facilities

  -Long-term: District Heating and Cooling, POPI

-Small-to-mid-scale contractor problem, no one is able to refer this kind of service.

- **We are working with the OES** to deliver the message to the OPR that a thriving forest products industry helps provide market incentives for landscape restoration efforts that reduce the risk of high-severity fire, resulting in safer communities.

QUESTIONS?

Thibault Hoppe-Glosser
Timber and Biomass Project Manager
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www.buttefiresafe.net

United States Department of Agriculture
Forest Service
Pacific Southwest Region
Plumas National Forest
159 Lawrence Street
Quincy, CA 95971
530-283-2050
TDD: 530-534-7984
Fax: 530-283-7746

File Code: 1950
Date: August 16, 2019

Dear Interested Participant,

The Plumas National Forest (PNF) proposes to designate National Forest System (NFS) trails and open areas for public over-snow vehicle (OSV) use, and has prepared a Final Environmental Impact Statement (FEIS) and draft Record of Decision (draft ROD) for this designation. You are receiving this letter because you submitted comments during the scoping or comment periods of this process, and the PNF is providing an opportunity to file an objection to the proposed decision. The objection period begins the day after Wednesday, August 21, 2019, when the opportunity to object legal notice is published in the Feather River Bulletin. For more details about the objection process please see the enclosure.

This draft ROD selects alternative 2 - modified, which designates approximately 858,436 acres (74 percent) of NFS lands in the PNF for cross-country OSV use. Alternative 2 – modified reduces available NFS lands by 25 percent. Designating NFS lands within open areas includes 2,753 miles of undesignated, unmarked, ungroomed, underlying roads and trails within designated OSV-use areas, which are primarily above 3,500 feet elevation.

Currently, the PNF allows OSV use on approximately 1.15 million acres of NFS land. Of these acres, 115,527 are at an elevation below 3,500 feet and not regularly available for OSV use due to lack of snow. Removing acres of NFS land below 3,500 feet from the existing condition results in 1,032,298 acres regularly available for OSV use. Selection of alternative 2 - modified would result in a functional reduction of 173,862 acres (17%) from the existing condition regularly available for OSV use. Alternative 2 – modified also retains 100 percent of currently groomed OSV trails and increases ungroomed OSV trails by approximately 370 percent.

The draft ROD designates approximately 226 miles of OSV trails, including approximately 143 miles of trails available for grooming and 83 miles of trails not available for grooming. Approximately 67 additional miles of non-NFS trails are managed for OSV under the jurisdiction of Plumas and Sierra Counties, including approximately 60 miles of trails available for grooming (County roads) and 7 miles of trails not available for grooming (County roads). The NFS also manages approximately 1.4 miles of OSV trails that cross private lands and are available for grooming.

The FEIS and draft ROD can be found at:
http://www.fs.fed.us/nepa/nepa_project_exp.php?project=47124. Please contact Katherine Carpenter, Environmental Coordinator and Project Leader, at (530)-283-7742 or katherine.carpenter@usda.gov for more information or to request specific materials.

Thank you for your continued interest in the Plumas National Forest; we appreciate your help managing our forests to benefit our communities, visitors, and future users.

Sincerely,

CHRISTOPHER CARLTON
Forest Supervisor
Plumas National Forest

Enclosure – Administrative Appeal or Objection Opportunities Information

Comments of the Attorneys General of California, Colorado, Illinois, New York, and Vermont

August 26, 2019

Via electronic submission to www.regulations.gov
ATTN: Docket ID No. FS-2019-0010-0001

NEPA Services Group
c/o Amy Barker, USDA Forest Service
125 South State Street, Suite 1705
Salt Lake City, Utah 84138

Re: USDA Forest Service's Proposal to Revise its NEPA Regulations, 84 Fed. Reg. 27,544 (June 13, 2019); Docket No. ID FS-2019-0010-0001

Dear Ms. Barker:

The undersigned State Attorneys General of California, Colorado, Illinois, New York, and Vermont (hereinafter, "the States") respectfully submit these comments on the revisions proposed by the U.S. Department of Agriculture, Forest Service ("Forest Service") to its regulations implementing the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq*. 84 Fed. Reg. 27,544 (June 13, 2019) (hereinafter, the "Proposed Rule"). The Proposed Rule is the current Administration's first major national rulemaking pertaining to the Forest Service and the first revision of the Forest Service's NEPA regulations since 2008.

The States recognize the importance of taking an active role in managing national forests to reduce wildfire risks, especially given that past forest management practices and climate change—which is causing persistent drought, warmer temperatures, and severe winds—have created conditions that will lead to more frequent and destructive wildfires. However, the Proposed Rule unnecessarily shortchanges public participation and informed decision-making for many projects in a way that has no rational relationship to fire danger and is inconsistent with the primary purposes of NEPA. This comment focuses on aspects of the Proposed Rule that substantially impair these purposes and which are not supported by a reasoned basis, contrary to the requirements for agency rulemaking under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706.

First, the Proposed Rule fails to provide a reasoned basis for eliminating "scoping" for projects that the Forest Service determines do not require a full-fledged environmental impact statement ("EIS"), dramatically reducing opportunities for public participation for the vast majority of Forest Service actions. Second, the Proposed Rule recklessly expands the number of categorical exclusions ("CEs"), presumptively deeming projects—such as construction of up to five miles of road or commercial timber harvests of up to 4,200 acres (nearly 6.5 square miles or the equivalent of nearly five of Manhattan's Central Park put together)—to have no significant

impact on the human environment. Third, without justification, the Proposed Rule would no longer bar the Forest Service from using a CE for projects that impact Regional Forester-designated "sensitive species." Fourth, the Proposed Rule would arbitrarily remove actions that "substantially alter the undeveloped character of an inventoried Roadless Area or a potential wilderness area" from the list of actions normally requiring an EIS. Fifth, the Proposed Rule creates a "determination of NEPA adequacy" process which improperly allows prior NEPA documents to apply to a wholly new proposal when such projects are "essentially similar." Sixth, while the rationale for the Proposed Rule is ostensibly to address the diversion of funds to fire suppression activities, the Proposed Rule does not consider or account for a primary cause of the increased intensity of wildfires – climate change. Finally, there is no basis for the Forest Service's contention that the Proposed Rule itself is not subject to NEPA.

Safeguarding adequate NEPA review and ensuring full public disclosure of environmental impacts for Forest Service projects is of paramount importance to the States' interests. The Forest Service manages 193 million acres of land in 154 national forests and 20 grasslands in 43 states and Puerto Rico. These areas include 36.6 million acres of wilderness, 5,000 miles of Wild and Scenic Rivers, and nine National Monuments.

In California, almost 20 percent of all land is administered by the Forest Service across 18 national forests. These areas are home to numerous imperiled species such as the California condor, bighorn sheep, and Pacific fisher, and include numerous scenic and ecologically important sites such as Mt. Shasta, the Lake Tahoe basin, Mt. Whitney, and the Giant Sequoia National Monument. Colorado's national forests and grasslands cover about one-quarter of the state's area and play a crucial role both in conservation and in the state's economy. Management of these lands has profound impacts on Colorado's water quality, its wildlife and wildlife habitat, and its economy, from recreation to grazing to wildfire mitigation. Because Colorado's forests contain the headwaters for four major river systems – the Colorado, the Rio Grande, the Arkansas, and the Platte – the impacts of forest management in Colorado are felt far beyond the state's borders. Illinois has a limited inventory of Forest Service-managed lands, but those lands are vitally important to the state and in need of protection. The Shawnee National Forest spans over 289,000 acres in southern Illinois and straddles six natural ecological regions; the Midewin National Tallgrass Prairie is the largest open space in the Chicago metropolitan area. In New York, by contrast, the Finger Lakes National Forest is the second smallest national forest at 16,212 acres, but features a unique landscape home to the northern harrier and the rare Henslow's sparrow, whose populations continue to decline in the state. Vermont's sole National Forest, the Green Mountain National Forest, includes approximately 400,000 acres of federally-owned land, located within a day's drive of 70 million people. In addition to providing habitat for rare and unique plants, fish, and birds, it provides opportunities for outdoor recreation, including hiking, alpine and nordic skiing, snowmobiling, and fishing, and draws 3 to 4 million visitors to Vermont each year.

For these reasons, the States urge the Forest Service to revise the Proposed Rule to remove the substantial defects discussed further below, and to develop a rule that directly

addresses the threats posed by climate change and offers a targeted, environmentally sustainable approach to protect communities from wildfire risks.

STATUTORY BACKGROUND

I. National Environmental Policy Act.

NEPA "is our basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). Congress enacted NEPA in 1969 to "establish a national policy for the environment ... and to create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. § 4321. NEPA has two fundamental purposes: (1) to guarantee that agencies take a "hard look" at the consequences of their actions before the actions occur by ensuring that "the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts;" and (2) to ensure that "the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349–50 (1989).

To achieve these purposes, NEPA requires the preparation of a detailed environmental impact statement for any "major federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). NEPA's implementing regulations broadly define such actions to include "new or revised agency rules, regulations, plans, policies, or procedures ... ." 40 C.F.R. § 1508.18.[1] In taking a "hard look," NEPA requires federal agencies to consider the direct, indirect, and cumulative impacts of their proposed actions. *Diné Citizens Against Ruining Our Environment v. Bernhardt*, 923 F.3d 831, 837 (10th Cir. 2019); 40 C.F.R. §§ 1508.7, 1508.8(a)–(b).

To determine whether a proposed project may significantly affect the environment, NEPA requires that both the context and the intensity of an action be considered. 40 C.F.R. § 1508.27. In evaluating the context, "[s]ignificance varies with the setting of the proposed action" and includes an examination of "the affected region, the affected interests, and the locality." *Id.* § 1508.27(a). Intensity "refers to the severity of impact," and NEPA's implementing regulations list ten factors to be considered in evaluating intensity, including "[u]nique characteristics of the geographic area such as proximity to ... ecologically critical areas," "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial," "[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks," "[t]he degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act," and "[t]he degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration." *Id.* § 1508.27(b). The presence of just "one of these factors may be

[1] The White House Council on Environmental Quality ("CEQ") was established to implement NEPA and has issued regulations at 40 C.F.R. Part 1500 that apply to all federal agencies.

sufficient to require the preparation of an EIS in appropriate circumstances." *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 865 (9th Cir. 2005).

As a preliminary step, an agency may first prepare an environmental assessment ("EA") to determine whether the effects of an action may be significant. 40 C.F.R. § 1508.9. An EA must discuss the "environmental impacts of the proposed action" and "provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." *Id.* § 1508.9(a)–(b); *see id*. § 1500.1(b). If an agency decides not to prepare an EIS, it must supply a "convincing statement of reasons to explain why a project's impacts are insignificant." *Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001). "The statement of reasons is crucial to determining whether the agency took a 'hard look' at the potential environmental impact of a project." *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin*., 538 F.3d 1172, 1215 (9th Cir. 2008).

In "certain narrow instances," an agency does not need to prepare an EA or EIS if the proposed action falls under a categorical exclusion. *See Coalition of Concerned Citizens to Make Art Smart v. Federal Transit Admin.,* 843 F.3d 886, 902 (10th Cir. 2016) (citing 40 C.F.R. § 1508.4). However, agencies may invoke a CE only for "a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of [NEPA] regulations." 40 C.F.R. § 1508.4; *see also id.* § 1507.3(b)(2)(ii). When adopting such procedures, an agency "shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect," *id.* § 1508.4, in which case an EA or EIS would be required.

II. Administrative Procedure Act.

Under the Administrative Procedure Act, courts will set aside an agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious where the agency: (i) has relied on factors which Congress has not intended it to consider; (ii) entirely failed to consider an important aspect of the problem; (iii) offered an explanation for its decision that runs counter to the evidence before the agency; or (iv) offered an explanation so implausible that it could not be ascribed to a difference of view or the product of agency expertise. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). When promulgating a regulation, "the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Id.* (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

These core principles apply to an agency's decision to change existing policy. *F.C.C. v. Fox Television Stations*, 556 U.S. 502, 513–15 (2009). While an agency need not show that a new rule is "better" than the rule it replaced, it still must demonstrate that "it is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates." *Id.* at 515 (emphases omitted). Further, an agency must "provide a more detailed justification than what would suffice for a new policy

created on a blank slate" when "its new policy rests upon factual findings that contradict those which underlay its prior policy." *Id.* Any "[u]nexplained inconsistency" between a new rule and its prior version is "a reason for holding an [agency's] interpretation to be an arbitrary and capricious change." *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs*., 545 U.S. 967, 981 (2005); *see also Sierra Club v. Bosworth*, 510 F.3d 1016, 1018 (9th Cir. 2007) (finding that Forest Service promulgation of categorical exclusion for certain fuel reduction projects was arbitrary and capricious where agency failed to demonstrate that it made a "reasoned decision" based on relevant factors and information).

COMMENTS ON THE PROPOSED RULE

The Forest Service's Proposed Rule is arbitrary and capricious and in violation of the APA for several reasons. It prioritizes efficiency at the expense of statutory factors which Congress intended to be considered under NEPA. It fails to offer any reasoned explanation for changes that would dramatically reduce opportunities for public participation and constrain environmental review. And, it fails to consider key aspects of the problem it is intended to remedy, *i.e*, wildfire risks, by ignoring the role of climate change in fueling fires and failing to evaluate appropriate, environmentally sustainable treatments that are close to communities and transportation corridors to reduce such risks.

I. The Elimination of Scoping for Most Forest Service Actions Contradicts NEPA's Purposes and Lacks a Reasoned Basis.

The Proposed Rule would significantly reduce public participation in the NEPA process by eliminating the requirement to conduct scoping for actions that do not require an EIS. *See* 84 Fed. Reg. at 27,545, 27,553. The Forest Service's current regulations provide that "[s]coping is required for *all* Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA or an EIS." 36 C.F.R. § 220.4(e)(1) (emphasis added). Under the Proposed Rule, scoping would only be conducted for Forest Service actions that require the preparation of an EIS. *See* 84 Fed. Reg. at 27,553 (to be codified at 36 C.F.R. § 220.4(d)(2)). Contrary to the APA, the Forest Service has failed to provide a reasoned basis for this change, which would frustrate the public participation goals of NEPA by eliminating a key step for informing the agency's environmental review of proposed actions.

Facilitating public involvement in an agency's decision-making process is a core tenet of NEPA. *See* 40 C.F.R. §§ 1500.1(b) ("NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken."), 1501.7 ("There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action."). The elimination of scoping from Forest Service actions that do not require an EIS is contrary to NEPA's purpose "to foster informed decision-making and informed public participation." *California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982). It also minimizes state and local agency involvement in the Forest Service's review of proposed actions by eliminating an initial phase during which the Forest Service invites outside participation. 40 C.F.R. § 1501.7(a)(1).

Limiting scoping to only the EIS process, as proposed, would reduce state and public involvement for the vast majority of Forest Service actions, which are completed under CEs or EAs.[2] This is especially problematic for CEs, which have no mandatory public comment process, meaning that the Forest Service will not be required to provide any opportunity for public input before simply issuing an "escape NEPA free" card. *See Native Ecosystems Council v. Weldon*, 2016 WL 4591897, *2 (D. Mont. Sept. 2, 2016). This shortcoming is compounded by the fact that the Proposed Rule also seeks to broaden the number of CEs, *see infra* at Section II.

The proposal would also defeat one of the primary purposes of scoping, which is to determine whether or not to prepare an EA or EIS in the first instance. *See* 36 C.F.R. § 220.6(c) ("If the responsible official determines, *based on scoping*, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, *based on scoping*, that the proposed action may have a significant environmental effect, prepare an EIS.") (emphasis added). Scoping is essential for responsible officials to understand the myriad potential impacts of their decisions, not all of which are intuitive or already understood by the agency. *See Citizens' Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1022 (10th Cir. 2002).

Other than identifying the "potential for some time and costs savings" from this change, *see* 84 Fed. Reg. at 27,551, the Proposed Rule offers no justification for eliminating public input for most Forest Service actions, in violation of the APA. In fact, given the large number CEs and EAs that the Forest Service is able to issue under its current regulations, *see id*. at 27,550, there is no basis for eliminating formal scoping periods for these actions.

II. The Proposed Rule Illogically and Illegally Expands Categorical Exclusions.

Of the many new categorical exclusions put forth in the Proposed Rule, six irresponsibly expand the Forest Service's ability to engage in actions with potentially significant environmental consequences under the presumption that environmental analysis is unnecessary. This harms the States' interests in ensuring that environmental impacts within their borders are adequately considered, and greatly limits opportunities for the public and affected communities to participate in scoping and other decision-making processes.

NEPA sets a high bar to establish new CEs: the category of actions must "not individually or cumulatively have a significant effect on the human environment." 40 C.F.R. § 1508.4. Actions included in CEs, therefore, must be able to be undertaken repeatedly with no significant effect on the environment. CEQ, in guidance cited by the Forest Service, lists as examples of such actions "payroll processing, data collection, conducting surveys, or installing

[2] *Cf.* 84 Fed. Reg. at 27,550 (noting that from fiscal years 2014 to 2018, the Forest Service prepared an average of 1,590 categorical exclusions and 277 EAs annually), *with* U.S. EPA, Environmental Impact Statement Database, https://cdxnodengn.epa.gov/cdx-enepa-II/public/action/eis/search (last visited Jul. 25, 2019) (showing that from fiscal years 2014 to 2018, the Forest Service issued an average of 33 final EISs annually).

an electronic security system in a facility."[3] The Forest Service's discretion to identify new categorical exclusions is not boundless, and several of the exclusions go well beyond the limits set by the CEQ regulations. In particular, six of the proposed CEs appear to be legally problematic: proposed sections 220.5(e)(3), (21), (22), (24), (25), and (26). The Forest Service has failed to offer a reasoned basis for these changes, in violation of the APA.

A. The Forest Service Proposes an Unreasonable Categorical Exclusion for Significant Road Construction Projects.

The Forest Service offers no reasoned basis for authorizing five- and ten-mile road projects without meaningful environmental review. The proposed CE authorizes "construction or realignment of up to 5 miles of [Forest Service] roads" and reconstruction of up to 10 miles of [Forest Service] roads." 84 Fed. Reg. at 27,557 (Section 220.5(e)(24)). To adequately justify this CE, the Forest Service must consider "whether the cumulative effects of multiple small actions would cause sufficient environmental impact to take the actions out of the categorically-excluded class." CEQ Guidance at 5. However, the Proposed Rule and supporting documentation do not adequately assess the potential cumulative effects of this CE.

Numerous studies demonstrate that roads have the potential to significantly impact the environment.[4] As the Forest Service itself has found, "[I]mproperly constructed roads and poor road maintenance can increase the risk of erosion, landslides, and slope failure–endangering the health of watersheds that provide drinking water to millions of Americans and critical habitat for fish and wildlife."[5] It is unreasonable for the Forest Service to presumptively assume that repeated "small" actions such as five miles of new road construction could not, cumulatively,

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[3] Nancy H. Sutley, Chair, Council on Envtl. Quality, *Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act* 4 (Nov. 23, 2010) (hereinafter, "CEQ Guidance"), https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf.

[4] *See, e.g.*, Andreas Seiler, *Effects of Infrastructure on Nature*, in *COST 341 – Habitat Fragmentation Due to Transportation Infrastructure: The European Review* 31 (M. Trocme, et al., eds., 2002); Rodney van der Ree, Daniel J. Smith, & Clara Grilo, *Handbook of Road Ecology* (2015); Ana Benítez-López, Rob Alkemade, & Pita A. Verweij, *The Impacts of Roads and Other Infrastructure on Mammal and Bird Populations: A Meta-Analysis*, 143 Biological Conservation 1307 (2010); Alisa W. Coffin, *From Roadkill to Road Ecology: A Review of the Ecological Effects of Roads*, 15 J. Transport Geography 396 (2007); Lenore Fahrig & Trina Rytwinski, *Effects of Roads on Animal Abundance: An Empirical Review and Synthesis*, 14 Ecology and Soc'y 21 (2009); Trina Rytwinski & Lenore Fahrig, *Do Species Life History Traits Explain Population Responses to Roads? A Meta-Analysis*, 147 Biological Conservation 87 (2012); Ian Spellerberg, *Ecological Effects of Roads and Traffic: A Literature Review*, 7 Global Ecology and Biogeography 317 (1998); Stephen C. Trombulak & Christopher A. Frissell, *Review of Ecological Effects of Roads on Terrestrial and Aquatic Communities*, 14 Conservation Biology 18 (2001).

[5] U.S. Forest Serv., Road Management Website, Background Question #8, https://www.fs.fed.us/eng/road_mgt/qanda.shtml.

result in significant impacts on the human environment.[6] *See* 40 C.F.R. § 1508.4 (defining categorical exclusions as "a category of actions which do not individually or cumulatively have a significant effect on the human environment").

The Forest Service states that of the 784 decisions with "road management" listed as the project purpose between fiscal years 2012 and 2016, it completed 311 projects using an EA and FONSI. U.S. Forest Serv., Ecosystem Mgmt. Coordination, *Supplementing 36 CFR Part 220: Proposed Categorical Exclusions for Certain Infrastructure Projects: Supporting Statements* (May 1, 2019) (hereinafter, "Infrastructure SS") at 31. Yet, the Forest Service unreasonably reviewed only a "representative sample" of sixty-two projects from the pool of projects completed with an EA and a FONSI, ignoring the vast majority of projects requiring more robust environmental analysis. *Id*. Unsurprisingly, based on this unreasonably narrow review of projects, the Forest Service concluded that "[n]one of the environmental analyses for the projects reviewed ... predicted significant effects on the human environment." *Id.* at 32. Because the Forest Service irrationally narrowed its review to exclude projects with a significant environmental impact and failed to demonstrate that it made a "reasoned decision" to promulgate this CE, the Forest Service's proposed CE for road construction is unlawful. *See Bosworth*, 510 F.3d at 1026.

Moreover, of the seven agencies used to benchmark this proposed change, only one allows a similar CE. The Farm Service Agency allows the construction of roads under a CE following the completion of an Environmental Screening Worksheet to detect extraordinary circumstances, though its regulations also note that "additional environmental review and consultation will be necessary in most cases." 7 C.F.R. § 799.32(e), (e)(2)(xxiv); Infrastructure SS at 34–35. Every other agency referred to has a significantly more restricted CE, including the National Park Service ("NPS"),[7] Bureau of Land Management ("BLM"),[8] Bureau of Indian Affairs,[9] the Federal Transit Administration,[10] the Federal Highway Administration,[11] and the

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[6] In 2018 amendments to the Healthy Forests Restoration Act, Congress specifically barred hazardous fuels reduction projects from relying on a NEPA categorical exclusion if they included "the establishment of permanent roads." *See* 16 U.S.C. § 6591d(c)(3)(A)(i).

[7] U.S. Dep't of the Interior, Departmental Manual (hereinafter, "DM"), 516 DM 12.5(C)(9) (allowing road repair, replacement, and maintenance for existing roads); Infrastructure SS at 35–36.

[8] 516 DM 11.9(G)(2), (3) (allowing for installation of routine signs, markers, waterbars, etc., as well as temporary closure of roads); Infrastructure SS at 36.

[9] 516 DM 10.5(L)(8), (9) (allowing resurfacing roads without changes in width as well as reconstruction or replacement of bridges); Infrastructure SS at 36–37.

[10] 23 C.F.R. § 771.118(c)(14)–(15), (d)(1)–(2) (allowing bridge removal and replacement, highway resurfacing, etc.); Infrastructure SS at 37.

[11] 23 C.F.R. § 771.117(c)(22), (26)–(28) (allowing projects within an existing, already-disturbed operational right-of way as well as reconstruction or repair of highways); Infrastructure SS at 37–38.

Department of Energy.[12] Consequently, benchmarking clearly shows that the Forest Service's proposed CE with regard to road construction would be both anomalous and irresponsible compared to other federal agencies.

B. The Forest Service Improperly Proposes a CE for Converting an Unauthorized or Non-Forest Service Road to a Forest Service Road.

The Forest Service unreasonably proposes a CE that would allow converting a previously unauthorized road or a non-Forest Service road to a Forest Service road. 84 Fed. Reg. at 27,577 (Section 220.5(e)(25)). This CE would significantly expand the Forest Service road system without any detailed environmental review. Similar to the CE for road construction discussed above, the Forest Service failed to adequately justify this CE or explain why it will not have a significant impact on the environment. *See supra*, Section II.A.

Moreover, in conjunction with other proposed exclusions, this CE would allow the Forest Service to convert unauthorized all-terrain vehicle or off-highway vehicle paths to a Forest Service road and subsequently rely on other existing and proposed CEs to "reconstruct," "repair," or otherwise improve the path into a permanent road. Such ad hoc road creation threatens to significantly impact the nation's forest lands without any environmental review. The Forest Service has offered no reasoned basis for such a sweeping change.

C. The Forest Service Does Not Justify Its Proposed CE to Allow Significant Timber Harvest and Other Activities on Up to 7,300 Acres.

The Forest Service also proposes a CE that would allow "[e]cosystem restoration and/or resilience activities on [Forest Service] lands ... [not to] exceed 7,300 treated acres. If commercial/non-commercial timber harvest activities are proposed they must be carried out in combination with at least one additional restoration activity and harvested acres cannot exceed 4,200 of the 7,300 acres." 84 Fed. Reg. at 27,557 (Section 220.5(e)(26)). As proposed, this CE is vague, overreaching, and illegal, and it imprudently ignores the environmental review specifically required by Congress in NEPA.

1. This proposed CE poses significant cumulative impacts.

The Forest Service does not offer a reasoned basis for this proposed CE, which is especially problematic in light of its potential for cumulative impacts. Under NEPA, categorical exclusions are reserved for those actions that do not cause significant impacts on the human environment, either "individually or cumulatively." 40 C.F.R. § 1508.4. While some restoration activities, such as the reestablishment of native species or aquatic habitat improvement, may be appropriate to include under this CE, other activities (e.g., a 4,200-acre commercial timber harvest with the construction of permanent roads) are likely to have a significant environmental

[12] 10 C.F.R. § 1021.410(D) app. B at B1.13, .32 (allowing construction of "pedestrian walkways and trails, bicycle paths ... and short access roads"); Infrastructure SS at 39.

impact. In fact, this CE goes well beyond the 3,000-acre limit recently established by Congress for relying on categorical exclusions for hazardous fuels reduction projects under the Healthy Forests Restoration Act. *See* 16 U.S.C. 6591d(c)(1) ("A project under this section may not exceed 3000 acres").

This proposed CE is unlikely to withstand judicial scrutiny. The Ninth Circuit considered a similar fuels reduction CE proposed in response to the Healthy Forests Initiative. *See* 67 Fed. Reg. 77,038, 77,039 (Dec. 16, 2002) (NEPA Documentation Needed for Fire Management Activities; CEs) (hereinafter, "Fuels CE") (codified at Forest Service Handbook 1909.15(30) § 31.2(10) (2004)). The court enjoined the Forest Service from implementing the Fuels CE because the agency failed to evaluate the potential cumulative effects of the CE on a programmatic level. *Bosworth*, 510 F.3d at 1030. As with the proposed CE here, the Forest Service in *Bosworth* hoped to use the Fuels CE to treat a significant number of acres. But as the Court noted, if the area to be treated is so extensive that "assessing the cumulative impacts of the ... CE as a whole is impractical, then the use of the categorical exclusion mechanism was improper." *Id.* at 1028.

The Forest Service offers no substantive analysis of the potential cumulative impacts of this proposed change. Instead, the Forest Service notes that it "has found that in certain circumstances the environmental effects of some restoration activities have not been individually or cumulatively significant." U.S. Forest Serv., Ecosystem Mgmt. Coordination, *Supplementing 36 CFR Part 220: Addition of New Categorical Exclusion for Certain Restoration Projects: Supporting Statement* 3 (May 1, 2019) (hereinafter, "Restoration SS"). The Forest Service later states that it "has concluded that this category of actions does not have individual or cumulative significant effects" and that, "based upon the data and information, the agency does not expect" there to be cumulative effects. *Id.* at 12. Nowhere in the Proposed Rule or supporting documentation does the Forest Service analyze the cumulative impacts, which the *Bosworth* court noted "is of critical importance in a situation ... where the categorical exclusion is nationwide in scope and has the potential to impact a large number of acres." 510 F.3d at 1028. The Forest Service admits that the same circumstances apply to this CE. *See* Restoration SS at 4–5; 84 Fed. Reg. at 27,544.

The unsubstantiated claims made by the Forest Service regarding cumulative impacts are, as in *Bosworth*, "inadequate as a cumulative impacts analysis because [the Forest Service] offers only conclusory statements that there would be no significant impact." 510 F.3d at 1028 (citing *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 811 (9th Cir. 1999) (noting that despite sections purportedly discussing cumulative effects, "these sections merely provide very broad and general statements devoid of specific, reasoned conclusions"). As in *Bosworth*, "[t]he Forest Service does not reveal its methodology or offer any quantified results supporting its conclusory statements that there are no cumulative impacts—it argues only that through the exercise of its expertise it determined that there was no such impact." *Id.* The only "hard data"

provided to support the Forest Service's conclusion is its analysis of previously completed actions as well as other comparable agencies' CEs, both discussed below.

2. The Forest Service's review of previously implemented actions is inadequate.

The Forest Service fails to offer a reasoned basis for this CE through a review of previously implemented actions. 84 Fed. Reg. at 27,549; Restoration SS at 11–12. Of 718 restoration actions completed under an EA between fiscal years 2012 and 2016, the Forest Service reviewed a random sample of sixty-eight actions along with their associated FONSIs. As with the reviews described previously in these comments, this analysis is inadequate and fundamentally flawed.

The first major flaw is the sole reliance on actions completed under EAs and FONSIs. The Forest Service did not include any analysis of actions under the 7,300-acre threshold that were completed using an EIS. Instead, the Forest Service randomly selected a sample of 68 projects completed using an EA. Restoration SS at 11. To effectively determine which actions do not have the potential to cause a significant impact, the Forest Service must also examine the kinds of actions do have such potential. The crafting of this CE, as framed by the Forest Service, is essentially a line-drawing project between "no significant impact" and "significant impact," and the Forest Service reviewed no data on what might cause a significant impact. The APA does not allow such unreasoned and unsupported decisionmaking. *See Bosworth*, 510 F.3d at 1026.

The second major flaw is the unreasonable justification for the 4,200- and 7,300-acre figures. There is no basis provided for why the average project acreage for past projects done under EAs should be used as a benchmark for the CE. All other flaws aside, even if these figures *did* actually represent a number of acres where restoration activities are unlikely to have a significant impact, that is immaterial to the question of whether they *might* have a significant impact. There is clearly potential for a 7,300-acre treatment to have a significant impact on the human environment. The use of a spatial limit for this type of CE is unreasonable, as there is no specific limit under which a restoration activity would not have the potential to have a significant environmental impact. But even if there were such a limit, it is clear that it does not extend to 4,200 and 7,300 acres as described in this Proposed Rule.

Third, the Forest Service does not justify the road and trail limitations, which would allow construction of up to 0.5 miles of permanent roads; maintenance or construction of road and trail systems, including relocation of road and trail segments; and construction of up to 2.5 miles of temporary roads that could be in service for up to three years. 84 Fed. Reg. at 27,557. Like the other CEs allowing for road construction activities, these actions threaten significant impacts. Yet the Forest Service failed to meaningfully review these potential individual and cumulative impacts in proposing this CE. Indeed, the Forest Service's review of other projects does not appear to include projects that consider the impacts of these types of road and trail impacts. *See* Restoration SS at 11.

3. The existing CE regime with regard to restoration is adequate.

The Forest Service's existing CEs already include restoration projects, such as "regeneration of an area to native tree species," "timber stand and/or wildlife habitat improvement activities," "prescribed burning," "modification or maintenance of stream or lake aquatic habitat improvement structures," "hazardous fuels reduction activities using prescribed fire," "post-fire rehabilitation activities," "harvest of live trees not to exceed 70 acres, including commercial thinning," "salvage of dead and/or dying trees not to exceed 250 acres," "sanitation harvest of trees to control insects or disease," "restoring wetlands, streams, riparian areas, or other water bodies," and "activities that restore ... lands occupied by roads and trails." 36 C.F.R. § 220.6(e); *see also* Restoration SS at 9–10.

The Forest Service recognizes that these existing CEs "may be similar" to the proposed CE, but argues the proposed CE is necessary because: (1) it would allow actions on a broader scale, and (2) it would require that timber harvest activities be carried out in combination with at least one additional restoration activity and that harvested acres cannot exceed 4,200 of the 7,000 [sic] acres to meet restoration objectives within the project area." Restoration SS at 9–10. Under the current CEs, the Forest Service may perform any of the tasks listed in the previous paragraph except fuels reductions, post-fire rehabilitation activities, and timber harvest with no spatial limit. Because the Forest Service did not mention any specific activities this CE would allow beyond those already authorized, the States can only assume that this CE is, in reality, an expansion only of the number of acres available for timber harvest and road construction without NEPA review.

4. The Forest Service's own benchmarking analysis does not support this CE.

The CEs of other agencies cited by the Forest Service in the Restoration SS most resemble the current Forest Service's regulatory regime, and not the Proposed Rule. BLM is perhaps the most logical comparison to the Forest Service as another land management agency subject to similar NEPA procedures as the current Forest Service rules.[13] Nowhere does BLM's

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[13] *Compare* 516 DM 11.9(A)(1) (allowing fence modification for wildlife) *with* 36 C.F.R. § 220.6(e)(9)(i) ("rebuilding a fence to improve animal distribution"); *compare* 516 DM 11.9(A)(2) ("minor modification of water developments to improve or facilitate wildlife use") *with* 36 C.F.R. § 220.6(e)(7) ("modification or maintenance of stream or lake aquatic habitat improvement structures"); *compare* 516 DM 11.9(C)(2) ("sale and removal of individual trees or small groups of trees which are dead, diseased, or injured ... [that] requires no more than maintenance to existing roads") *with* 36 C.F.R. § 220.6(e)(13) ("salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction"); *compare* 516 DM 11.9(c)(3) ("seeding or reforestation of timber sales or burn areas") *with* 36 C.F.R. § 220.6(e)(5)(ii) ("planting trees or mechanical seed dispersal of native tree species following a fire") and 36 C.F.R. § 220.6(e)(11) ("Post-fire rehabilitation activities, not to exceed 4,200 acres (such as tree planting, [etc.])"); *compare* 516 DM 11.9(C)(4) ("pre-commercial

CE provide blanket authority to engage in 7,300-acre restoration projects by relying upon a CE. Nor does BLM's CE provide for the road and trail construction authorized in the Forest Service's proposed regulations.

Other agencies have regimes similar to those of BLM. The Bureau of Indian Affairs ("BIA") may approve 10,000-acre emergency rehabilitation plans, but only when such plans are limited to environmental stabilization that does not include timber sales. *See* 516 DM 10.5(H)(3); Restoration SS at 16–17. BIA may approve 2,000-acre forest stand improvement projects, 516 DM 10.5(H)(4), just as the Forest Service may currently approve "timber stand ... improvement activities that do not include the use of herbicides," 36 C.F.R. § 220.6(e)(6). The Natural Resources Conservation Service may plant certain vegetation, remove dikes and other water structures, restore agricultural field topography, stabilize streams, and undertake minor agricultural practices. 7 C.F.R. § 650.6(d); Restoration SS at 17–18. The Fish and Wildlife Service may construct "small structures or improvements," use prescribed burning, undertake other fire management activities, or introduce native species in certain ranges. 516 DM 8.5(B); Restoration SS at 18–19. None of these agencies are granted the broad authority to enact a "restoration and/or resilience activity" on as much as 7,300 acres under a categorical exclusion. Rather than matching step with other federal agencies, as the text of the proposal claims, the Proposed Rule would make the Forest Service anomalous among comparable agencies subject to the same statutory regime.

D. The Forest Service Wrongly Proposes an Overbroad Categorical Exclusion for Uses of Forest Service Lands under Twenty Acres.

The Proposed Rule includes a CE for the "approval, modification, or continuation of special uses of [Forest Service] lands that require less than twenty acres of [Forest Service] lands." 84 Fed. Reg. at 27,555 (Section 220.5(e)(3)). This CE encompasses a broad range of actions, ranging from relatively benign projects such as approving meteorological sampling sights or one-time group events, to significant land modifications such as the approval of a four-mile long natural gas pipeline. The breadth of this CE is inconsistent with NEPA's requirement that agencies determine whether actions will significantly impact the human environment, and with CEQ's guidance for developing CEs. CEQ Guidance at 5 (recommending that agencies restrict CEs geographically or seasonally, since some activities may have different effects at different locations or times and suggesting limits on CEs' frequency or spatial extent by distance or area).

While the Forest Service attempts to justify the twenty-acre limit in their supporting documentation, it does not offer a reasoned basis for relying on this limitation to guide appropriate use of the CE. *See* U.S. Forest Serv., Ecosystem Mgmt. Coordination, *Supplementing 36 CFR Part 220: Proposed Categorical Exclusions for Certain Special Use*

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thinning and brush control using small mechanical devices") *with* 36 C.F.R. § 220.6(e)(6)(ii) ("thinning or brush control to improve growth or to reduce fire hazard").

Projects: Supporting Statements (May 1, 2019) (hereinafter, "Special Use SS"). In particular, the Forest Service cites numerous EAs and FONSIs in support of the Proposed Rule, arguing that in the agency's experience, "approval, modification, or continuation of special uses that require less than 20 acres of [Forest Service] lands does not have the potential to have significant effects on the human environment." 84 Fed. Reg. at 27,548. Although there might be situations where projects less than twenty acres may not have a significant impact, projects of this type should not be presumed insignificant enough to forego the environmental analysis mandated by NEPA. For example, a twenty-acre utility corridor through an old-growth stand of redwoods in Sequoia National Forest or a pipeline through the widely-spaced bristlecone pines of the Inyo National Forest, could have a vastly different impact than "approving the use of land for a one-time group event." Furthermore, the Forest Service provides no explanation for the departure from its existing CE, which is limited to special uses involving "less than five contiguous acres of land." 36 C.F.R. § 220.6(e)(3).

E. The Forest Service Proposes an Unnecessary and Unsupported CE for Certain Actions at Existing Administrative Sites.

The Forest Service does not rationally support its proposed CE for "[c]onstruction, reconstruction, decommissioning, relocation, or disposal of buildings, infrastructure, or other improvements at an existing administrative site." 84 Fed. Reg. at 27,557 (Section 220.5(e)(21)). The Proposed Rule expansively defines "administrative site" to encompasses a host of facilities, including fire-lookout stations, telecommunication facilities, and a limited number of parcels of undeveloped land "acquired or used for purposes of administration of Forest Service activities" that are not currently in use which significantly broaden the scope of this CE. *Id*. Given this expansive definition, Forest Service actions within this category may have a potentially significant impact on the human environment.

In its review of implemented actions, the Forest Service states that it reviewed twenty-one projects completed under an EA and FONSI. Infrastructure SS at 15. It also notes that "none of the environmental analysis for the projects reviewed for this proposed CE predicted significant effects on the human environment." *Id.* However, selectively reviewing only those projects completed with a "finding of no significant impact" would deliberately reveal projects with no impact.

Moreover, the Forest Service's existing CEs should be adequate to solve many of the issues justifying this CE as described in the Proposed Rule. A CE currently in effect allows the Forest Service to undertake repair and maintenance of administrative sites without a decision memo. 36 C.F.R. § 220.6(d)(3) ("Repair and maintenance of administrative sites"). While the supporting statement for the proposed CE notes that the existing CE "typically covers routine activities," and that much of the Forest Service's deferred maintenance "goes beyond routine repair and maintenance," this does not lead to the conclusion that the Forest Service should be permitted to construct entirely new facilities without substantive NEPA analysis. *See*

Infrastructure SS at 12. In fact, the existing CE is not restricted to "routine" activities, but includes all repair and maintenance actions.

The sufficiency of this existing CE is supported by the Forest Service's own benchmarking analysis, which analyzes several agencies' CEs for comparison:

- The CEs for USDA's Farm Service Agency include construction of only very specific structures, such as watering troughs, pipelines for watering animals, and farm storage facilities. The Farm Service Agency regulations also specifically note that "additional environmental review and consultation will be necessary in most cases" for those projects. 7 C.F.R. § 799.32(d)(2); Infrastructure SS at 17.

- The National Park Service's CEs generally include replacement and construction of *minor* structures in previously disturbed or developed areas. DM, pt. 516, ch. 12.5, at (C)(3); Infrastructure SS at 18. Like the Farm Service Agency's CEs, and unlike the Forest Service's Proposed Rule, NPS's CEs are decidedly not a free license to allow construction uninformed by NEPA.

- BLM's CEs extend only to structure *removal* in limited cases, and in contrast to the Proposed Rule, allow construction only for such minor, specific structures as snow fences and small protective enclosures for reservoirs, springs, and small study areas. 516 DM 11.9(J)(7), (9), (10); Infrastructure SS at 18.

- The U.S. Army Corp of Engineers' CEs allow "routine operation and maintenance actions," as well as rehabilitation of some buildings and installation of utilities. 33 C.F.R. § 230.9; Infrastructure SS at 19.

- The Federal Transit Administration's CEs are limited to maintenance, rehabilitation, and reconstruction of facilities within a limited footprint, and allow new facility development only when it does not "substantially enlarge" the facility at which it is located and are not part of a larger project. 23 C.F.R. § 771.118; Infrastructure SS at 19. Furthermore, the Federal Transit Administration is not a particularly appropriate benchmark for the Forest Service, as each agency generally administers significantly different types of land with different potential for environmental impacts.

- The Department of Energy's CEs allow construction of certain buildings within or contiguous to already developed areas. 10 C.F.R. § 1021.410; Infrastructure SS at 21.

Consequently, the Forest Service's own benchmarking analysis does not support this proposed CE.

F. The Forest Service Proposes an Unnecessary and Unsupported Categorical Exclusion for Actions at Existing Recreation Sites.

The Forest Service offers no reasoned basis for its proposed CE involving the construction, reconstruction, decommissioning, or disposal of buildings, infrastructure, or improvements at existing recreation sites, such as campgrounds, day use areas, ski areas, and trailheads, which appears to unnecessarily expand an existing categorical exclusion. 84 Fed. Reg. at 27,548, 27,557 (Section 220.5(e)(22)). Existing Forest Service regulations categorically exclude "repair and maintenance of recreation sites and facilities" from detailed NEPA review. 36 C.F.R. § 220.6(d)(5). The Forest Service's only basis to support this new CE is that many "recreation sites and facilities are in need of major repair or decommissioning." *Id*. It is unclear how the Proposed Rule will substantively increase the efficiency of the Forest Service to complete work at existing recreational sites, and the Forest Service does not demonstrate why this CE is needed.

The proposed CE extends the range of categorically excluded activities irresponsibly. Allowing this range of actions with regard to "buildings, infrastructure, or improvements" is highly vague and potentially sweeping in its breadth. The Forest Service contends that this CE would allow it to decommission a dated bathroom at a campsite, or reconstruct a poorly maintained water access point at a trailhead without going through excessive environmental analysis and paperwork. However, the proposed CE is not tailored to just encompass those examples, but could be used much more expansively such as to sanction the types of activities that were recently evaluated in an EIS for the Mt. Rose Ski Tahoe Atoma Area Expansion Project.[14] As noted in the Proposed Rule, recreation sites include ski areas and activities covered include "[r]eplacing a chair lift at a ski area." 84 Fed. Reg. at 27,548, 27,557. The EIS for Mt. Rose analyzed the potentially significant impacts of several components of the project, including the construction of seven new ski trails on twenty-six acres, a 3,500-foot-long chairlift including towers and terminals, a 130-foot-long bridge over the Mt. Rose highway, the installation of a new water tank, and the removal of a 2,000-square-foot building. Under the Proposed Rule, many these actions could have been authorized under a CE. The Forest Service's use of an EIS for this project demonstrates that such actions can have a significant impact on the environment.

III. The Forest Service Offers No Reasoned Explanation for Eliminating Sensitive Species from the List of Extraordinary Circumstances Barring the Use of a CE.

The Forest Service failed to provide a reasoned explanation for concluding that the presence of a "sensitive species" should not be considered in determining whether an "extraordinary circumstance" bars the use of a CE. *See* 84 Fed. Reg. at 27,546. As discussed above, when adopting CEs, the CEQ regulations require federal agencies to "provide for

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[14] U.S. Forest Serv., Final Environmental Impact Statement, Mt. Rose Ski Tahoe Atoma Area Expansion (Feb. 2019), https://www.fs.usda.gov/nfs/11558/www/nepa/94719_FSPLT3_4616993.pdf.

extraordinary circumstances in which a normally excluded action may have a significant environmental effect." 40 C.F.R. § 1508.4. "Sensitive species" are those not listed as "endangered" or "threatened" under the federal Endangered Species Act, 16 U.S.C. § 1531, but that have been identified by Regional Foresters as those "for which population viability is a concern" and which must "receive special management emphasis to ensure their viability and to preclude trends toward endangerment." Forest Service Manual §§ 2670, 2672.1.

The Forest Service contends that because agency projects "must comply with relevant land management plans" developed pursuant to the National Forest Management Act ("NFMA"), 16 U.S.C. § 1600 *et seq.*, and these plans "have direction to provide for the diversity of plant and animal communities," the inclusion of this sensitive species circumstance is redundant. 84 Fed. Reg. at 27,546. However, the direction "to provide for the diversity of plant and animal communities" in a land management plan, *see* 16 U.S.C. § 1604(g)(3)(B), is significantly less robust that using site-specific information from a particular project as part of a NEPA review to address potential impacts to such species. Moreover, many land management plans are significantly outdated and may not provide adequate information or protection for currently-listed sensitive species. For example, the plans for Sierra, Tahoe, and Plumas National Forests in California are twenty-eight, twenty-nine, and thirty-one years old, respectively.

The Forest Service also claims that its 2012 planning regulations "marked a transition away from the term 'sensitive species,' and retention of the term in the NEPA procedures is unnecessary." 84 Fed. Reg. at 27,546. However, the agency's 2012 planning regulations did not abandon the concept of "sensitive species." As the Forest Service stated at that time:

> [T]he Agency has developed and maintained a list of regional forester sensitive species (RFSS) for over two decades. An RFSS list can include any native plant or animal species. RFSS are those plant and animal species identified by a regional forester for which population viability is a concern, as evidenced by: significant current or predicted downward trends in population numbers or density or significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution. RFSS are thus similar to species of conservation concern. The conservation and management of many RFSS has been a part of many land management plans and projects and activities for decades.

77 Fed. Reg. at 21,175. The Forest Service Manual continues to require that Regional Foresters identify sensitive species and manage forest lands to ensure that such species remain viable and do not become threatened or endangered because of Forest Service actions. *See* Forest Service Manual §§ 2670.22, 2670.32, 2672.1, 2672.11, 2672.32. Nothing in the Forest Service's planning regulations or guidance makes the inclusion of this circumstance "unnecessary" in the NEPA context.

The Pacific Southwest Region of the Forest Service, which manages 20 million acres of National Forest land in California, maintains a list of 124 sensitive animal species that exist in California's National Forests. These species include the California spotted owl, Yosemite toad,

North American wolverine, Pacific marten, fisher, and several species of butterflies and trout, several of which have been proposed for listing under the ESA. *See, e.g.*, 84 Fed. Reg. 644 (Jan. 31, 2019 (Endangered and Threatened Wildlife and Plants; Threatened Species Status for the West Coast Distinct Population Segment of Fisher); 81 Fed. Reg. 71,670 (Oct. 18, 2016) (Endangered and Threatened Wildlife and Plants; Proposed Rule for the North American Wolverine). Given that many species listed as "sensitive" are also proposed for listing as "threatened" or "endangered" under the ESA, the Forest Service must not remove sensitive species from the list of extraordinary circumstances barring use of a CE. Under the CEQ regulations, "[t]he degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the [ESA]" is a factor which on its own can trigger the need for an EIS. *See* 40 C.F.R. § 1508.27(b)(9). The Forest Service does not offer a reasoned explanation for its proposal to abandon the requirement to take a closer look at projects which might affect "sensitive species," for which by definition "population viability" is already a concern.

IV. The Forest Service Has Offered No Reasoned Explanation for Eliminating Actions that Alter Roadless and Potential Wilderness Areas from the List of Actions Requiring Preparation of an EIS.

The Forest Service has failed to provide a reasoned explanation for removing actions that "would substantially alter the undeveloped character of an inventoried Roadless Area or a potential wilderness area" from the list of actions normally requiring an EIS. *See* 84 Fed. Reg. at 27,549. According to the agency, "the activities that have the greatest potential to affect the roadless character of these lands are addressed separately by the Roadless Area Conservation Rule and state-specific roadless rules at 36 CFR part 294." *Id.* The Forest Service also states that "[p]otential wilderness areas are a class of congressionally designated lands where management must conform with the establishing statute's requirements, and therefore presumptive preparation of an EIS is not required." *Id.* However, none of these requirements provide a legitimate basis for the proposed change.

The protection of inventoried roadless areas by the Roadless Area Conservation Rule (Part 294), as well as the petition process for state-specific rulemakings to address the management of inventoried roadless areas, cannot substitute for the Forest Service's duty to take a "hard look" at the impacts of its proposed actions under NEPA. Moreover, the only states that have approved state-specific roadless rules are Idaho and Colorado, 36 C.F.R. §§ 294.20–.49, and those provisions contradict the Forest Service's proposal here. *See id.* § 294.45(a) ("Proposed actions that would significantly alter the undeveloped character of a Colorado Roadless Area require an [EIS]").

For potential wilderness areas, there is typically no establishing statute that provides guidance for the NEPA process. Potential wilderness areas are those that are not yet designated as wilderness through legislation by Congress, but sites that the Forest Service itself has evaluated for inclusion in the National Wilderness Preservation System based on the area's wilderness character. *See* 36 C.F.R. § 219.7(c)(2)(v) (requiring that the Forest Service, as part of its land management planning duties, "[i]dentify and evaluate lands that may be suitable for

inclusion in the National Wilderness Preservation System and determine whether to recommend any such lands for wilderness designation"); Forest Service Handbook § 1909.12, ch. 70. When areas are officially designated as wilderness by Congress, the legislation establishing such wilderness does not waive NEPA's requirements, and the Forest Service identifies no examples to the contrary. *See* 16 U.S.C. § 1132 note.

Removing actions that "would substantially alter the undeveloped character of an inventoried Roadless Area or a potential wilderness area" from the list of actions normally requiring an EIS is also inconsistent with CEQ's regulations implementing NEPA. In particular, when evaluating the significance of a proposed action, federal agencies are required to consider the "[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas." 40 C.F.R. § 1508.27(b)(3). By definition, inventoried roadless areas and potential wilderness areas "possess independent environmental significance" that makes it crucial for the Forest Service to thoroughly consider the environmental impacts of actions which may substantially alter such areas. *See Lands Council v. Martin*, 529 F.3d 1219, 1230 (9th Cir. 2008) (discussing why logging in inventoried roadless areas and potential wilderness areas is "environmentally significant"); *Smith v. Forest Serv.*, 33 F.3d 1072, 1079 (9th Cir. 1994) ("The decision to harvest timber in a 5,000 acre roadless area is environmentally significant.").

In sum, the Forest Service has failed to provide any reasoned basis for removing activities that affect roadless or potential wilderness areas from the classes of actions that normally require the preparation of an EIS.

V. The Determination of NEPA Adequacy ("DNA") Process Is Incompatible with NEPA's Fundamental Goals.

The proposed DNA process would allow the Forest Service to "determine whether a previously completed NEPA analysis can satisfy NEPA's requirements for a subsequent proposed action." 84 Fed. Reg. at 27,553. The Forest Service claims in the Proposed Rule that this process resembles BLM's DNA process. *Id.* at 27,546. However, the Forest Service goes well beyond BLM's regulations by establishing this process for "new proposed actions" and allowing them to bypass NEPA as long as they are deemed "essentially similar" to an action analyzed under a years-old NEPA review. 84 Fed. Reg. at 27,553. This process contradicts NEPA's central requirement for agencies to perform environmental analysis of any "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(C). It would also allow the Forest Service to illegally bypass NEPA's requirement to analyze the cumulative impacts of past, present, and reasonably foreseeable future actions, which is particularly relevant when an agency is conducting multiple "similar" actions. *See* 40 C.F.R. § 1508.7.

A. The DNA Process Directly Conflicts with NEPA's "Hard Look" Requirement.

1. Actions at previously unanalyzed sites require site-specific analysis, which a DNA would bypass.

For proposed actions at sites that *have not* been previously analyzed under NEPA, taking a "hard look" at an action requires analysis of its direct, indirect, and cumulative impacts. *See* 42 U.S.C. § 4332(C)(i); 40 C.F.R. § 1508.25(c)(1); *California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982). It is impossible to analyze such impacts of a site-specific action without considering the site to some extent. Accordingly, courts have required site-specific analysis whenever agency resources will be irretrievably committed to the action.[15] In bypassing established NEPA procedures, the DNA process would allow the Forest Service to engage in actions without considering or documenting their environmental impacts. The Forest Service offers no reasoned basis for circumventing NEPA in this way, in violation of the APA. *See* 5 U.S.C. § 706(C)(2).

2. The DNA Process would not sufficiently account for or analyze cumulative impacts.

For "essentially similar" actions occurring at a site that *has* been previously analyzed, the proposed DNA process still falls short of NEPA's requirements. Similar actions recurring at the same site inherently have cumulative effects beyond those of a single action—effects that may or may not be significant. *See, e.g.*, *Triumvirate, LLC v. Bernhardt*, 367 F. Supp. 3d 1011, 1027 (D. Alaska 2019) (holding that BLM violated NEPA in relying on a DNA insufficiently considering cumulative effects), *appeal filed* May 3, 2019. The Proposed Rule would direct the responsible official to evaluate whether such cumulative effects are "similar" to those analyzed in existing NEPA documents. 84 Fed. Reg. at 27,553. But whether or not these effects are similar to others is unrelated to the Forest Service's statutory requirement to evaluate the environmental impacts of its actions. While the Forest Service may perform similar analyses in similar situations or tier from a programmatic EIS, this does not absolve the Forest Service of its duty to fulfill Congress's goals expressed in NEPA. Whether or not the cumulative effects of repeated actions have a significant environmental impact is a determination that requires an EA or an EIS, as the CEQ regulations direct. *See* 40 C.F.R. §§ 1508.7, 1508.27(b)(7) ("Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment" and

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[15] *See* 42 U.S.C. § 4332(C)(v); 40 C.F.R. § 1508.27; *Conner v. Burford*, 848 F.2d 1441, 1450–51 (9th Cir. 1988) (requiring site-specific analysis before leasing lands for oil development, noting that it would otherwise be "precisely the type of environmentally blind decision-making NEPA was designed to avoid"); *N. Alaska Envtl. Ctr. v. Kempthorne*, 457 F.3d 969, 975–76 (9th Cir. 2006) (affirming *Conner*'s requirement for site-specific analysis and upholding the EIS at issue as sufficiently site-specific); *see also Conservation Law Found. v. Gen. Serv. Admin.*, 707 F.2d 626, 630–31 (1st Cir. 1983) (requiring site-specific analysis to supplement an EIS); *Sierra Club v. Peterson*, 717 F.2d 1409, 1414–15 (D.C. Cir. 1983) (requiring site-specific analysis before sanctioning any surface-disturbing activities).

"cannot be avoided by terming an action temporary or by breaking it down into small component parts").

The Forest Service's own justifications for this change belie the notion that there will be no cumulative impacts. The Forest Service notes in the Proposed Rule that "[o]ver 80 million acres of National Forest System (NFS) land are in need of restoration to reduce the risk of wildfire, insect epidemics, and forest diseases," and that the proposed changes are essential to be able to treat those acres efficiently. 84 Fed. Reg. at 27,544. Ecological treatment of 80 million acres is plainly a "major federal action" deserving of environmental analysis—or at least sufficient analysis to determine whether such restoration will "significantly affect[] the quality of the human environment." 42 U.S.C. § 4332(C). The Forest Service is, in effect, "breaking up [this] large or cumulative project into smaller components in order to avoid designating the project a major federal action" that requires an EIS, which is prohibited under NEPA. *See Bosworth*, 510 F.3d at 1028 (citing *Churchill Cty. v. Norton*, 276 F.3d 1060, 1076 (9th Cir. 2001)). If the Forest Service intends to appropriately evaluate the 80 million acres needing treatment, repurposing environmental analysis through the proposed DNA process is an inadequate, illogical, and illegal way to do so, and one that conflicts with stated intent of NEPA.

B. The DNA Process Also Conflicts with NEPA's Public Participation Requirements.

While proposed actions subject to the DNA process would still be listed in the Schedule of Proposed Actions ("SOPA") and trigger other notice, comment, and review requirements, this process is substantially less robust than CEQ's requirement to "encourage and facilitate public involvement in decisions which affect the quality of the human environment … to the fullest extent possible." 40 C.F.R. § 1500.2(d). This divergence from regulation is especially concerning in light of the concurrent proposal to remove the scoping requirement for EAs and CEs (discussed *supra,* Section I). 84 Fed. Reg. at 27,533. The Proposed Rule would lead to the extreme outcome of allowing the Forest Service to implement an environmentally-significant action previously analyzed in a decade-old EA that was itself completed without any scoping or formal public engagement beyond the SOPA. The Forest Service offers no reasoned basis for this proposal.

The States recognize that BLM's DNA process has been implicitly approved by federal courts. *See, e.g., Friends of Animals v. Bureau of Land Mgmt.*, 2018 WL 1612836, *9 (D. Or. Apr. 2, 2018). However, BLM's DNA process more closely resembles the Forest Service's existing Supplemental Information Report ("SIR") process than the Proposed Rule.[16] BLM's DNA process is commonly used to determine whether new information considered post-NEPA evaluation might change the outcome of the analysis and require supplemental review pursuant to 40 C.F.R. § 1502.9(c)(1)(ii). *See, e.g.*, *W. Energy All. v. Salazar*, 709 F.3d 1040 (10th Cir. 2013) (considering whether NEPA analysis done for a Resource Management Plan was still

[16] A Supplemental Information Report is prepared to document agency review of new information or changed circumstances to determine the sufficiency of an existing NEPA analysis and subsequent decision. *See* Forest Service Handbook, 1909.15, Section 18.1.

valid); *W. Watersheds Project v. Salazar*, 993 F. Supp. 2d 1126 (C.D. Cal. 2012) (holding that a DNA was sufficient to determine that a supplemental EIS was not required in light of new population data for desert tortoises); *Or. Nat. Desert Ass'n v. Bureau of Land Mgmt*., 2011 WL 5830435 (D. Or. Nov. 15, 2011).

The Forest Service claims that its DNA process will be a means to rely on, and determine the continuing validity of, previously completed EAs. Such a determination is, however, precisely what courts have upheld as the function of the Forest Service's SIR process. *See Idaho Sporting Cong. Inc. v. Alexander*, 222 F.3d 562 (9th Cir. 2000); *cf*. 84 Fed. Reg. at 27,553–54 (portion of the proposed Rule discussing SIRs). If the Forest Service is truly interested in reducing redundancy, 84 Fed. Reg. 27,546, it should continue to rely on its existing processes for determining whether NEPA documentation is still valid. If an action is not plainly within the scope of a past environmental review, the Forest Service must prepare a new analysis as required by NEPA.

VI. The Forest Service Ignores the Impacts of Climate Change.

Reforming the agency's NEPA procedures requires a recognition—absent in the Proposed Rule—that climate change is an enduring threat to the management of public lands. Although the Proposed Rule does not disclose the reality that climate-related impacts are stretching budgets and over-taxing personnel, the Forest Service previously led efforts to study and adapt to climate change on the land it manages.[17] Now, however, by failing to acknowledge that *climate-fueled* fires and climate change-related impacts are requiring an ever-increasing proportion of budget and personnel time, the Forest Service fails to consider a "key aspect" of the problem and its Proposed Rule is arbitrary and capricious in violation of the APA. 5 U.S.C. § 706(C)(2).

In the Proposed Rule, the "problem" that the Forest Service purports to be trying to solve is a lack of resources due to an increased diversion of funds to fire suppression. *See* 84 Fed. Reg. at 27,544. Rather than addressing a primary driver of this issue – climate change – the Forest Service instead looks to save resources by severely constraining the NEPA process for many of its actions. By ignoring climate change, the Forest Service fails to ask, much less analyze, multiple important questions about its proposal. Nowhere does the Forest Service ask or analyze

[17] Past Forest Service efforts to combat climate change include: U.S. Forest Serv., *Forest Service Strategic Framework for Responding to Climate Change: Version 1.0* (Oct. 2, 2008), https://www.fs.fed.us/climatechange/documents/strategic-framework-climate-change-1-0.pdf; Research and Development, U.S. Forest Serv., *Forest Service Global Change Research Strategy, 2009–2019* (June 2009), https://www.fs.fed.us/climatechange/documents/global-change-strategy.pdf; U.S. Forest Serv., *National Roadmap for Responding to Climate Change* (Feb. 2011), https://www.fs.fed.us/climatechange/pdf/Roadmapfinal.pdf; U.S. Forest Serv., *Forest Service Climate Change Performance Scorecard* (2011), https://www.fs.fed.us/climatechange/advisor/scorecard/The-Forest-Service-Climate-Change-Performance-Scorecard.pdf; and U.S. Dept. of Agric., *Climate Change Adaptation Plan: Forest Service* 57 (June 2014), https://www.usda.gov/oce/climate_change/adaptation/Forest_Service.pdf.

the factors driving the increase in the share of its budget going to wildfire suppression. Had it done so, the Forest Service would be compelled to acknowledge that climate change is a major contributing factor, and that human-caused greenhouse gas ("GHG") emissions are climate change's root cause. Moreover, the absence of this analysis means that the Forest Service gave no consideration to the impact of its Proposed Rule on climate change or greenhouse gas emissions, or the absorption of greenhouse gases on National Forest lands.

This is irresponsible and unacceptable given that recent international and national assessments of climate change and its impacts have established that human-caused or "anthropogenic" GHG emissions are driving climate change that endangers the public health and welfare. *See* Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009). Global GHG emissions reached an all-time high in 2018, underscoring the need for immediate and stronger action to address climate change.[18] And global annual average temperatures have "increased by more than 1.2°F (0.65°C) for the period 1986–2016 relative to 1901–1960."[19] In October 2018, the leading international body of climate scientists—the Nobel-prize-winning Intergovernmental Panel on Climate Change ("IPCC")—issued a report finding that, absent substantial GHG reductions by 2030 and net zero emissions by 2050, warming above 1.5°C (2.7°F) from pre-industrial levels is likely and would have wide-ranging and devastating consequences.[20]

The Forest Service has not revised its NEPA regulations since 2008, and its failure to use the opportunity now to address climate impacts is irresponsible and arbitrary and capricious in light of the federal government's conclusions that immediate action is necessary to avoid the most severe long-term consequences of climate change. On November 23, 2018, thirteen U.S. government agencies released the second volume of the Fourth National Climate Assessment, providing a thorough evaluation of the harmful impacts of climate change to different regions of the country and the projected risks climate change poses to our health, environment, economy, and national security.[21] The Assessment, which was externally peer-reviewed by a committee of

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[18] Corinne Le Quéré, et al., *Global Carbon Budget 2018*, 10 Earth Syst. Sci. Data 2141 (2018), https://doi.org/10.5194/essd-10-2141-2018; Chelsea Harvey, *More CO_2 Released in 2018 Than Ever Before*, E&E News (Dec. 6, 2018), https://www.eenews.net/climatewire/2018/12/06/stories/1060108875.

[19] 1 U.S. Glob. Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment* (2017).

[20] *See* IPCC Press Release, *Summary for Policymakers of IPCC Special Report on Global Warming of 1.5 C Approved by Governments* (Oct. 8, 2018), https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on global-warming-of-1-5c-approved-by-governments/; IPCC, *Special Report, Global Warming of 1.5°C*, https://www.ipcc.ch/sr15/.

[21] 2 U.S. Glob. Change Research Program, *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment* (D.R. Reidmiller, et al. eds., 2018) (hereinafter, "Assessment"), https://nca2018.globalchange.gov/ ("based on extensive evidence, ... it is extremely likely that human activities, especially emissions of GHGs, are the dominant cause of the observed warming since the mid-20th century").

the National Academies of Sciences, Engineering and Medicine, and underwent several rounds of technical and policy review by the thirteen federal member agencies of the U.S. Global Change Research Program, represents the federal government's most comprehensive analysis of climate science and the impacts of climate change on the United States. Assessment at 1; *see also* Global Change Research Act of 1990, Pub. L. No. 101-606, 15 U.S.C. §§ 2921–61; Assessment at iii, 2.

The Assessment cautions that "[i]n the absence of significant global mitigation action and regional adaptation efforts, rising temperatures, sea level rise, and changes in extreme events are expected to increasingly disrupt and damage critical infrastructure and property, labor productivity, and the vitality of our communities." Assessment at 22 (Summary Findings). Further, "[w]hile mitigation and adaptation efforts have expanded substantially in the last four years, they do not yet approach the scale considered necessary to avoid substantial damages to the economy, environment, and human health over the coming decades." *Id.* at 26. Documenting many of the record-setting phenomena we have recently seen, including fires, floods, other extreme weather, and sea level rise, the Assessment emphasizes the increasing vulnerability of our built environment as these phenomena become the new normal or even more extreme. *See, e.g.*, *id.* at 442, 669–1244 (documenting regional impacts of climate change).

The Assessment thoroughly documents the impacts of climate change on forest health in diverse regions of the United States, concluding that, "[t]he ability of U.S. forests to continue to provide goods and services is threatened by climate change and associated increases in extreme events and disturbance." *Id.* at 232–67. The Assessment lists rapid changes taking place on Forest Service lands over the past twenty years, such as: persistent drought, insect outbreaks which have killed hundreds of millions of trees across the United States; wildfires that have burned at least 3.7 million acres annually in all but three years from 2000 to 2016; and longer wildfire seasons resulting from increased temperatures and earlier snowmelt. *Id.*

For wildfires in particular, the Assessment concludes: "[b]y the middle of this century, the annual area burned in the western United States could increase 2–6 times from the present, depending on the geographic area, ecosystem, and local climate." *Id.* The Assessment warns that "[d]ecisions about how to address climate change in the context of forest management need to be informed by a better understanding of the risks of potential climate change effects on natural resources and the organizations that manage those resources." *Id.* at 247.

The Forest Service also fails to acknowledge or incorporate into its analysis the vital role of forests in sequestering carbon and mitigating greenhouse gas emissions from other sectors of the economy, and how the Proposed Rule would impact the carbon sequestration capability of lands managed by the Forest Service. According to EPA, even after accounting for emissions from forest fires, existing domestic forest land removed 612.5 million metric tons of equivalent carbon dioxide emissions from the atmosphere in 2017, offsetting approximately 10 percent of

total U.S. greenhouse gas emissions.[22] To put this into perspective, U.S. forests sequestered the equivalent amount of carbon dioxide that was emitted by fossil fuel power plants to provide electricity to U.S. residences in 2017.[23]

Rather than confront these critical issues, the Forest Service's proposed strategy to achieve efficiency and gain an upper hand on its backlog of projects and a budget being usurped by fire suppression activities is to sacrifice full and complete environmental disclosure and public involvement required by NEPA. The Forest Service has failed to disclose, much less fully assess, the actual problem it faces, and meaningfully explore how climate change impacts are affecting and will continue to affect the land it manages and how it implements NEPA. The Proposed Rule represents a short-sighted solution that sacrifices the vitally important purposes of NEPA without ameliorating a more complex problem.

VII. The Proposed Rule is Not Exempt From NEPA.

The Forest Service has acted arbitrarily and capriciously by failing to properly consider whether the Proposed Rule itself triggered NEPA, thus requiring the preparation of an EA or an EIS prior to the issuance of a final rule. Instead, the Forest Service simply states that "[t]he determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc. v. U.S. Forest Service*, 230 F.3d 947, 954–55 (7th Cir. 2000)." 84 Fed. Reg. at 27,550. However, this ignores facts that distinguish *Heartwood*, and is contrary to CEQ regulations and more recent circuit court precedent that warrant a different conclusion.

In *Heartwood*, the Seventh Circuit addressed the limited question of whether the Forest Service's creation of new CEs could amount to "a federal action of the type contemplated in 42 U.S.C. § 4332(2)(C)." 230 F.3d at 953–54. The court determined that such action amounted to an "agency procedure" that was not subject to NEPA review. *Id.* at 954. The court also noted that the agency had determined in its rulemaking that "implementation of the revised Forest Service environmental policy and procedures will not significantly affect the quality of the human environment, individually or cumulative." *Id.*

There are several reasons why *Heartwood* provides no basis for bypassing NEPA review here. First, the Proposed Rule goes well beyond simply adopting new CEs, but also includes the new DNA process and changes to how the Forest Service conducts environmental assessments and environmental impacts statements. These changes will necessarily implicate actions which, unlike those covered by categorical exclusions, may have a significant impact on the environment. *See Heartwood*, 230 F.3d at 954 (noting that "categorical exclusions, by definition, do not have a significant effect on the quality of the human environment").

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[22] U.S. EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2017, U.S. Environmental Protection Agency (Apr. 11, 2019), at p. 6-4, Table 6-3; p. ES-22, Table ES-5, https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks.
[23] *Id.* at p. ES-12, Table ES-3.

Second, while the Seventh Circuit in *Heartwood* characterized the Forest Service's proposal as an "agency procedure" to avoid NEPA review, NEPA itself does not allow for such a result. The language in 42 U.S.C. § 4332(2)(C) "is intentionally broad to force the government to consider the environmental effects of its actions." *Found. for Horses & Other Animals v. Babbitt*, 995 F. Supp. 1088, 1093 (C.D. Cal. 1998) (citing *Found. for N. Am. Wild Sheep v. U.S. Dep't of Agric.,* 681 F.2d 1172, 1177 (9th Cir. 1982)). According to the CEQ regulations, "[a]ctions include ... new or revised agency *rules*, *regulations*, plans, policies, or *procedures*." 40 C.F.R. § 1508.18 (emphasis added); *see also* 40 C.F.R. § 1507.3 (requiring each federal agency to "adopt procedures to supplement these regulations"). Regardless of whether the Proposed Rule is characterized as a rule, regulation, or procedure, it may still be subject to NEPA review.

Third, more recent case law has contradicted the holding of *Heartwood*. In *Bosworth*, plaintiffs challenged the Forest Service's adoption of a new CE for fuel reduction projects up to 1,000 acres and prescribed burns up to 4,500 acres on all national forest lands in the United States, claiming that the Forest Service violated NEPA by failing to prepare an EA or EIS in promulgating this categorical exclusion. 510 F.3d at 1018, 1022 (9th Cir. 2007). While the Ninth Circuit agreed with *Heartwood* that the CEQ regulations did not specifically require an EA or EIS when promulgating a CE, it held that the Forest Service violated NEPA by failing to take the requisite "hard look" at the potential significant impacts of this rulemaking on the environment. *Id.* at 1025–34. In particular, the Ninth Circuit found that the Forest Service failed to properly assess the scope of potential impacts, and failed to adequately consider the NEPA significance factors, including cumulative impacts and the extent to which the categorical exclusion was highly controversial and the risks uncertain. *Id.* at 1026–32. Consequently, the Ninth Circuit ordered the district court "to enter an injunction precluding the Forest Service from implementing the [CE] pending its completion of an adequate assessment of the significance of the categorical exclusion from NEPA." *Id.* at 1034.

Unlike the situation in *Heartwood*, the Forest Service here has made no findings, or even considered, whether the Proposed Rule may significantly affect the quality of the human environment. Unless and until the Forest Service properly considers whether the Proposed Rule may have a significant impact on the environment, it is in direct violation of the Ninth Circuit's holding in *Bosworth* and the requirements of NEPA.

CONCLUSION

As discussed above, the Forest Service has failed to offer any reasoned explanation for many of the changes in its Proposed Rule, which directly conflict with the fundamental purposes and requirements of NEPA. The Forest Service should abandon these proposals and instead develop a rule that directly addresses the threats posed by climate change and offers a targeted approach to protect communities from the increased risks posed by wildfire. The States stand ready to work with the Forest Service to obtain the funding necessary to address this growing threat to our citizens and wild places.

Sincerely,

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February 28, 2019

Katherine Carpenter, Forest Environmental Coordinator
Plumas National Forest
159 Lawrence St.
Quincy, CA 95971

RE: Plumas National Forest OSV Use Designation Draft Environmental Impact Statement and Modified Proposed Action (Alternative 2)

Dear Ms. Carpenter:

The Butte County Board of Supervisors (Board) has reviewed the Plumas National Forest Draft Environmental Impact Statement (DEIS) for use by Over-Snow Vehicles (OSV), and has actively solicited feedback from recreationists and other stakeholders via the Butte County Forest Advisory Committee. We appreciate the opportunity to comment on this DEIS, and recognize that this is part of the process required for compliance with Subpart C of the Forest Service Travel Management Rule as part of the Settlement Agreement between the Forest Service and Snowlands Network, et al.

The Board makes the following comments regarding the Modified Proposed Action (referenced below) and the DEIS:

Alternative 2: Preferred Alternative, Modified Proposed Action (2018)

Alternative 2 strives to balance the availability of motorized and non-motorized over-snow recreational opportunities and minimization of impacts to natural and cultural resources. Alternative 2 includes the designation of seven cross-country OSV-use areas (864, 826 acres); 2,335 miles of unmarked, ungroomed, underlying roads and trails; and 304 miles of trails for OSV use where 203 miles would be groomed and 101 miles would be ungroomed. Alternative 2 proposes a minimum snow depth requirement of 12 inches within the designated cross-country OSV-use areas; 6 inches along designated OSV trails; and 12 to 18 inches along designated groomed trails (consistent with California Snowmobile Grooming Standards). Specific to the PCT, alternative 2 would designate 20 OSV trails where motorized routes on the Plumas Motorized Vehicle Use Map (MVUM) cross the PCT and 6 OSV trails along the shared Plumas and Tahoe National Forests administrative boundary that are not existing motorized routes and their width would range up to 0.25 mile.

Designated (Allowed) OHV Use

The Board agrees that it makes sense to align the OSV Areas with existing Ranger Districts, less any portion of a District where OSV use is prohibited.

The Board acknowledges the research on snow depth included in the DEIS and the resultant conclusion that a minimum of 12" provides a measure of protection against resource damage and is consistent with the California State Department of Parks and Recreation Off-Highway Motor Vehicle Division snow depth grooming guidelines.

Trail Grooming for OSV Use

1. The need for agreements between the United States Forest Service (USFS) and counties or private parties to allow use and grooming of OSV trails upon County or private roads is a new practice **The Board would like to know when the USFS will initiate contact**, expectedly in an expeditious manner, to provide a Memorandum of Understanding (MOU) or other authorization for counties and private individuals to agree to that is straightforward and reasonable for all parties.

2. The Board reiterates its request that a provision for future additional groomed trails, when funding becomes available, is required in all alternatives. The Smith Peak/Lake Davis Trail System is one such new area for groomed trails that should be considered.

Restricted OSV Use

The use of the United States Fish and Wildlife Service's (USFWS) National Bald Eagle Management Guidelines and a review of other available scientific studies supports the proposed restricted areas around known nesting eagle sites for both motorized and non-motorized recreationists; however, the Board requests a response as to how the nesting areas are marked so that recreationists will know what areas to avoid, and how law enforcement will be able to monitor and enforce compliance.

Prohibited OSV Use

Alternative 2 proposes only 20 "road" crossings of the PCT, and only 6 broader, non-trail crossings. The Board's understanding from OSV user feedback makes it clear that most of the open cross country areas around the PCT are not conducive to even knowing where the PCT is located, much less readily locating any specific "crossings". The Board reiterates its request for an explanation of how such crossings will be made visible and enforced.

1. It is the Board's contention that any proposed closure should be based on extensive surveys of a broad spectrum of user groups and/or science based reasoning. It appears that the basis for closure of popular OSV area was largely based on a compromise position between various interested parties. The Board requires an explanation of the compelling basis for any closure of an area currently being heavily used by OSV riders, particularly when it cuts off OSV travel from one part of the National Forest to another part. Lacking a compelling basis, these proposed closures shall be removed from the alternatives.

   The Board is strongly opposed to any closure of existing OSV cross country or OSV trail areas in the Western portion of Lakes Basin Recreation Area. The area in the Lakes Basin proposed for closure is part of a heavily used OSV "loop" for cross country OSV recreating. The USFS built a staging area on the Lakes Basin Road approximately six years ago. The funds they used to do so

were from State Parks OHV monies. If the closure were to go through, the staging area could still be used by snowmobilers; however, the area of riding would be reduced, and therefore less attractive to OSV users. We infer that the number of riders will more than likely also be reduced, affecting the local area tourism and recreation dollars, and diminishing overall enjoyment of the OSV cross country experience by those who ride in the area.
The Board believes that the large Bucks Lake Wilderness Area is already well established for non-motorized recreation, with lakes and mountainous terrain similar to the proposed Lakes Basin closure area, and is more than sufficient to provide non-motorized recreationist opportunities for quiet enjoyment, and animals a haven for a more natural and undisturbed habitat.

2. The Plumas County Sheriff's Department communicated to us their strong opposition (through a public Forest Advisory Committee meeting) to the proposed closure of the 4,020 acres in the Lakes Basin area. The Board supports the Sheriff's position, as follows:

   - There is already a large area (34,850 acres) designated as wilderness in Plumas NF that is closed to motorized travel of any sort, including OSV. The Bucks Lake Wilderness Area has several lakes and scenic areas similar in experience to the Lakes Basin area being proposed for closure.
   - It is the Board's understanding that the proposed closure effectively cuts off a popular cross country OSV "loop" from the Gold Lake Road staging area through the proposed closure area to the next valley to the west and back around to return to the staging area.
   - The Sheriff believes that there will be more user conflicts if the area is closed, due to non-compliance issues, whereas they have experienced no OSV issues in that area in the past.
   - Since funding for OSV enforcement is provided by the State Parks, the funding would likely be reduced on a pro-rata basis for any reduction in OSV available acreage, which would negatively impact the Sheriff's ability to fund effective patrol of the entire area.
   - Any reduced activity in one area will undoubtedly result in increased activity, and possibly more impact, on other OSV areas in the locale.
   - OSV activities have a measurable economic impact on the local area, and the sport is embraced and supported by the local towns and general population. People come to this area from Reno, from the Valley and from other areas outside of Plumas County. Tourism is key to the economic well-being of that area, and the Lakes Basin is the premier attraction.

Socioeconomic Considerations – Butte County

The Board appreciates inclusion of economic and social analysis within the DEIS. The section addressing socio-economics supports the Board's contention that Butte County's snowmobile owners have a vested interest in retaining as much recreational opportunity as possible, as the numbers in the table below demonstrate that snowmobile ownership within Butte has remained fairly level as opposed to other areas in the state. (see chart, next page)

Table 83. Annual OSV registration 2009 to 2014

Population	2009	2010	2011	2012	2013	2014	6 Year Change
Butte	1,093	1,054	1,057	991	1,014	955	0.25%
Lassen	394	364	352	322	315	279	-12.63%
Nevada	1,037	1,066	1,023	1,020	1,041	1,030	-29.19%
Plumas	1,236	1,180	1,111	1,025	1,022	920	-0.68%
Sierra	223	220	205	208	207	192	-25.57%
Analysis Area	5,992	5,894	5,759	5,578	5,612	5,390	
Annual Change		**-1.64%**	**-2.29%**	**-3.14%**	**0.61%**	**-3.96%**	**-10.05%**
California Residents	18,542	17,982	17,776	16,956	16,929	16,189	
Annual Change		**-3.02%**	**-1.15%**	**-4.61%**	**-0.16%**	**-4.37%**	**-12.69%**
Out of State Residents	260	242	235	244	215	197	
Annual Change		**-6.92%**	**-2.89%**	**3.83%**	**-11.89%**	**-8.37%**	**-24.23%**
Total	18,802	18,224	18,011	17,200	17,144	16,386	
Annual Change		**-3.07%**	**-1.17%**	**-4.50%**	**-0.33%**	**-4.42%**	**-12.85%**

Conclusion

In summary, the Butte County Board of Supervisors believes that OSV opportunities in the Plumas National Forest are very important to winter outdoor recreation, the industries and business supported by recreationists, and the economy of the local areas where OSV travel is a popular winter sport. The Board strongly disagrees with proposed closure of areas currently open to OSV travel unless such closure is necessary for compelling safety or environmental reasons, or based on a broad survey of those individuals and communities affected by such a decision.

We appreciate the opportunity to comment on the OSV Revised DEIS and Modified Proposed Action, and look forward to your response and the opportunity to work more closely with you on developing alternatives as requested in this letter.

Respectfully,

Steve Lambert

Steve Lambert
Chair

CC: Board of Supervisors
Shari McCracken, Chief Administrative Officer
Casey Hatcher, Economic & Community Develop Manager
Butte County Forest Advisory Committee
Butte County Federal/State Land Use Coordinating Committee

SPI Roads for Land Swap Consideration

PNF/LNF/SPI Potential Land Interchange Parcels:
1) Access to High Lakes OHV Area at southern Rock Creek Crossing entrance from the south (24N04.4). Could include sections along 24N04 from Ramsey Bar (uses more of existing county road), or could include sections from Granite Ridge through Logue/Lynch Meadows (perhaps not as erosive soils).

2) Access to High Lakes OHV Area from North Valley up 460U to 410R to Trail #519 (Pipejam). Would likely include Sections 3, 11 & 14 in T24N, R5E. This provides a loop opportunity within the High Lakes not available now, as well as a safety route out to county roads from a difficult OHV trail.

3) Direct OHV Access from Butte Meadows to Philbrook Reservoir / High Lakes OHV Area, taken away in ~2012 with the paving of Skyway/FR 171. There could be super-long-way-around access on 26N27 (Scotts John Rd), except it is currently ML3. The purpose of this is to avoid the super long way, and cut across from the fire station in Butte Meadows, across Bolt Creek, to join 26N17, then Humbug Summit Rd. below Snag Lake right near the start of #4 or #5 below. This would include Sections 26, 27 & 28 T26N, R4E, and one parcel in Section 36, T26N, R4E.

3a) an alternative is to go up over Bull Hill and come out at Cuddleback Flat at the intersection of Humbug Summit Rd and Philbrook Road. would involve Section 32 and 33 in the same R&T

4) OHV Access to High Lakes OHV Area (Soda Ridge west area 26N74 to Trail #501) from Humbug Summit Rd near Snag Lake. Would likely include two parcels in Section 31, T26N, R5E, would move OHV vehicles off the busier ML3 25N05 (Smokin' Duck Rd.), and also give access to a dispersed camping area close to Snag Lake.

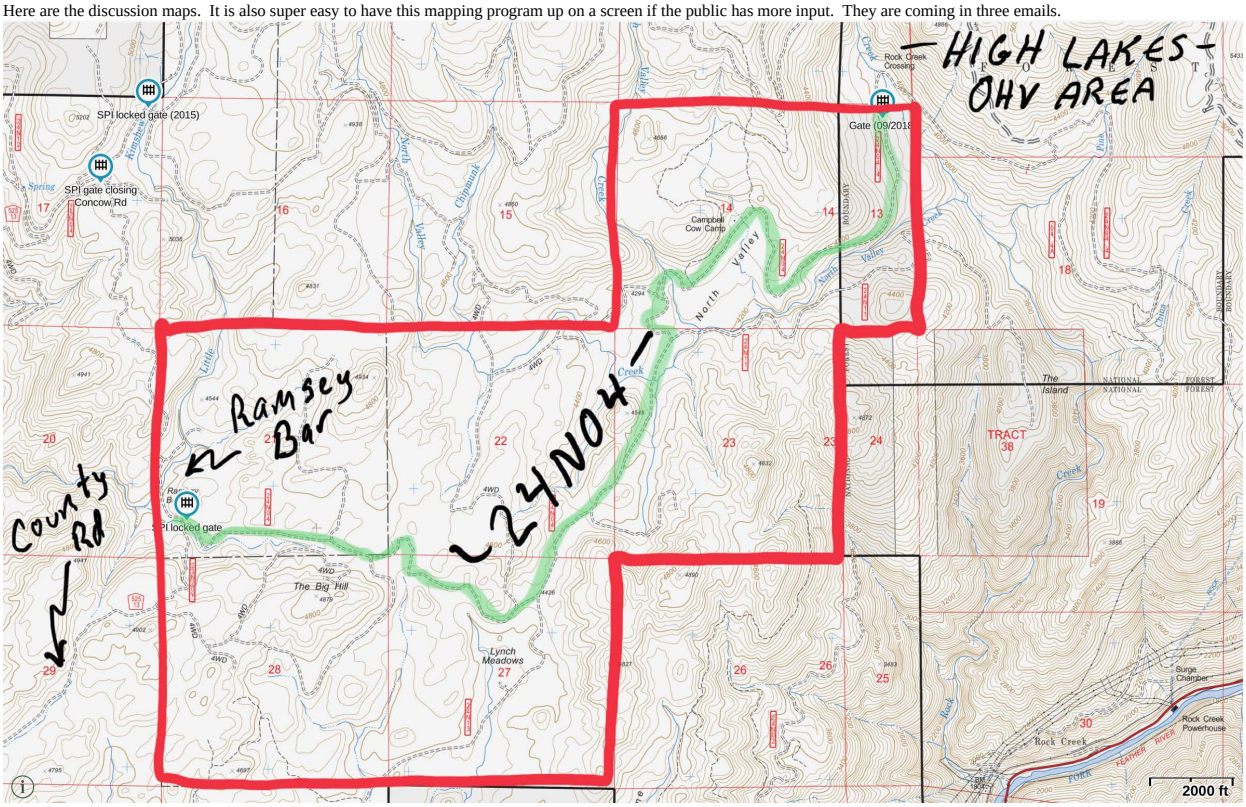
5) OHV Access to High Lakes OHV Area from Butte Meadows / Humbug Summit Rd, across West Branch Feather River, and through to 25N05 (Smokin' Duck Rd.) via DFW (Coon Hollow Wildlife Area) and LNF lands on 26N74 along Coon Hollow. Would likely include one parcel in Section 6, T25N, R5E, and one parcel in Section 36, T26N, R4E.

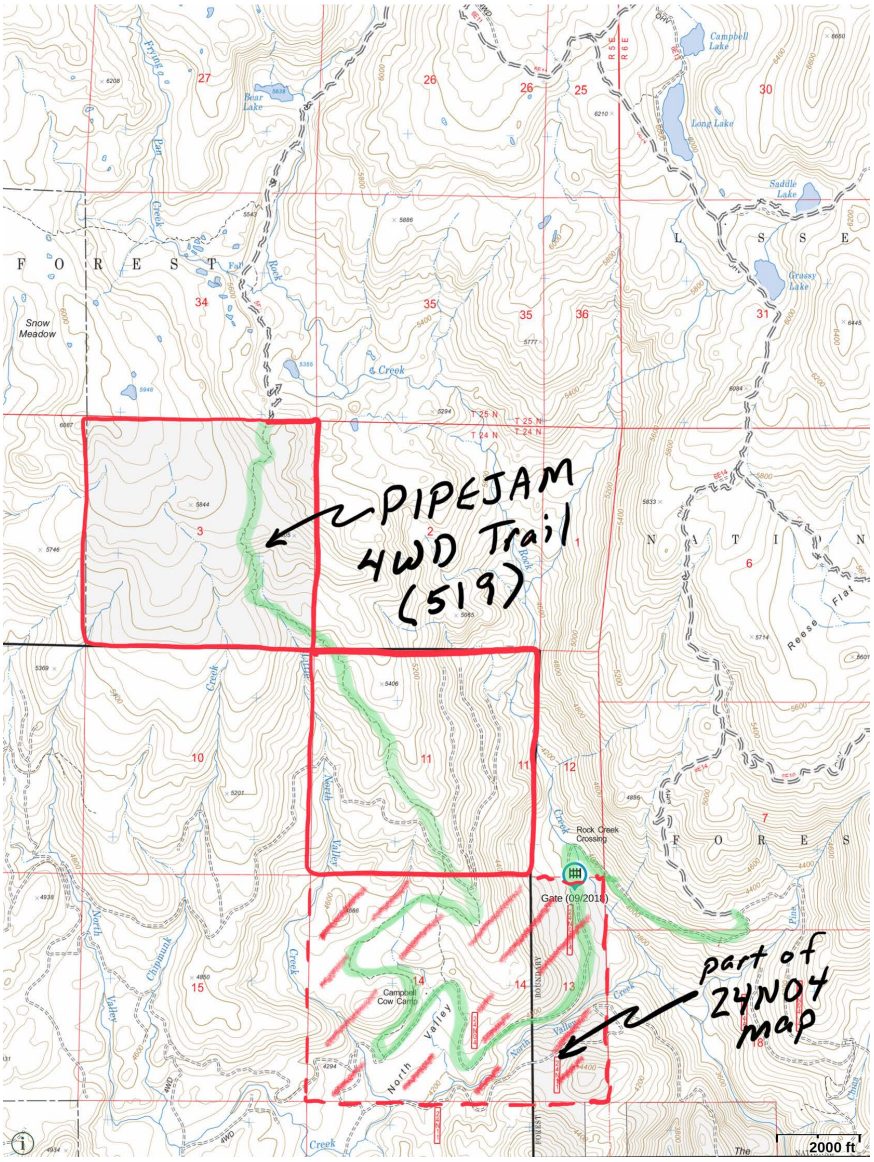
6) Access to 3-Tiered Waterfall, aka Kimshew Falls, a Butte County destination landmark POI. Would be Section 17, T24N, R5E, assuming Butte County rebuilds the county road on their easement in the Bald Mtn to Ramsey Bar area.

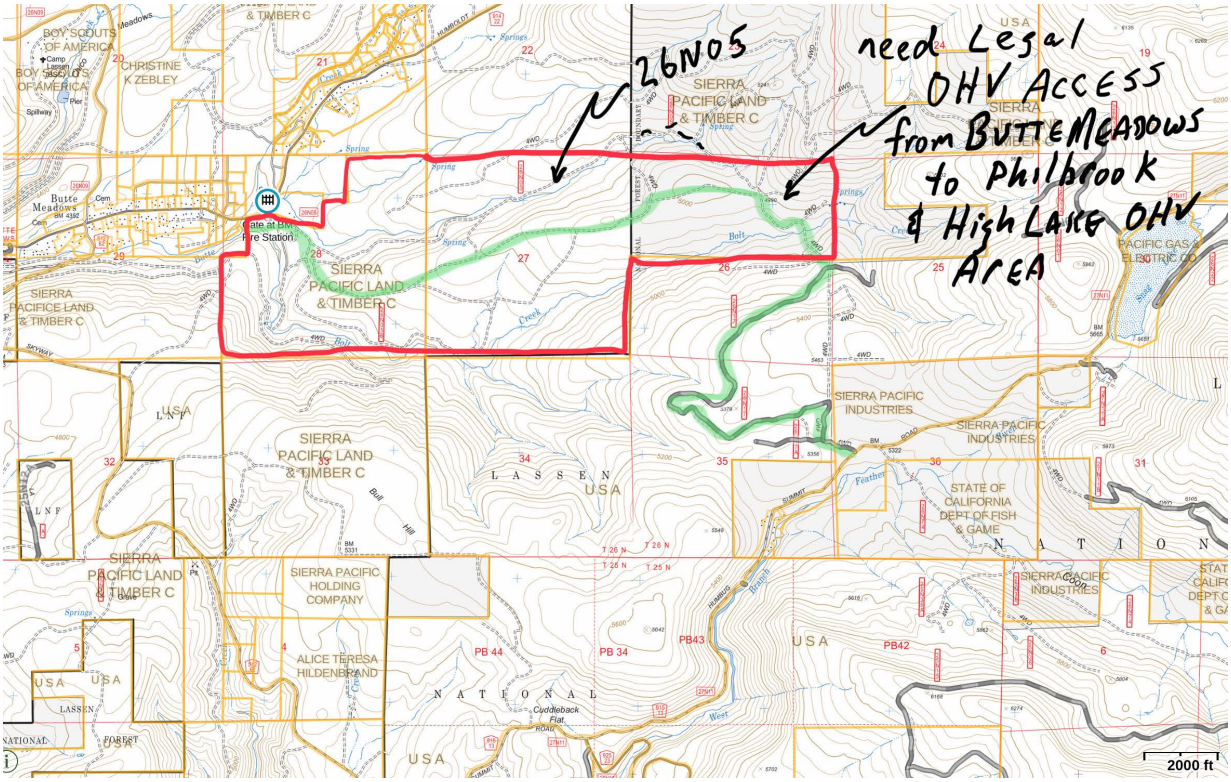
7) Access to the High Lakes via "T-Line", the more direct way to get to the main entrance if you are on an OHV coming from the Paradise/Stirling City population centers. Section 21 T25N R5E.

From: Nick Repanich
To: Moak, Peggy
Cc: Thad Walker; Vance Severin; Teri Faulkner; Schmidt, Dennis
Subject: Re: maps for SPI Land Interchange project
Date: Monday, August 19, 2019 10:39:10 AM

Here are the discussion maps. It is also super easy to have this mapping program up on a screen if the public has more input. They are coming in three emails.




PIPEJAM
4WD Trail
(519)
part of
24N04
map
Campbell Lake
Long Lake
Saddle Lake
Grassy Lake
Bear Lake
Snow Meadow
Rock Creek Crossing
Gate (09/2016)
Campbell Cow Camp
North Valley
Reese Flat
2000 ft



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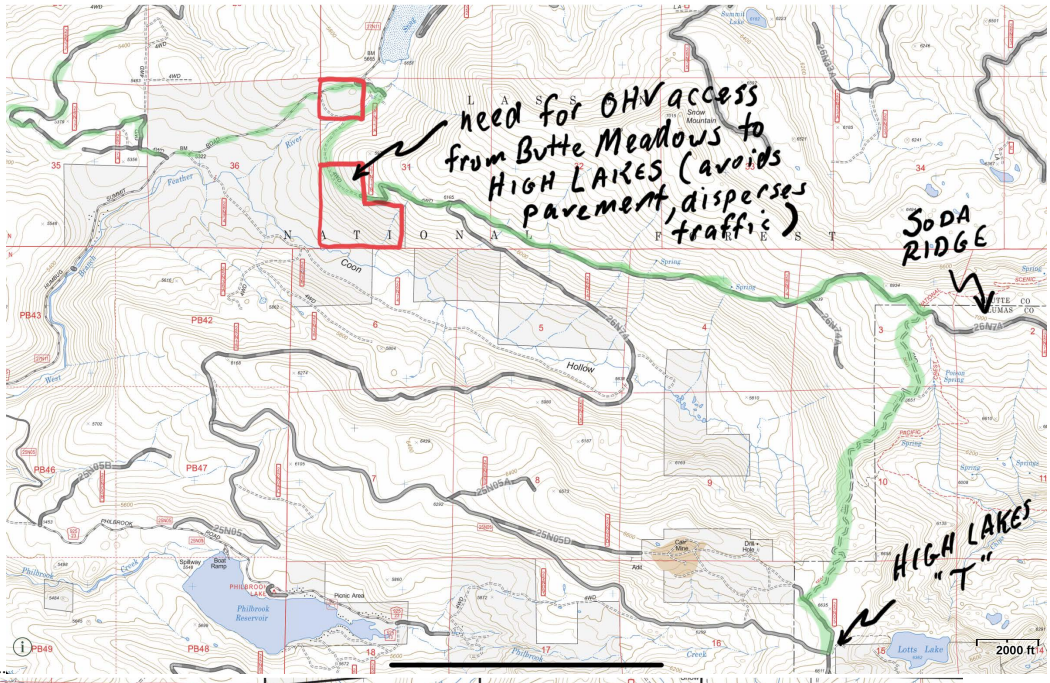
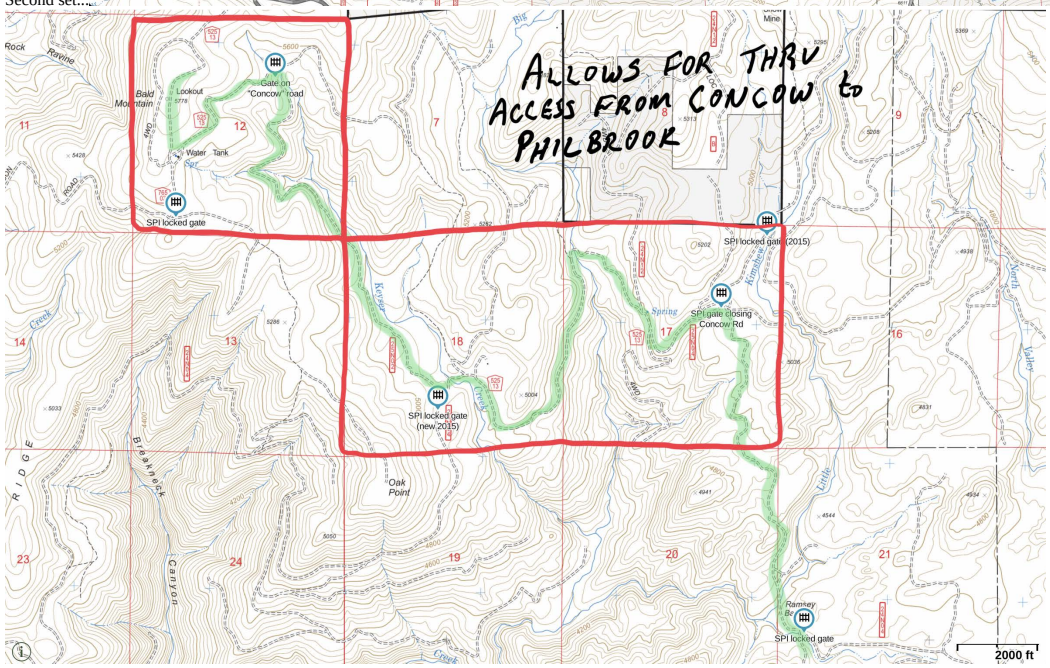
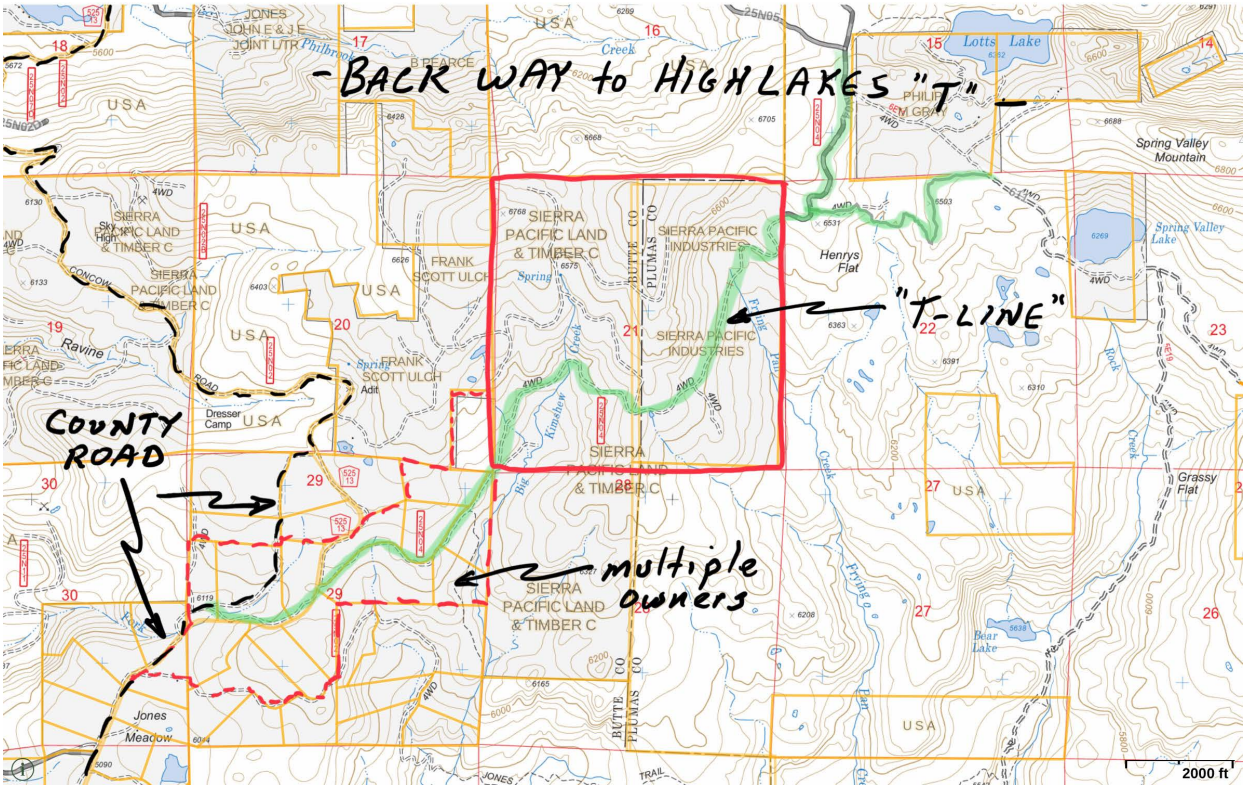


Second set...





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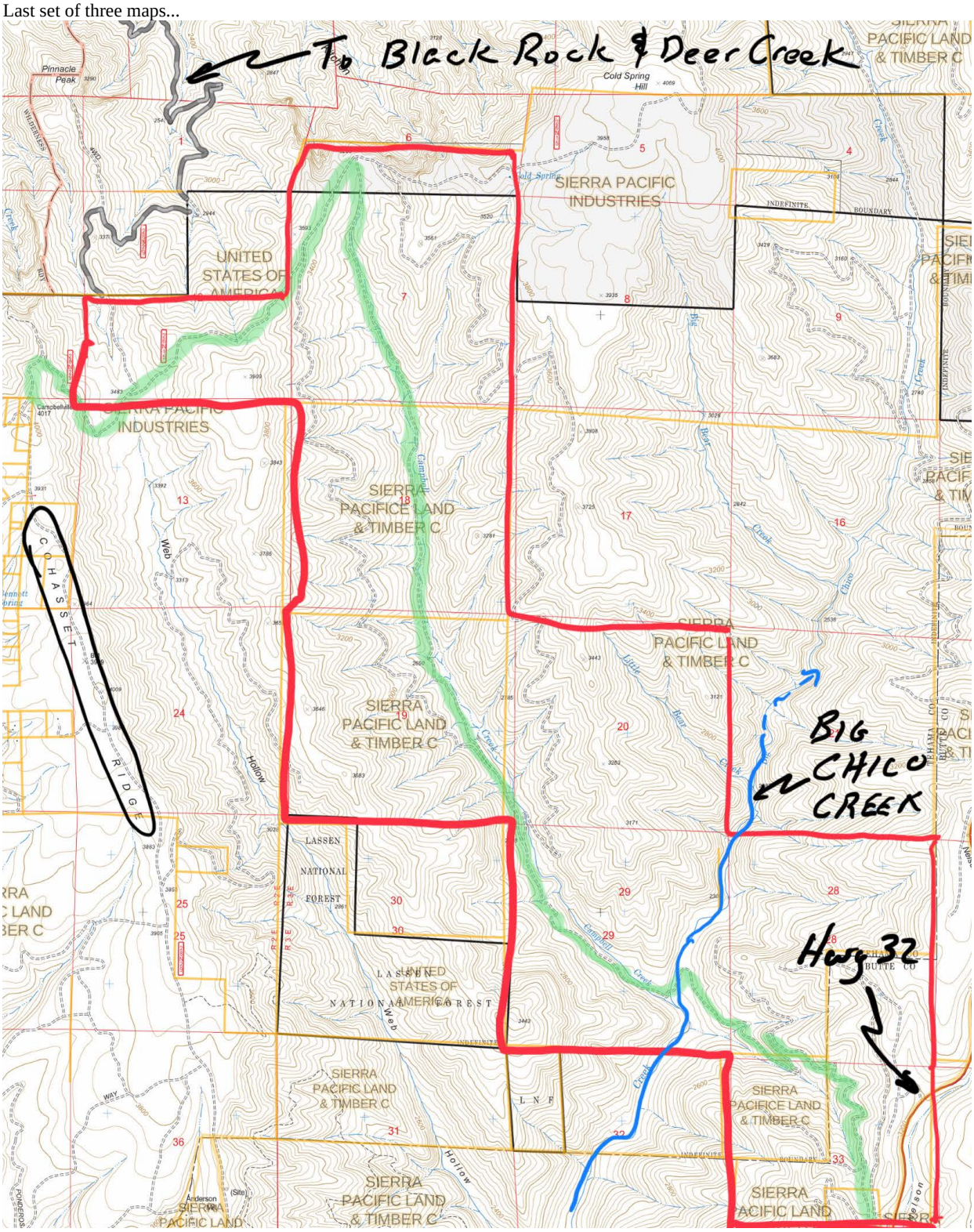
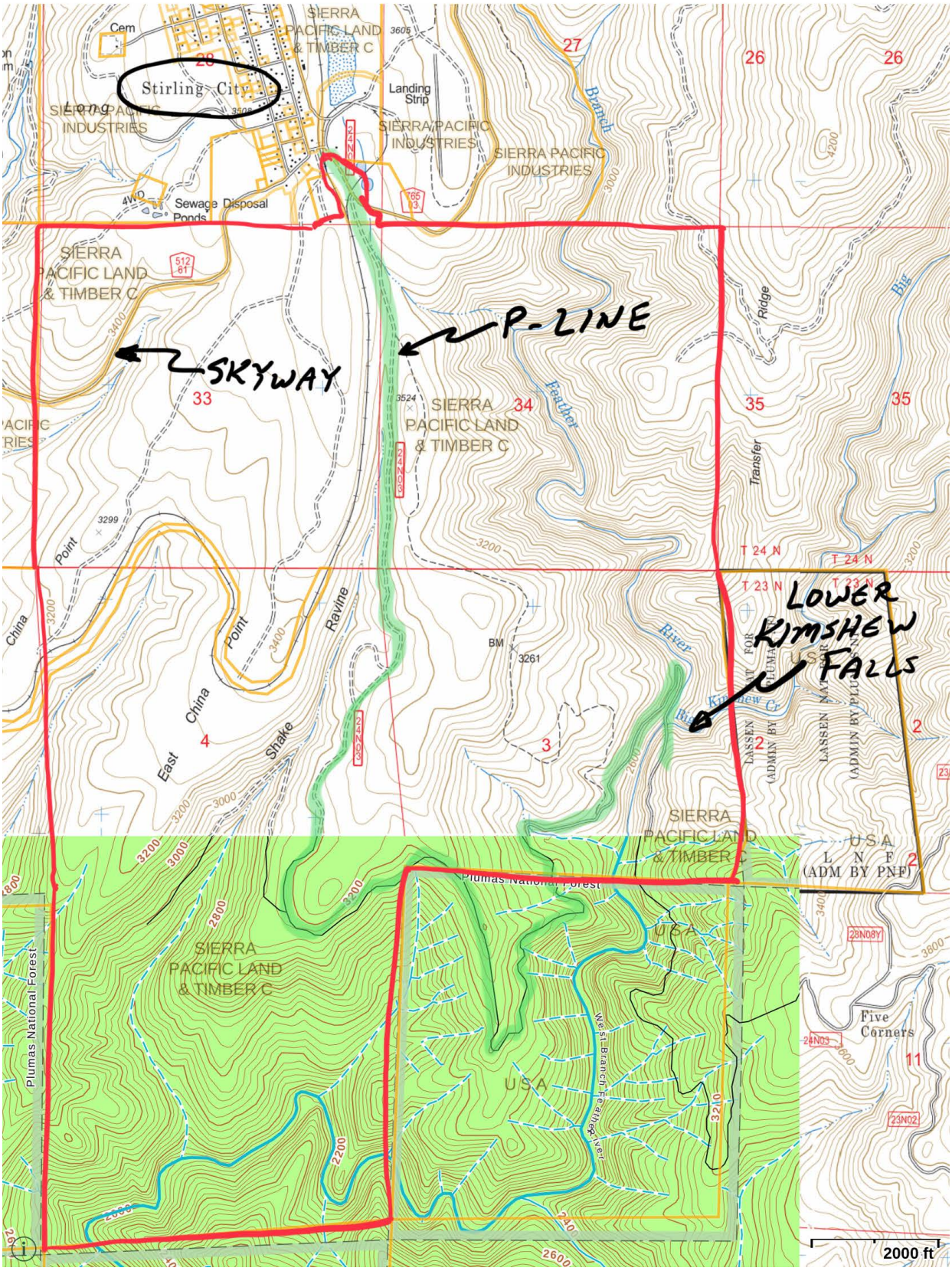
Last set of three maps...




Stirling City
Cem
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SIERRA PACIFIC LAND & TIMBER C
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4WD
P-LINE
SKYWAY
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Feather
Branch
Ridge
Transfer
Big
Point
China
East
Shake
Ravine
River
Kimshew Cr
BM
3261
T 24 N
T 23 N
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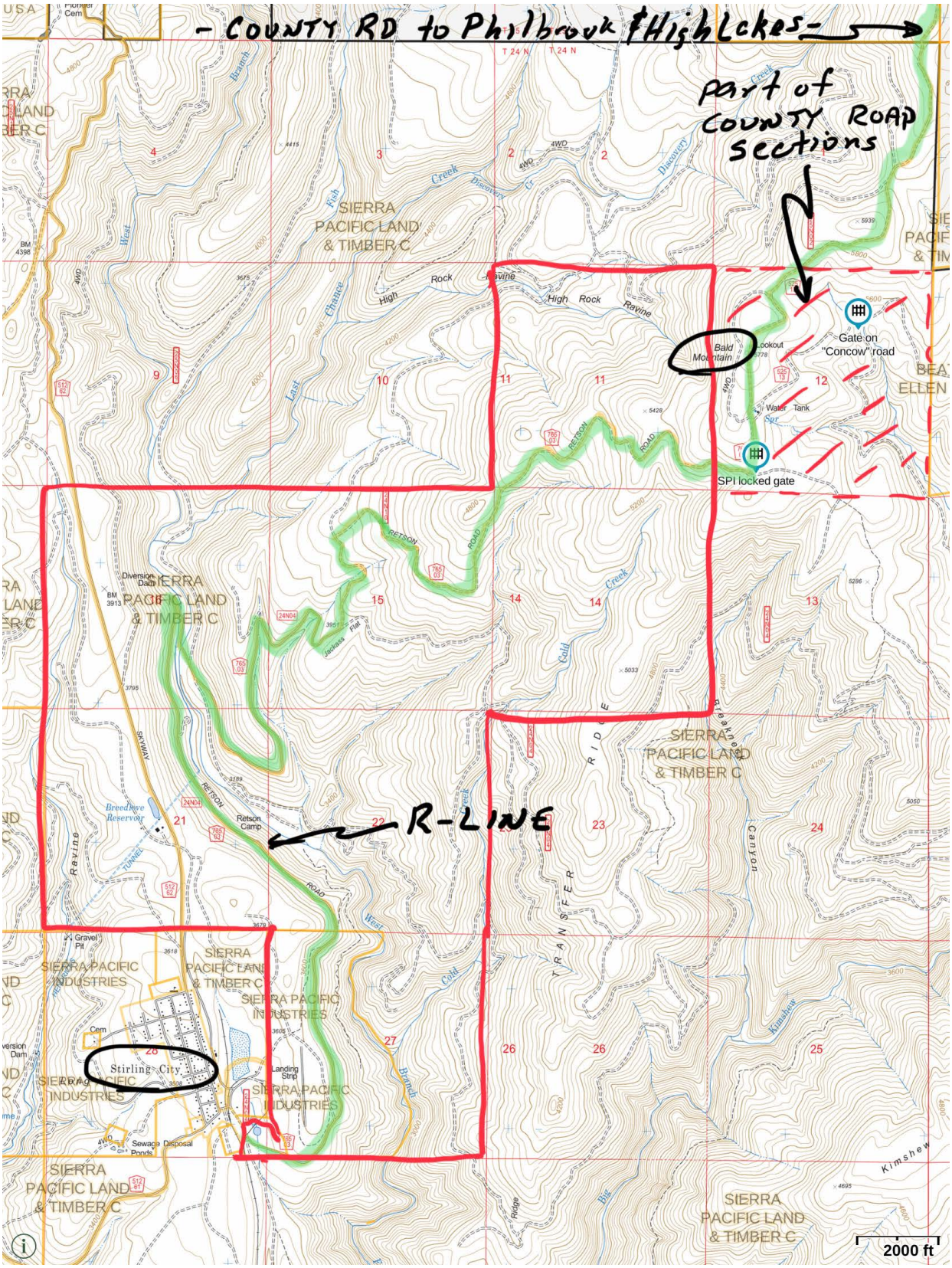

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>> I dont believe anyone except you and I and Doug Laurie are working on mapping roads. I think these types of maps would be useful in preparation for putting them into GIS.
>>
>> Steve Roberts mentioned to me an interest in looking at lands from Kimshew Point going East. That was not official, but it was his comment.
>>
>> I believe we will need to seek OHV Grant's for maintenance and/or development.

24N04 has been a focus for years and is only graded to ML3 conditions where SPI did so. I believe it would be ML2. That is an area of discussion, for sure.

We could try for NEPA funding through the CA OHV as well. Not sure if the acquisition issue would be a concern to the state but I think opening up the roads to regain traditional OHV access could be a compelling project.

Hope that answers your questions. Dennis, once we have a good list of roads, can we use County GIS resources or would we need to find another way?

Thanks,

Peggy

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Nick Repanich <nrepanich@csuchico.edu>
Date: 8/6/19 2:44 PM (GMT-08:00)
To: "Moak, Peggy" <pmoak@buttecounty.net>
Cc: Thad Walker <thad@bcrcd.org>, Vance Severin <mrshred@sbcglobal.net>, Teri Faulkner <terifa@ix.netcom.com>, "Schmidt, Dennis" <DSchmidt@buttecounty.net>
Subject: Re: maps for SPI Land Interchange project

Those were just samples, and there are a few more to come if you all think I should take the time to finish it up. Yes? No - go straight to GIS? Is anyone else working on the mapping so we don't duplicate effort? I also think we need to clarify with SPI what they mean when they say "out past Kimshew", if that was ever in writing or a real guideline. I understand that area is where roads are the most sensitive due to the nature of the decomposed granite, so I wonder if that was their justification. Then the next thing we need to deal with is whose budget and $$ to maintain these roads. Then someone probably has to pay for NEPA to bring these roads into the PNF/LNF system, or at least we can check their needed process ahead of time. And finally, are we going to do all this and then have the PNF say that 24N04 is an ML3 road and no OHV allowed? it is not included in the 5-County Planning to my knowledge.

Nick

On Aug 6, 2019, at 10:24 AM, Moak, Peggy <pmoak@buttecounty.net<mailto:pmoak@buttecounty.net>> wrote:

Nick, thanks for taking this on : -) Could you enlarge the area bordered in red to include the Big Kimshew Creek area and Keyser Creek to the degree sufficient to allow access to Concow Road off the R-Line going to Bald Mountain? Also low enough to incorporate Kimshew Falls? And Doug Laurie will be submitting his list with justification prior to the 19th, at which time I will be attempting to get the spreadsheet (requested by Dave Brillenz) completed. I think it would be advantageous to put this in GIS format so that we can see the whole spectrum (less detail but better idea of parcels) and also zoom in to get good resolution on specific areas.

Thanks again,

Peggy

From: Nick Repanich <nrepanich@csuchico.edu<mailto:nrepanich@csuchico.edu>>
Sent: Monday, August 5, 2019 1:53 PM
To: Thad Walker <thad@bcrcd.org<mailto:thad@bcrcd.org>>; Moak, Peggy <pmoak@buttecounty.net<mailto:pmoak@buttecounty.net>>; Vance Severin <mrshred@sbcglobal.net<mailto:mrshred@sbcglobal.net>>; Teri Faulkner <terifa@ix.netcom.com<mailto:terifa@ix.netcom.com>>
Subject: maps for SPI Land Interchange project

Hi all,

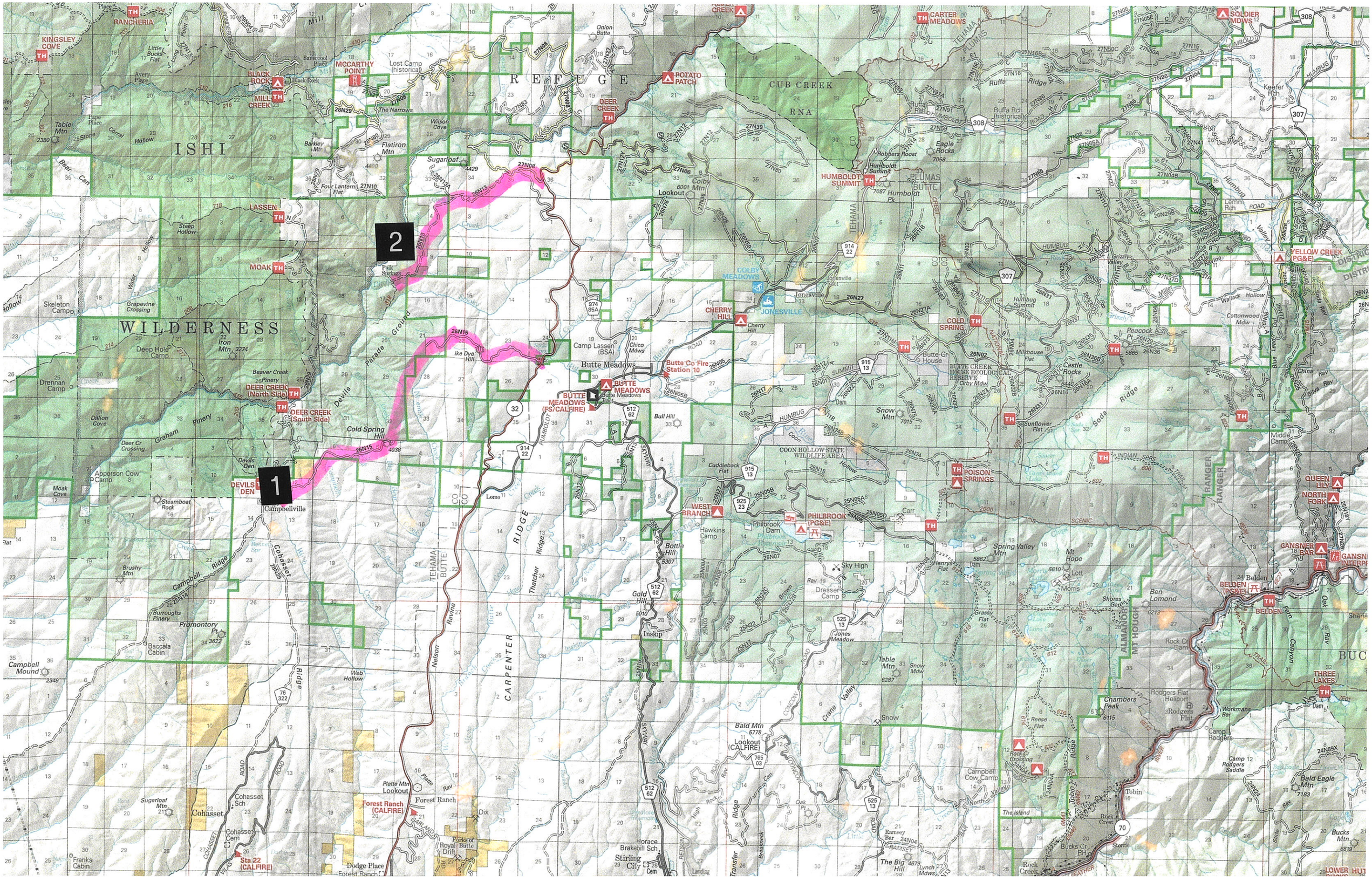
Just FYI, I am taking the feedback from the last meeting and making some rudimentary

maps that will help show where the parcels are in the big County-wide picture, and well as individual maps that we can use in the next meeting. As soon as I have them, the plan was to work through them with you all and then see if we need to use Thad RCD GIF resources, or whether these served the purpose for the next meeting. After these areas are generally approved, I guess that is when we would get serious about acerage, or whatever SPI and PNF/LNF need to proceed.

Additional?

Attached are some samples - not complete. Right idea?<image001.jpg><image002.jpg> <image003.jpg>

Nick


2
1
ISHI
WILDERNESS
REFUGE
CUB CREEK
RNA
KINGSLEY COVE
RANCHERIA
MCCARTHY POINT
BLACK ROCK
MILL CREEK
DEER CREEK
POTATO PATCH
CARTER MEADOWS
SOLDIER MDWS
HUMBOLDT SUMMIT
LASSEN
MOAK
GOLBY MEADOWS
JONESVILLE
CHERRY HILL
COLD SPRING
YELLOW CREEK (PG&E)
DEER CREEK (North Side)
DEER CREEK (South Side)
BUTTE MEADOWS
BUTTE MEADOWS (FS/CALFIRE)
Butte Co Fire Station 10
DEVILS DEN
Campbellville
POISON SPRINGS
WEST BRANCH
PHILBROOK (PG&E)
QUEEN LILY
NORTH FORK
GANSNER BAR
BELDEN (PG&E)
BELDEN
THREE LAKES
Forest Ranch (CALFIRE)
Sta 22 (CALFIRE)
Stirling City
Cohasset
Tobin
Belden
Butte Meadows
Jonesville
Campbellville
Forest Ranch
Stirling City
Cohasset
Tobin
Belden
TEHAMA
BUTTE
PLUMAS
CARPENTER RIDGE
ALMANOR
MT HOUGH
RANGER
COON HOLLOW STATE WILDLIFE AREA
BUTTE CREEK HOUSE ECOLOGICAL RESERVE
Lookout
Colby Mtn
Sugarloaf
Flatiron Mtn
Iron Mtn
Table Mtn
Snow Mtn
Bald Mtn
Lookout (CALFIRE)
Platte Mtn Lookout
Bull Hill
Sky High
Dresser Camp
Philbrook Dam
Hawkins Camp
Spring Valley Mtn
Mt Hope
Ben Lomond
Chambers Peak
Rodgers Flat
Campbell Cow Camp
Bald Eagle Mtn
Bucks Mtn
Campbell Mound
Promontory Pt
Burroughs Pinery
Baccala Cabin
Franks Cabin
Steamboat Rock
Abperson Cow Camp
Deep Hole Camp
Drennan Camp
Skeleton Camp
Grapevine Crossing
Steep Hollow
Four Lantern Flat
Wilson Cove
The Narrows
Savercool Place
Lost Camp (historical)
Onion Butte
Robbers Roost
Eagle Rocks
Humbolt Pk
Ruffa Ridge
Ruffa Rch (historical)
Keefer Rch
Lemm Rch
Humbug Summit
Grizzly Valley
Peacock Pt
Castle Rocks
Milkhouse Flat
Butte Cr House
Snow Mtn
Sunflower Flat
Middle Camp
Cottonwood Mdw
Cuddleback Flat
Carr
Jones Meadow
Table Mtn
Snow Mdw
Crane Valley
Rock Cr Dam
Rock Crest
Bucks Cr Pt
Storrie
The Island
Ramsey Bar
The Big Hill
Lynch Mdws
Horace Brakebill Sch
Dodge Place Forest Ranch
Dix
Cohasset Sch
Cohasset Cem
Sugarloaf Mtn
Web Hollow
Nelson Ravine
Thatcher Ridge
Brown Canyon
Oak Ridge
Transfer Ridge
Breakneck Ridge
Rock Creek Crossing
Rock Creek
Tobin Ridge
Workmans Bar
Camp Rodgers
Camp 12 Rodgers Saddle
Rodgers Flat Heliport
Reese Flat
Middle Fork Feather River
Lower Hut
Bear Can
Table Mtn
Stone Hollow
Avery Place
Little Bucks Flat
Tape Place
Canal Hollow
Mill Creek
Berkley Mtn
Steep Hollow
Grapevine Crossing
Iron Mtn
Ike Dye Hill
Parade Ground
Beaver Creek
Pinery
Dillon Cove
Deer Cr Crossing
Graham Pinery
Devils Den
Moak Cove
Brushy Mtn
Campbell Ridge
Cohasset Ridge
Sugarloaf Mtn
Franks Cabin
Cuddleback Flat
Lomo
Bottle Hill
Gold Hill
Inskip
Jones Meadow
Table Mtn
Snow Mdw
Bald Mtn
Lookout (CALFIRE)
Platte Mtn Lookout
Forest Ranch
Dix
Horace Brakebill Sch
Stirling City
Ramsey Bar
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Camp Rodgers
Camp 12 Rodgers Saddle
Rodgers Flat Heliport
Reese Flat
Middle Fork Feather River
Lower Hut

TO: Butte County Forest Advisory Committee

FROM: Douglass G. Laurie
193 Panama Ave.
Chico, CA 95973
530 342-1977

SUBJECT: Restored Access To Public Lands

DATE: August 15, 2019

Thank you for the opportunity to provide input regarding potential land swaps between the United States Forest Service and Sierra Pacific Industries that would restore motorized access to existing public lands now blocked by SPI.

Please include:

1. USFS road 26N15 from Ponderosa Way at Web Hollow to State Route Highway 32 (Deer Creek Highway). This road is also designated as H-Line by SPI. SPI road 260-G would also provide access directly from H-Line to Highway 32 at the Soda Springs area. This will restore public access to existing LNF, including the Devil's Parade Ground, Murphy's Trail down to the historic site of Murphy's on Deer Creek, and a substantial length of Deer Creek canyon. Additionally, this will potentially restore a critical back-door emergency escape route for Cohasset residents.

2. USFS road 26N13 from USFS road 2708 to include the entire length of the roadway to Polk Springs. Road 26N13 is designated as J-Line by SPI. Road 27N08 is designated as K-Line by SPI. This will restore public access to existing LNF including Wilson Cove and a substantial length of Deer Creek canyon that follws the contour of state game refuge Tehama 1-G. There is a USFS trail head (318) at Polk Springs ending in the area of Murphy's along Deer Creek. Nearby USFS trail 2E06 also provides hiking opportunities along Deer Creek canyon within the refuge.

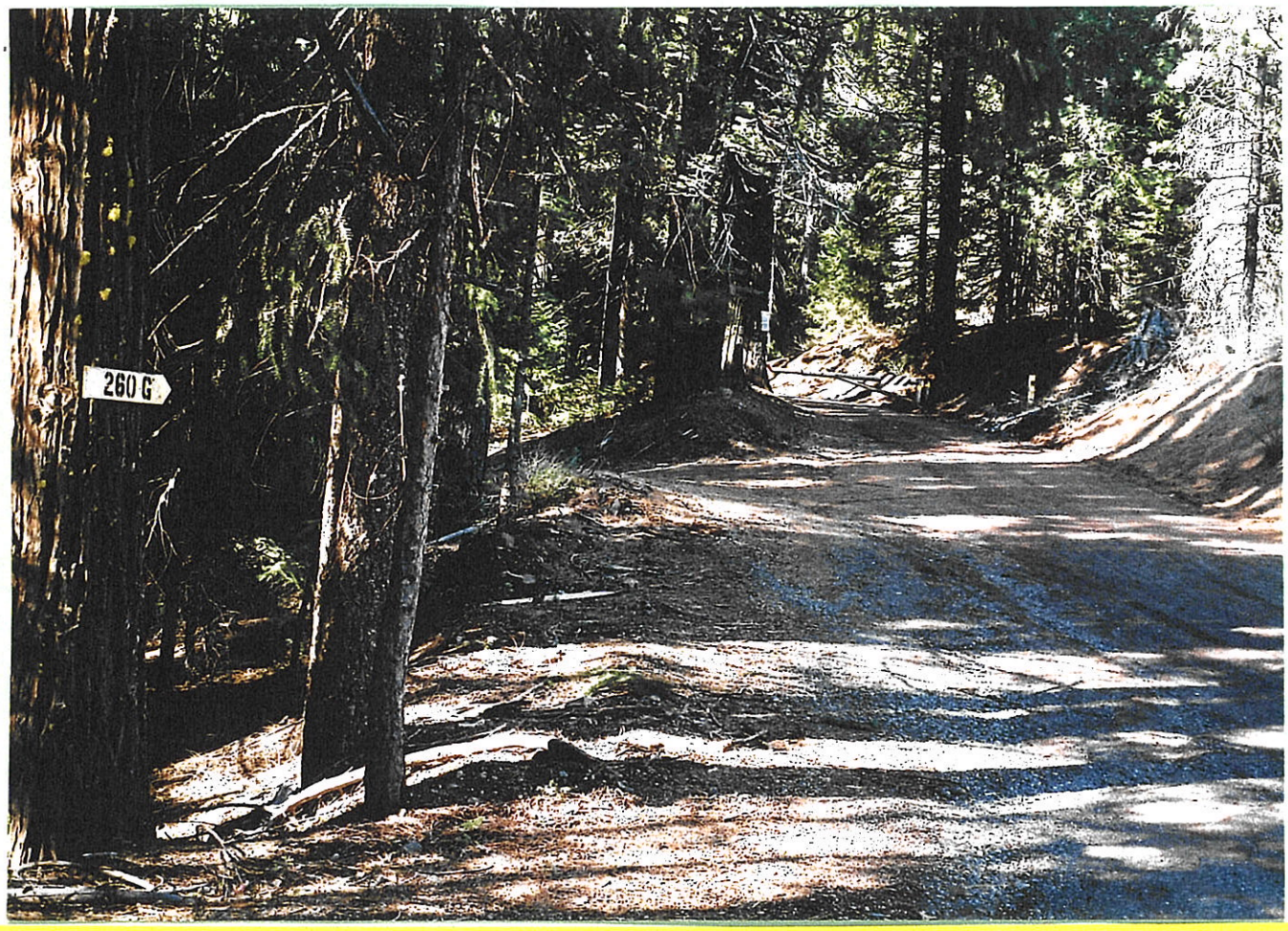
The restoration of public access to these areas will once again provide multiple use outdoor recreation opportunities to the public. The eyes of the public will also be restored to this area of the LNF.

Respectfully,

D. G. Laurie

Douglass G. Laurie

cc: file



ROAD 260G,OFF HWY.32. ROAD ENTERS LNF TO MURPHY'S TRAIL.

CLOSER VIEW OF LOCKED GATE.

EXITING 260G BACK TO HWY 32.

"USFS PLEASE KEEP LOCKED. SPI." @ LOCK.