René P. Voss (CA Bar No. 255758)
Natural Resources Law
15 Alderney Road
San Anselmo, CA 94960
Phone: (415) 446-9027
Email: renepvoss@gmail.com
LEAD COUNSEL

Oliver J. H. Stiefel (OR Bar No. 135436)
(503) 227-2212 | oliver@crag.org
Kelly Chang (OR Bar No. 223727)
(503) 234-0788 | kelly@crag.org
Crag Law Center
3141 E Burnside St,
Portland, OR 97214
LEAD COUNSEL
Applicants Pro Hac Vice

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO OR OAKLAND DIVISION

KLAMATH FOREST ALLIANCE, EARTH ISLAND INSTITUTE, SEQUOIA FORESTKEEPER, CONSERVATION CONGRESS, AMERICAN WHITEWATER, ENVIRONMENTAL PROTECTION INFORMATION CENTER, and CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE,

Defendant.

No.: 3:23-cv-3601

COMPLAINT

Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*)

GLOSSARY OF TERMS

ACS	Aquatic Conservation Strategy
AMS	Aquatic Management Strategy
APA	Administrative Procedure Act
AW	American Whitewater
BiOp	Biological Opinion
CAR	Critical Aquatic Refuge
CC	Conservation Congress
the Center	Center for Biological Diversity
CEQ	Council on Environmental Quality
Defendant	United States Forest Service
DN	Decision Notice
EA	Environmental Assessment
EII	Earth Island Institute
EIS	Environmental Impact Statement
EPIC	Environmental Protection Information Center
ESA	Endangered Species Act
FONSI	Finding of No Significant Impact
Forest Service	United States Forest Service
Hazard Tree Guidelines	Forest Service internal guidelines for identification and mitigation of hazard trees
KFA	Klamath Forest Alliance
LAA	Likely to Adversely Affect
ML	Maintenance Level
NF	National Forest
NEPA	National Environmental Policy Act
NFMA	National Forest Management Act
NLAA	Not Likely to Adversely Affect
Project	Region 5 Post-Disturbance Hazardous Tree Management Project
R5 Hazard Tree Project	Region 5 Post-Disturbance Hazardous Tree Management Project
RCA	Riparian Conservation Area
Region 5	Pacific Southwest Regional Office of the Forest Service
SFK	Sequoia ForestKeeper
SSN	Southern Sierra Nevada
USFWS	United States Fish and Wildlife Service
WSRA	Wild and Scenic Rivers Act

INTRODUCTION

1. This is a civil action for declaratory and equitable relief, which stems from Defendant's (the "Forest Service's") actions related to a roadside hazard tree project of unprecedented scale, covering nine of California's national forests.

2. The Forest Service has authorized "hazard tree" felling and removal, including by commercial timber sale, within the footprint of recent fires on the Six Rivers, Mendocino, Klamath, Shasta Trinity, Lassen, Plumas, Sierra, Sequoia, and Inyo National Forests ("NFs"). The project is known as the "Region 5 Post-Disturbance Hazardous Tree Management Project," also known as the "R5 Hazard Tree Project" or "Project" (*see* https://www.fs.usda.gov/project/?project=60950).

3. While each Forest signed a separate decision notice, the R5 Hazard Tree Project was noticed to the public as a single action or program in October 2021 covering three geographic zones—the North Zone (Six Rivers, Mendocino, Klamath, Shasta Trinity NFs), the Central Sierra Zone (Lassen and Plumas NFs), and the Southern Sierra Zone (Sierra, Sequoia, and Inyo NFs).

4. The Pacific Southwest Regional Office of the Forest Service ("Region 5") initiated, planned, and led the Project, from scoping, through analysis, and even final administrative review; thus, it is titled the R5 Hazard Tree Project.

5. Collectively, the Project authorizes the felling and removal of hazard trees up to 300 feet on either side of Forest Service roads (a 600-foot-wide corridor) covering over 400,000 acres, as well as along trails, developed sites, and adjacent areas. The Forest Service defines "hazard trees" as those standing trees that present a hazard to people due to conditions such as deterioration or physical damage.

6. Authorizing logging operations on over 417,208 acres of forestlands in California, the Project likely constitutes one of the largest, if not the largest, logging/vegetation management projects ever proposed in California's history.

7. Even at the regional scale, each zone's logging/vegetation management footprint, at 187,880 acres (North), 131,066 acres (Central Sierra), and 98,262 acres (Southern Sierra), would likely be the largest in California's history.

8. Although some of the trees targeted for felling and removal may be hazardous in

some sense, the felling and removal of hundreds of thousands of trees—or potentially millions of trees—as authorized by this Project would adversely and significantly affect public lands, fish and wildlife habitat, and wild and scenic rivers along with their corridors.

9. Such a major federal action requires detailed analysis in an Environmental Impact Statement ("EIS") to comply with the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321–4370h.

10. Instead, the Forest Service prepared three Environmental Assessments ("EAs") and associated Findings of No Significant Impact ("FONSIs").

11. Plaintiffs challenge the sufficiency of the analysis for the Project and allege that the Forest Service's action to log hundreds of thousands of acres across this geographically, ecologically, and biologically diverse region is a major federal action significantly affecting the environment, which requires one or more EISs to comply with NEPA.

12. By logging sensitive post-fire habitat, the Project would adversely affect several species listed under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531–44—including the threatened northern spotted owl, the threatened Humboldt marten, the endangered Southern Sierra Nevada Pacific fisher, and the California spotted owl, now proposed for listing as "threatened" throughout the Sierra Nevada Mountain range—as well as Forest Service sensitive species, including the northern goshawk and Pacific fisher.

13. The Project would adversely affect riparian areas, water quality, carbon storage, and geologic hazards by increasing soil erosion and landslide potential through steep-slope logging and log hauling along primitive, stream-side forest-roads.

14. The Project would adversely affect wild and scenic rivers and their corridors; heavy logging treatments are incongruous with the statutory mandate to place primary emphasis on the protection of aesthetic, scenic, historic, archeologic, and scientific features of such rivers and their corridors.

15. Rather than take a "hard look" at site-specific direct, indirect, and cumulative effects, the Forest Service's cursory analyses have only offered general and conclusory statements that the Project would not significantly affect proposed, threatened, endangered, and sensitive species,

exacerbate geologic hazards, augment the climate impacts, reduce carbon storage, or adversely affect designated wild and scenic rivers, and those rivers that the Forest Service has identified as eligible wild and scenic rivers. The analytical scale was simply too coarse for the agency to satisfy its obligations under NEPA to take a "hard look" at the potential adverse effects from the Project on these and the myriad other resources.

16. During the public involvement process, Plaintiffs implored the Forest Service to consider alternatives, including ones that would reduce the size and scope of the Project. For example, Plaintiffs suggested that the Project focus on higher-use (maintenance level 3 and above) roads rather than lower-use (maintenance level 2) roads that may only be accessed with high clearance vehicles, most of which are not needed for public, administrative, or recreational access.

17. Moreover, Plaintiffs urged the Forest Service not to tier to guidelines for tree felling and removal ("Hazard Tree Guidelines") to support its conclusions until those guidelines have been analyzed under NEPA.

18. Instead, the Forest Service dismissed any consideration of Plaintiffs' proposed alternatives because it manufactured a purpose and need so slender as to define competing reasonable alternatives out of consideration.

19. Because the Forest Service has failed to prepare an EIS for its major Federal action, failed to take a hard look at the potential adverse environmental effects from its action, and failed to consider a reasonable range of alternatives, the Project violates NEPA and is arbitrary, capricious, and contrary to law, and thus violates the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A).

JURISDICTION

20. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 5 U.S.C. §§ 701 et seq. (Administrative Procedure Act) and 28 U.S.C. §§ 2201 and 2202 (Declaratory Judgment Act). Plaintiffs have exhausted all administrative remedies and the violations of law claimed below are ripe for judicial review.

DIVISIONAL ASSIGNMENT

21. Venue lies in the Northern District of California, pursuant to 28 U.S.C. § 1391(e),

because a substantial part of the property and events that give rise to this suit occur in this District and because some of the Plaintiffs, Klamath Forest Alliance, Earth Island Institute, and Environmental Protection Information Center, reside within the District in Humboldt and Alameda Counties.

22. Moreover, because a substantial part of the events or omissions that give rise to the claims herein occurred in the Six Rivers and Mendocino National Forests, located in Del Norte, Humboldt, Mendocino, and Lake Counties, and because Plaintiffs decline consent to review of the case by a magistrate judge, assignment to either the San Francisco or Oakland Division of this Court is proper under Civil Local Rule 3-2(c) & (f).

PARTIES

23. Plaintiff KLAMATH FOREST ALLIANCE ("KFA") is a 501(c)(3) non-profit conservation organization based in Arcata, California. KFA works in the public interest with the mission to promote sustainable ecosystems and sustainable communities. KFA was founded in 1989 by residents of the Klamath and Salmon River watersheds and represents over 500 members and supporters. KFA participates in forest planning through agency engagement, substantive comments, and collaboration with the goal of protecting and restoring the biodiversity, fisheries, wildlife, mature forests, and public lands of the Klamath-Siskiyou Mountain region, particularly the Klamath, Six Rivers and west side of the Shasta-Trinity National Forests. KFA's members and supporters use and enjoy the Project area and would be irreparably harmed if the Project moves forward.

24. Plaintiff EARTH ISLAND INSTITUTE ("EII") is a nonprofit corporation organized under the laws of the State of California. EII is headquartered in Berkeley, California. EII's mission is to develop and support projects that counteract threats to the biological and cultural diversity that sustains the environment. Through education and activism, these projects promote the conservation, preservation and restoration of the Earth. One of these projects is the John Muir Project, whose mission is to protect all federal public forestlands from commercial exploitation that undermines and compromises science-based ecological management. John Muir Project offices are in San Bernardino County, California. EII is a membership organization with over 15,000 members in the U.S., over 3,000 of whom use and enjoy the National Forests of California for recreational,

educational, aesthetic, spiritual, and other purposes. EII through its John Muir Project has a longstanding interest in protection of national forests. EII's John Muir Project and EII members actively participate in governmental decision-making processes with respect to National Forest lands in California and rely on information provided through the NEPA processes to increase the effectiveness of their participation. EII's members include individuals who regularly use and continue to use public lands within the Southern Sierra Nevada National Forests, including the exact tracts of lands in the Project area proposed for logging, in particular, for scientific study, recreational enjoyment, aesthetic beauty, and nature photography. These members' interests would be irreparably harmed by the planned logging, as they would no longer be able to scientifically study these areas in their pre-logging state, take nature photographs of the area in its pre-logging state, or enjoy the aesthetic beauty of the unlogged forest habitat and its inhabitants.

25. Plaintiff SEQUOIA FORESTKEEPER ("SFK") is a non-profit corporation residing in Weldon, California. Its mission is to protect and restore the ecosystems of the Southern Sierra Nevada, including, but not limited to, the Giant Sequoia National Monument, Sequoia National Forest, Sequoia and Kings Canyon National Parks, and Mountain Home State Forest through monitoring, enforcement, education, and litigation. Sequoia ForestKeeper's members, many of whom reside in local areas including Kern, Tulare, Fresno, and Kings Counties, and others who visit from across the country, use and continue to use the national forests and parks of the Southern Sierra Nevada for activities such as hiking, bird and animal watching, aesthetic enjoyment, quiet contemplation, fishing, scientific study, and to improve their health, including the exact tracts of the lands and waters that are now planned for logging as part of the Project. These members' interests would be irreparably harmed by the planned logging, as they would no longer be able to scientifically study these areas in their pre-logging state, take nature photographs of the area in its pre-logging state, or enjoy the aesthetic beauty of the unlogged forest habitat and its inhabitants.

26. Plaintiff CONSERVATION CONGRESS ("CC") is a non-profit 501(c)(3) organization incorporated in the State of California, dedicated to maintaining, protecting, and restoring the native ecosystems of northern California. Conservation Congress has a longstanding organizational interest in the proper and lawful management of National Forests located in northern

California, including the Mendocino, Six Rivers, and Shasta Trinity National Forests. Conservation Congress also has an organizational interest in the protection of the northern spotted owl. Conservation Congress's members, staff, and board members participate in a wide range of aesthetic, scientific, business, and recreational activities, such as hiking, fishing, hunting, photography, wildlife viewing, appreciation of scenery, and bird watching, including attempts to view and appreciate the northern spotted owl in the Mendocino, Six Rivers, and Shasta Trinity National Forests, including the specific federal lands involved in the Project, and have concrete plans to continue these activities. The organization's membership includes professional photography businesses and freelance photographers who earn income by photographing in northern California's National Forests. Conservation Congress' members, staff, and board members pursue, and have concrete plans to continue pursuing, these aesthetic, scientific business and recreational activities, including on the lands involved in the Project. These interests of Conservation Congress, its members, officers, and staff are substantial and are adversely affected by Defendants' failure to comply with NEPA. The requested relief would redress the injuries of Conservation Congress and its members, staff, and board members.

27. Plaintiff AMERICAN WHITEWATER ("AW") is a non-profit corporation founded in 1954 and organized under the laws of the State of Missouri. It has three satellite offices in California. American Whitewater's mission is to protect and restore the nation's whitewater rivers and to enhance opportunities to enjoy them safely. With approximately 7,000 members and 85 locally based affiliate clubs—including five in California—the organization is the primary advocate for the preservation and protection of whitewater rivers throughout the United States, connecting the interests of human-powered recreational river users with ecological and science-based data to achieve the goals within its mission. AW's members proposed some of the initial river protection concepts that were incorporated into the Wild and Scenic Rivers Act, and since the Act's passage in 1968, the organization has advocated for and defended the nation's wild and scenic rivers. A significant number of AW's members use and enjoy the rivers and lands affected by the R5 Hazard Tree Project and would suffer a degraded experience due to the Project's impacts on eligible and designated wild and scenic rivers.

28. Plaintiff ENVIRONMENTAL PROTECTION INFORMATION CENTER ("EPIC") is a nonprofit public benefit corporation organized under the laws of California and headquartered in Arcata, California. Since 1977, EPIC has defended the wildlife and wild places of the Klamath Mountains and North Coast Range. EPIC's mission is science-based protection and restoration of Northwest California's forests and seeks to ensure that a connected landscape exists for species survival and climate adaptation. EPIC's advocacy utilizes community organizing, public education, collaboration, and, when necessary, litigation. EPIC submits substantive comments on projects that would negatively impact public and private forestlands. Most of EPIC's 2,000 members and 13,000 supporters live in northern California. EPIC's members and staff use, enjoy, and recreate on public lands and Wild and Scenic Rivers, including those within the project area on the Klamath, Mendocino, Six Rivers, and Shasta-Trinity National Forests, and would be irreparably injured by the Project.

29. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY ("the Center") is a nonprofit corporation headquartered in Tucson, Arizona, with offices in a number of states and Mexico. The Center has an office in Oakland, California. The Center works through science, law, and policy to secure a future for all species, great or small, hovering on the brink of extinction. The Center is actively involved in protecting threatened and endangered species, and their habitat, including numerous imperiled species in California such as the Pacific fisher, northern spotted owl, and California spotted owl. The Center is actively involved in participating in the Forest Service's public processes for plan-level decisions and site-specific projects in California. The Center has over 89,000 members throughout the United States and the world, including many members who regularly recreate on and enjoy the national forests in California.

30. This suit is brought by the Plaintiffs on behalf of themselves and their adversely affected members and staff. Plaintiffs and their members' present and future interests in and use of the national forest areas are and would be directly and adversely affected by the Project. Those adverse effects include, but are not limited to: (1) impacts to native plants and wildlife and their habitats within and around the Project area from logging; (2) reduction and impairment of recreation opportunities; (3) impaired aesthetic value of forest lands, trails, and landscapes caused by

Defendant's logging; and (4) loss of scientific study and viewing opportunities with regard to wildlife in areas proposed for logging. In addition, Plaintiffs and their members and staff have an interest in ensuring that Defendant complies with all applicable laws, regulations, and procedures pertaining to the management of these publicly-owned National Forest lands.

31. The Forest Service's implementation of the R5 Hazard Tree Project is in contravention of NEPA. Because Defendant's actions approving the Project violate the law, a favorable decision by this Court would redress the actual and imminent injuries to Plaintiffs. If the Forest Service were to comply with NEPA, it would supplement its environmental analyses and prepare one or more EIS's to consider the significant effects from the Project on imperiled species and designated and eligible wild and scenic rivers. The analysis would take a "hard look" at the direct, indirect, and cumulative effects from its actions, and consider additional alternatives to the proposed action that could minimize or avert the harms to Plaintiffs' members caused by the logging of trees and destruction of wildlife habitat and wild and scenic rivers along with their corridors by the proposed actions.

32. Defendant UNITED STATES FOREST SERVICE ("Forest Service") is an agency within the U.S. Department of Agriculture, which holds National Forests in trust for the American people and is responsible for the R5 Hazard Tree Project.

LEGAL BACKGROUND

The National Environmental Policy Act (NEPA)

33. Congress enacted NEPA "[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation."42 U.S.C. § 4321.

34. Through NEPA, Congress also established the Council on Environmental Quality ("CEQ") to develop national policies to promote environmental quality. 42 U.S.C. § 4342; *id.* § 4344(4).

35. The CEQ promulgated uniform regulations implementing NEPA in 1978, which

remained in force until 2020. *See* 40 C.F.R. Part 1500 (2019). CEQ modified the regulations in 2020. 85 Fed. Reg. 43,304 (July 16, 2020); *see* 40 C.F.R. Part 1500 (2021). The 2020 CEQ regulations are subject to multiple lawsuits. In 2022, CEQ then rescinded some of the modifications. 87 Fed. Reg. 23,453 (Apr. 20, 2022) *see* 40 C.F.R. Part 1500 (2021). Additional rulemaking proposing broader changes to the 2020 modifications is forthcoming.

36. The Forest Service promulgated its own set of regulations implementing NEPA, amended most recently in 2020. 85 Fed. Reg. 73,620 (November 19, 2020) (codified at 36 C.F.R. Part 220). The Forest Service is bound by its own regulations.

37. When the Forest Service issued its Scoping Notice for the Project, on October 25, 2021, the 2020 CEQ regulations were in force. At the time of the final decisions, the 2022 CEQ regulations were in force.

38. Congress amended NEPA through the "Builder Act" contained in the "Fiscal Responsibility Act of 2023." Pub. L. No. 118-5; 138 Stat. 38-46 (Sec. 321). The amendments codify some of the requirements of the 2022 CEQ regulations.

39. While the state of NEPA and its regulations were somewhat in flux during the decisionmaking process for the Project, a series of fundamental requirements applied.

40. NEPA requires all agencies of the federal government to prepare a "detailed statement" that discusses the environmental impacts of, and reasonable alternatives to, all "major Federal actions significantly affecting the quality of the human environment."42 U.S.C. § 4332(2)(C). This statement is commonly known as an environmental impact statement ("EIS"). The EIS must describe the adverse environmental effects of the proposed action and alternatives to the proposed action. *Id.*

41. Agencies may prepare a less detailed Environmental Assessment ("EA") if the significance of the effects is unknown and the need for an EIS has not been determined.

42. In the EA, the agency must disclose and consider the direct, indirect, and cumulative effects of a proposed action. Direct effects are those caused by the action and occur at the same time and place. Indirect effects are those caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Cumulative effects are those that result from the

incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.

43. In the EA, the agency must discuss the purpose and need for the proposed action. An agency may not define its objectives in unreasonably narrow terms.

44. In the EA, the agency must study, develop, and describe appropriate alternatives to the proposed action. The agency must give full and meaningful consideration to all reasonable alternatives.

45. The EA must provide sufficient evidence and analysis for determining whether to prepare an EIS, or a Finding of No Significant Impact ("FONSI") because the proposed action would not have significant effects.

46. In considering whether the effects of a proposed action are significant, agencies must analyze the potentially affected environment and the degree of effects of the action. In considering the potentially affected environment, agencies should consider the affected area and its resources, including ESA-listed species and critical habitat. In considering the degree of effects, agencies should consider both short- and long-term effects, both beneficial and adverse effects, effects on public health and safety, and effects that would violate Federal, State, Tribal, or local law protecting the environment.

47. If substantial questions are raised whether a project may have a significant effect upon the human environment, an EIS must be prepared.

48. An EA is intended to help an agency decide if an EIS is warranted; an EA is not meant to replace or substitute an EIS.

The National Forest Management Act (NFMA)

49. NFMA is the primary statute governing administration of national forests. Pursuant to NFMA and its implementing regulations, management of national forests occurs at two levels: forest and project.

50. At the forest level, NFMA requires the Secretary of Agriculture to "develop, maintain, and, as appropriate, revise land and resource management plans for units of the National

Forest System."16 U.S.C. § 1604(a).

51. The Forest Service, which manages the National Forest System, uses these plans, called "forest plans" to guide all natural resource management activities, including use of the land for "outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness."16 U.S.C. § 1604(e). A forest plan is a broad, long-term programmatic planning document for each forest, containing goals and objectives for individual units of the forest and providing standards and guidelines for management of forest resources.

52. The nine forests each have developed an individual forest plan. Subsequent to the adoption of the individual forest plans, the Forest Service has issued regional forest planning overlays, which amend portions of the individual forest plan.

53. In particular, the Forest Service in 1994 adopted the Northwest Forest Plan, which sets mandatory standards and guidelines for management actions within the range of the northern spotted owl. The four North Zone forests are subject to the Northwest Forest Plan. Also, in 2004, the Forest Service adopted the Sierra Nevada Forest Plan Amendment, or Sierra Nevada Framework, which sets mandatory standards and guidelines for management actions applicable to the Sierra Nevada forests, which include the three Southern Sierra forests and the two Central Sierra forests.

54. At the project level, once a forest plan is in place, site-specific actions or "projects" are planned and evaluated by the Forest Service. Each site-specific project must be consistent with the governing forest plan. 16 U.S.C. § 1604(i).

The Endangered Species Act (ESA)

55. Congress enacted the ESA to "provide a means whereby the ecosystems upon which endangered species and threatened species depend must be conserved" and to "provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate."16 U.S.C. § 1531(b).

56. To achieve these purposes, the Secretaries of Commerce and the Interior are responsible for administering and enforcing the ESA. 16 U.S.C. § 1532(15). The Secretaries delegated this responsibility to the National Marine Fisheries Service ("NMFS") and the United States Fish and Wildlife Service ("USFWS") (collectively, the "Services"), respectively. 50 C.F.R.

§ 402.02(b). FWS administers the ESA as to terrestrial and freshwater species, and NFMS administers the ESA as to marine and anadromous species, such as salmon.

57. The ESA makes it unlawful to "take" any "endangered" species and certain "threatened" species for which protective regulations have been promulgated. 16 U.S.C. §§ 1538(a)(1), 1533(d).

58. Section 7 of the ESA imposes substantive and procedural obligations on federal agencies like the Forest Service. Substantively, Section 7 provides that federal agencies must "insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the adverse modification of habitat of such species * * * determined * * * to be critical."16 U.S.C. § 1536(a)(2).

59. Procedurally, Section 7 requires federal agencies (the "action agency") to engage in consultation with the applicable Service (the "consulting agency") before undertaking a discretionary action that may affect listed species or critical habitat. 16 U.S.C. § 1536(a)(2).

60. If an action "may affect" listed species, the action agency must engage in consultation with the appropriate consulting agency. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14.

61. Section 7 consultation is either informal or formal. Informal consultation is a process designed to help the action agency determine whether to engage in formal consultation. 50 C.F.R. § 402.13. If the action agency determines that the proposed action may affect, but is "not likely to adversely affect" ("NLAA") listed species or critical habitat, and the appropriate Service concurs in writing, formal consultation is not required. 50 C.F.R. § 402.14(b)(1).

62. If the action agency decides that the action may affect, and is likely to adversely affect ("LAA") a listed species, the action agency must engage in formal consultation with the appropriate Service. 50 C.F.R. § 402.14(a).

63. During formal consultation, the appropriate Service must "formulate its biological opinion as to whether the action, taken together with cumulative effects, is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat."50 C.F.R. § 402.14(g)(4). The biological opinion ("BiOp") must be based on the best available scientific and commercial data. 16 U.S.C. § 1536(b).

Wild and Scenic Rivers Act (WSRA)

64. Congress enacted the WSRA to preserve selected rivers and their immediate environments in their free-flowing condition and to protect them for the benefit and enjoyment of future generations. 16 U.S.C. § 1271. Such rivers, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. *Id.*

65. Rivers eligible to be included in the national wild and scenic rivers system are those free-flowing streams with adjacent land area possessing one or more outstandingly remarkable values. 16 U.S.C. § 1273(b).“Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system.” *Id.* If included, such rivers are classified, designated, and administered as one of the following: “(1) wild river areas, or those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted; (2) scenic river areas, or those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads; or (3) recreational river areas, or those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.”16 U.S.C. § 1273(b)(1)–(3).

66. Both Congress and the Secretary of the Interior have designated certain rivers as components of the national wild and scenic rivers system. 16 U.S.C. § 1274 (“designated” rivers). Pursuant to 16 U.S.C. § 1276(d)(1), the Forest Service has identified additional rivers that are eligible for inclusion in the national wild and scenic rivers system (“eligible” rivers).

67. Irrespective of its classification, under the WSRA, “each component of the national wild and scenic rivers system shall be administered in such a manner as to protect and enhance the values which caused it to be included in the system.”16 U.S.C. § 1281(a).“Primary emphasis shall be given to protecting each component’s aesthetic, scenic, historic, archeologic, and scientific features.” *Id.*

The Administrative Procedure Act (APA)

68. The APA confers a right of judicial review on any person adversely affected by agency action. 5 U.S.C. § 702.

69. "Agency action made reviewable by statute and final agency action for which there is no adequate remedy in court are subject to judicial review."5 U.S.C. § 704.

70. Upon review, a court shall hold unlawful and set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with and/or without observance of procedure required by law. 5 U.S.C. § 706(2)(A),(D).

71. The issuance of the R5 Hazard Tree Project EAs, FONSIs, and DNs constitutes a final agency action.

FACTS

Background

72. Wildfires in 2020 and 2021, including the August Complex, River Complex, Dixie, Castle, and Creek fires, burned millions of acres of national forestland and other areas in California.

73. Tragically, these fires caused widespread evacuations and property and other damage, and, in some instances, resulted in human injuries and loss of life.

74. At the same time, forest fires are a natural phenomenon, a necessary ecological process responsible for forest regeneration. Countless species of flora and fauna depend on fire.

75. Because the 2020/2021 fires generally burned in a mosaic pattern, with varying degrees of intensity, there are varying degrees of fire-killed, living but partially burned, and living green trees within the fire footprints.

76. For example, in the Mendocino National Forest, within the footprint of the August Complex and Range fires, 23% of the area was unburned, 22% burned at low severity, 14% burned at moderate severity, and 40% burned at high severity (1% was unmapped).

77. Within the footprint of the fires are thousands of miles of Forest Service roads and trails, and hundreds of facilities (campgrounds, trailheads, Forest Service offices).

78. According to the Forest Service, fire-killed and/or damaged trees along roads and trails and near facilities pose a safety risk. The degree of risk is dependent upon a host of variables,

including the probability a tree will die, fall over, fall in the direction of a road, trail, or facility, and fall at a time at which it will actually cause damage because of variables such as traffic volume. There is no objective test for measuring the degree of risk.

Scoping

79. On October 25, 2021, the Forest Service released a proposal, titled "The Region 5 Post Disturbance Hazardous Tree Management project," which proposed hazard tree felling and removal, as well as removal of downed woody fuels resulting from hazard trees (slash), to reduce public safety hazards along portions of roads, trails, and near facilities within the 2020/2021 fire footprints.

80. The Forest Service proposed hazard tree felling, removal, and slash removal within the Inyo, Klamath, Lassen, Mendocino, Modoc, Plumas, Sequoia, Shasta-Trinity, Sierra, and Six Rivers National Forests, within the North, Central Sierra, and Southern Sierra sub-regional zones. According to the Project scoping notice, the Project would fell and remove killed or damaged trees around facilities and adjacent to national forest system roads and trails that are "likely" to fall within the next three to five years (according to the Forest Service's internal guidelines).

81. Citing the "time sensitive" nature of the Project, the Forest Service identified a need to expedite analysis. Final decisions, however, were not reached for all of the Forests for over 19 months.

82. Plaintiffs timely submitted scoping comments. Plaintiffs, *inter alia*, objected to the Project's massive scope, and requested that the Forest Service prepare an EIS because the proposed activities would result in significant adverse and cumulative effects on soils, wildlife, recreation, aquatic habitat, carbon storage, and more.

83. In broad strokes, Plaintiffs requested detailed analysis to provide a basis for adequately balancing the trade-offs between cutting hazard trees versus other important objectives such as wildlife habitat, carbon storage, climate change, and water quality.

84. Over 1,900 scoping comment letters were submitted.

Draft Environmental Assessments and Limited Emergency Actions

85. Rather than prepare one or more EISs for this action, on April 8, 2022, the Forest

Service Region 5 provided notice and released three draft Environmental Assessments (EAs) for comment for the North Zone, Central Sierra Zone, and Southern Sierra Zone, stating that the three separate zone-level EAs would collectively support up to nine forest-level decisions.

86. Although the EAs purported to reference additional documents supporting the analysis/conclusions, including specialist reports, biological evaluations, and other documents and information, the Forest Service did not make these additional documents available to the public until after the comment period had closed.

87. Plaintiffs timely submitted comments on the draft EAs. Plaintiffs contended that this massively large logging/vegetation management project should receive greater scrutiny in one or more EISs because of its large size and scope and the potential for significant direct, indirect, and cumulative effects to sensitive and ESA-listed species, as well as designated and eligible wild and scenic rivers.

88. Moreover, Plaintiffs again asked that the Forest Service consider reducing the size and scope of the project and its impacts to wildlife as well as designated and eligible wild and scenic rivers by studying a reasonable range of alternatives that would either close off some low-level use roads or defer treatments along roads that did not lead to private inholdings or trailheads.

89. Additionally, Plaintiffs objected to the Forest Service's failure to make supporting documents available for public inspection and review.

90. Finally, Plaintiffs criticized the general and conclusory analysis of effects to wildlife, designated and eligible wild and scenic rivers, and asked that the Forest Service take a site-specific "hard look" at the direct, indirect, and cumulative effects of the proposal on these resources, as well as climate change, including cumulative effects from its proposal and other actions, which greatly overlap the proposed action and combine to adversely affect wildlife and their habitats.

91. Approximately 218 comment letters on the draft EA were submitted.

92. After receiving input from the public and Plaintiffs, and to avert imminent safety hazards from trees at the highest risk of failure, on July 12, 2022, the Chief of the Forest Service signed a single Decision Memorandum, supported by a single analysis, authorizing an emergency action across Region 5 to allow tree felling and removal from 167 road miles along Level 3 or higher

maintenance roads (passable by most passenger vehicles) and from 18 developed recreation sites.

93. Plaintiffs did not oppose this emergency action because it was limited in scope to higher maintenance level roads, and it targeted trees that were at the highest risk of failure.

Objection Process

94. The Forest Service initiated the pre-decisional administrative objection process in September/October 2022. This process affords stakeholders who participated in earlier stages of the administrative process the opportunity to engage with the Forest Service to resolve key issues prior to a final decision. *See generally* 36 C.F.R. Part 218.

95. On September 20, 2022, the Forest Service released draft Decision Notices for the Central Sierra Zone forests—Plumas and Lassen. Interested parties submitted four objections.

96. On September 29, 2022, the Forest Service released draft Decision Notices for the Southern Sierra Zone forests—Inyo, Sierra, and Sequoia. Interested parties submitted four objections.

97. On October 26, 2022, the Forest Service released draft Decision Notices for the North Zone forests—Klamath, Mendocino, Shasta-Trinity, and Six Rivers. Interested parties submitted eight objections.

98. Plaintiffs timely submitted objections. Plaintiffs averred that their concerns were not sufficiently addressed in the draft DNs in response to their extensive comments, which were reviewed by the same Region 5 Forest Service personnel who crafted the environmental analyses.

99. Objections covered a range of topics including the failure to take a hard look at the Project's impacts to listed wildlife species, wild and scenic rivers, carbon storage, geologic hazards, and water quality. Objectors also raised concerns about the range of alternatives considered, including the need for treatment along all ML 2 roads within the fire perimeters. Objectors also flagged the need for one or more EISs.

100. On December 15, 2022, the Forest Service responded to the Central Sierra Zone objections. On January 13, 2023, the Forest Service responded to the Southern Sierra Zone objections. On February 24, 2023, the Forest Service responded to the North Zone objections.

101. Except for minor corrections and adjustments, the Region 5 administrative review

process affirmed the analyses and dismissed Plaintiffs' and other objectors' primary concerns. In total, fewer than 1% of the roads proposed for treatment were dropped as a result of the objection processes.

102. In filing comments on the scoping notice and draft EAs, and filing objections, Plaintiffs have exhausted their administrative remedies.

Final Environmental Assessments/Findings of No Significant Impact

103. The Forest Service released three final EAs/FONSIs. The Central Sierra Zone EA/FONSI is dated December 2022. The Southern Sierra Zone EA/FONSI is dated January 2023. The North Zone EA/FONSI is dated May 2023.

104. According to the Forest Service, the Project used a consistent regional approach and a single interdisciplinary team to complete the environmental analysis. Accordingly, the three EAs are largely the same, with nearly identical sections on proposed action, purpose and need, alternatives, design features, finding of no significant impact, and others. Boilerplate language was used for the effects analysis sections, with certain region-specific information plugged in (acres of fire perimeters, miles of streams, number of species, etc.).

Proposed Action

105. The proposed action section of each EA lists three actions:

- Identify, fell, and remove hazardous trees up to 1.5 times the tree height striking distance of roads, trails, and facilities; and remove trees already felled during fire suppression or rehabilitation activities along high-use roads (maintenance level 2, 3, 4, and 5 National Forest System roads, county roads, and highways), within and adjacent to developed facilities on National Forest System lands; and fell certain trees along National Forest System trails.
- Maintain roads.
- Use design features to minimize or eliminate potential negative effects.

106. According to the Forest Service, "hazard trees" are trees that have a risk of falling, in whole or part, and injuring people or damaging property.

107. Roads, trails, and areas adjacent to facilities would be assessed for hazard trees. The

area assessed would be a 600-foot corridor (300 feet along each side of the centerline of roads, trails, and fences) and around facilities and infrastructure.

108. Hazard trees would be identified using internal Forest Service guidance: *Hazard Tree Guidelines for Forest Service Facilities and Roads in The Pacific Southwest Region* and *Marking Guidelines for Fire Injured Trees* (Smith and Cluck 2011) (collectively, Hazard Tree Guidelines). These internal guidance documents have not been subject to public review and scrutiny pursuant to NEPA.

109. In moderate intensity (25% to 75% basal area loss) and high intensity (75% or greater basal area loss) burn areas (which comprise over 50% of the Project area), the Project authorizes the felling of trees up to 1.5 times the tree height striking distance of roads (failure impact zone) with a probability of mortality of 60% or greater (failure potential).

110. Estimating failure impact zone is inherently subjective, based on an "ocular estimate" (i.e., "eyeballing it"). The assessment is based on factors such as the height of the tree, lean, condition, distance, and slope from the area to be protected.

111. Assessment of probability of mortality is inherently subjective, based on the ocular estimate. The assessment is based on factors such as tree species and the extent of crown (a tree's branches and needles) injury. See Figure 1 (next page). For example, the Hazard Tree Guidelines provide that a 40-inch-diameter Douglas fir tree with 70% of its crown volume scorched has a 60% probability of mortality.

112. The Final EAs do not specify who would be conducting the hazard tree assessments (e.g., Forest Service employees or timber sale contractors). The Final EAs do not provide any methodology for field-verifying the hazard tree assessments. Timber sale contractors have an inherent incentive to cut the highest number of larger diameter trees to maximize profits. Larger diameter trees tend to provide critical ecosystem benefits.

113. Even under the Forest Service's subjective criteria for assessing probability of mortality, living green trees with a 40% chance of survival would be cut if they fall within the failure impact zone. It has now been at least 3 years post-fire, and it is likely these trees would continue to provide critical ecosystem functions and habitat into the future.

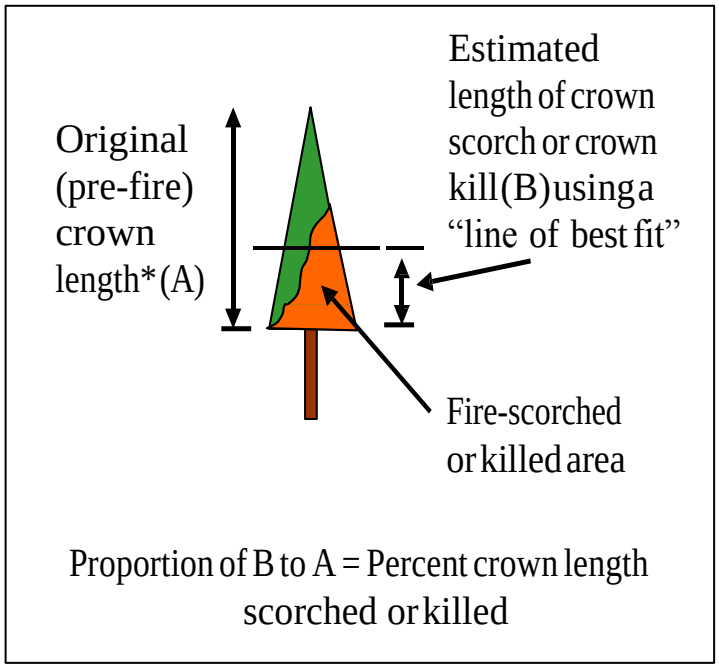

Figure 1. Estimating the percent crown length or scorched killed.

114. Even if a tree dies, that does not necessarily mean it is at imminent risk of falling over. Many dead trees remain standing for decades.

115. In unburned or low-intensity burn areas (less than 25% basal area loss), the Project authorizes the felling of trees with a "high" hazard rating according to the Hazard Tree Guidelines.

116. According to the Forest Service, along trails and fences trees would be felled only if they have a "high" hazard rating.

117. Along roads, trees meeting the criteria would be felled along Maintenance Level 2, 3, 4, and 5 roads.

118. National Forest System roads are classified into five different maintenance levels, which define the level of service provided by, and the maintenance required for, a specific road.

119. Roads are assigned both an "operational" maintenance level, which is the maintenance level currently assigned to the road, and an "objective" maintenance level, which is the maintenance level to be assigned at a future date, considering future road management objectives, traffic needs, budget constraints, and environmental concerns.

120. Maintenance criteria describes how a road is to be maintained. The criteria include: 1)

requirements for the protection of adjacent resources or improvements; 2) smoothness required for desired operating speed and for user comfort and convenience; 3) acceptability of dust; 4) season of use and approximate volumes and types of traffic; and 5) current and future road operation and maintenance strategies.

121. The Forest Service considers several factors when selecting maintenance levels: 1) road management objectives; 2) road investment protection requirements; 3) service life and current operational status; 3) user safety; 5) volume, type, class, and composition of traffic; 6) surface type; 7) travel speed; 8) user comfort and criteria; and 9) functional classification.

122. Maintenance Level 1 roads have been placed in storage for at least one year between intermittent uses. These roads are labeled as "closed" on administrative maps. It is unlawful for the general public to drive on these "closed" roads.

123. Maintenance Level 2 roads are open for use by high clearance vehicles for dispersed recreation and specialized commercial haul. ML 2 roads are more primitive; they: 1) do not consider passenger car traffic, user comfort, and user convenience; 2) have low traffic volume and low speed; 3) have dips and cross drains as preferred drainage treatments; 4) avoid the use of culverts, arches, and bridges when possible; 5) have very few, if any, signs or other traffic control devices; 6) do not consider surface smoothness; 7) do not always alert motorists to potential hazards; and 8) may not always be passable during periods of inclement weather.

124. There are 4,255 miles of roads in the Project area classified as ML 2, or approximately 74% of the miles of roads.

125. Some of these ML 2 roads have been assigned an "objective" maintenance level of ML 1, meaning that the Forest Service intends to close the roads due to factors such as traffic needs, budget constraints, and environmental concerns. The Forest Service in the EAs did not account for objective maintenance levels.

126. Maintenance level 3,4, and 5 roads are open for use by passenger cars for general use, with ML 5 roads providing the highest degree of user comfort and ordinarily receiving the most use by the general public.

127. There are 1,467 miles of roads in the Project area classified as ML 3, 4, and 5, or

approximately 26% of the miles of roads.

128. A significant amount of road maintenance is required to facilitate hazard tree logging operations along these roads, especially the ML 2 roads. Thousands of miles of roads would be used for log hauling, facilitating tens of thousands of trips by logging trucks fueled by gasoline or diesel.

129. In addition to the use of roads themselves, hazard tree logging operations would require the use of landings (where logs and equipment are placed and temporarily stored) and skid trails (the routes where logs are dragged to landings), resulting in soil compaction and displacement, ground disturbance, and introduction of invasive species.

Purpose and Need and Alternatives

130. The purpose and need section of each EA lists five items:

- There is a need to reduce safety hazards adjacent to roads, trails, and facilities.
- There is a need to maintain the integrity and utility of National Forest System roads, trails, and facilities.
- There is a need to reduce fuel loading associated with dead, dying, fire-damaged, and already fallen hazard trees adjacent to roads, trails, and facilities.
- There is a need for economic and operational efficiency.
- There is a need to provide for the recreational and ecological values associated with hazard trees to the extent that doing so would not substantially undermine the core project purposes of improving safety, maintaining the integrity and utility of the National Forest System infrastructure, and reducing fuels along roads, trails, and facilities.

131. The EAs consider in detail two alternatives: The No Action Alternative and the Proposed Action. The EAs' purpose and need statement prioritized public safety and road maintenance over all other resource considerations and values, such that only the Proposed Action could meet the purpose and need.

132. While the Forest Service considered the No Action Alternative in detail, the agency rejected it outright on grounds it would not meet the purpose and need.

133. The Forest Service rejected additional alternatives that fell into three categories:

geographic limitations; reduced intensity treatment; and road, trail, and facility closures.

134. The Forest Service rejected alternatives that placed geographic limitations on the project, such as treating fewer roads, constraining treatment areas based on burn severity, and avoiding less developed areas or particular areas of concern.

135. The Forest Service's rationale for rejecting these alternatives was that they were inconsistent with the objective to reduce safety hazards (purpose and need element 1) and to maintain the integrity and utility of National Forest System roads, trails, and facilities (purpose and need element 2).

136. The Forest Service also rejected alternatives proposing reduced intensity treatment, such as limitations on hazard tree criteria, because the agency claimed they resulted in reduced safety and were consistent with purpose and need element 1. The Forest Service likewise rejected alternatives that would leave more trees (as opposed to commercial removal), stating that these alternatives would be inconsistent with the elements of the purpose and need and frustrate the agency's policy objectives.

137. Finally, the Forest Service did not analyze alternatives that would close roads, trails, and facilities, even for limited durations. For example, the Forest Service refused to consider closures for low-use level 2 roads that would obviate the need for hazard tree removal. The agency rejected this alternative, emphasizing an unsupported need to "maintain the integrity and utility" of every single open road in the Project area, which is approximately double the number of miles of interstate highway in California.

138. As reflected in the purpose and need statement and alternatives dismissed from detailed consideration, the Forest Service preemptively made a policy choice to take an over-inclusive approach to hazard tree abatement, precluding the consideration of other resource values that would have yielded a more narrowly tailored approach.

Design Criteria

139. The Project relies on a comprehensive set of "design features" to ostensibly eliminate or minimize the effects of hazard tree logging and attendant operations below the level of "significance."

140. The Forest Service is relying on the design features to avoid preparation of an EIS under NEPA.

141. Design features were developed for soils, watersheds, botany, fisheries and aquatic wildlife, forest health, nonnative invasive species, geology, recreation and scenery, and cultural resources and heritage.

142. In total, the Project relies on approximately 130 specific design features in addition to a series of best management practices and other applicable criteria. The breadth of design features is unprecedented. Relying on design features to minimize or eliminate effects for a Project of this scale is unprecedented.

143. The Final EAs do not provide any assessment of the potential efficacy of the design features. There is no monitoring plan in place to assess whether the design features are effective, nor any contingency plan if the design features are not effective.

Findings of No Significant Impact

144. Each EA contains a brief Finding of No Significant Impact (FONSI). The FONSIs in the three EAs are virtually the same. Each FONSI is geographically specific for each zone, meaning that there is no assessment of the Project's region-wide impacts across all nine forests.

145. The FONSIs state that the Forest Service considered both short- and long-term effects and identified no significant effects, but provides no supporting rationale and instead refers to the EA's analysis sections and Project design features.

146. The FONSIs state that the Forest Service considered both beneficial and adverse effects and identified no significant effects but provides no supporting rationale and instead refers to the EA's analysis sections and Project design features. The North Zone FONSI states that the Project would provide a beneficial long-term impact by improving public safety, but does not address whether such an impact would be significant.

147. The FONSIs state that the Forest Service considered effects on public health and safety. The FONSIs state that the felling of hazard trees would, in many instances, eliminate the safety hazard posed by such trees. The FONSIs state that the removal of hazard trees would reduce future fuel loads. The FONSIs do not explain why such effects are not significant.

148. The FONSIs state that the Forest Service considered effects that would violate Federal, State, or local law protecting the environment, but provides no supporting rationale and instead refers to the EAs' analysis sections and Project design features.

Final Decision Notices

149. The Forest Service issued Final DNs for each of the nine forests. The DNs were signed by the Forest Supervisors of each forest, but were prepared by the Region 5 office.

150. For the Central Sierra Zone, the Lassen and Plumas Final DNs were signed on December 19, 2022. For the Southern Sierra Zone, the Inyo and Sequoia DNs were signed on January 17, 2023; the Sierra DN was signed on January 24, 2023. For the North Zone, the Klamath DN was signed on June 7, 2023; the Mendocino DN was signed on June 12, 2023; the Shasta-Trinity DN was signed on June 13, 2023; the Six Rivers DN was signed on June 15, 2023.

151. All of the Final DNs adopt the EAs/FONSIs for their respective zones and select the Proposed Action. All of the Final DNs state they considered other alternatives but selected the proposed action because the other alternatives did not meet the purpose and need of the project.

152. Only the Six Rivers Final DN modified the proposed action, narrowing the treatment corridor to 250 feet above and 150 feet below roads. All of the other Final DNs retain the 600-foot corridor.

153. By and large, the Final DNs contain the same, boilerplate language; each final decision notice generally is distinguished only by the miles of road, trail, and range fence or number of facilities proposed for treatment:

- The Six Rivers final DN authorizes tree felling and removal along 65 miles of ML 2 roads, 29 miles of ML 3 roads, 3 miles along county roads and near 7 recreation facilities.
- The Shasta-Trinity final DN authorizes hazard tree felling and removal adjacent to 815 miles of roads, 29 miles of trails, and 43 facilities.
- The Mendocino final DN authorizes hazard tree felling and removal adjacent to 1,574 miles of roads, 288 miles of trails, and 85 facilities.
- The Klamath final DN authorizes hazard tree felling and removal adjacent to 180

miles of roads, 9 miles of trails, and 18 facilities.

- The Sierra final DN authorizes hazard tree felling and removal adjacent to 938 miles of roads, 202 miles of trails, 51 miles of range fence and 75 facilities.
- The Sequoia final DN authorizes hazard tree felling and removal adjacent to 326 miles of roads, 83 miles of trails, 15 miles of range fence, and 22 facilities.
- The Inyo final DN authorizes hazard tree felling and removal adjacent to 17 miles of roads, 1 mile of trails, and 2 facilities.
- The Plumas final DN authorizes hazard tree felling and removal adjacent to 907 miles of roads, 51 miles of trails, 82 miles of range fence, and 96 facilities.
- The Lassen final DN authorizes hazard tree felling and removal adjacent to 868 miles of roads.

154. Each of the Final DNs recognizes the potential for negative short-term effects to wildlife habitat, soils, water quality, scenery, and other resources, but emphasizes applicable design features to reduce effects below the level of "significance," while stressing the public safety purpose of the Project.

155. Hazard tree logging operations can now begin immediately across all nine forests. There will be no further analysis or decisionmaking.

Project Area and Key Resources

156. In total, the Project authorizes the felling of hazard trees up to 300 feet from either side of roadways on over 400,000 acres of forestlands. The Project also authorizes the felling of hazard trees along 663 miles of trails and 148 miles of range fence, and around 348 facilities, amounting to tens of thousands of additional acres.

157. Plaintiffs aver that the size and scope of this project is unprecedented and is likely the largest logging/vegetation management project ever proposed by the Forest Service in California.

Proposed, Threatened, Endangered, and Sensitive Species in the Project Area

158. The R5 Hazard Tree Project area contains important habitat for proposed, threatened, endangered, and Forest Service sensitive species. The Project "may affect" 350 proposed, threatened, endangered, or sensitive fish, wildlife, and plant species. This includes 145 species in the

Southern Sierra zone, 96 species in the Central Sierra zone, and 148 species in the North Zone. The number of species across the different zones do not add up exactly to the total number of species because there is some species overlap between the various zones.

159. Proposed, threatened, and endangered species are species protected (or proposed for protection) under the ESA and are defined as those species in danger of extinction throughout all or a significant portion of their range, or those likely to become so within the foreseeable future. Many of these species have designated critical habitat in Project area. Sensitive species are those plant or animal species which are susceptible or vulnerable to activity impacts or habitat alterations that are recognized by the Regional Forester as needing special management to prevent placement on Federal or State ESA lists.

160. The Project area provides habitat for numerous threatened, endangered, or sensitive fish and wildlife species including Pacific fisher, northern spotted owl, marten, Franklin's bumble bee, several salmonid species, several frog species, California spotted owl, and northern goshawk, among many others. The Project area also is home to numerous proposed, threatened, endangered, or sensitive plant species.

161. Many of these species rely on the unique habitat conditions created by fires. Large trees that are dead and dying, including those near remote forest roads like those in the Project area, provide valuable habitat for a wide variety of wildlife that rely on dead wood in the forest.

162. Post-fire habitats are inherently fragile. Post-fire logging activities, including hazard tree logging operations, can cause habitat modification and destruction, soil compaction, and degradation of water quality. The effects of such activities are additive to the effects of the fires themselves. Many species can adapt to and in some cases, select for burned habitat, but avoid areas that have burned and then been logged.

163. Pacific fishers require moderate to dense forest canopy cover for denning/resting habitat and avoid non-forested habitats with little or no cover. They prefer habitat with an abundance of complex forest structural components such as trees with cavities, large down logs, and large snags (standing dead trees). Larger trees that have burned in a wildfire provide valuable cavities and crevices for fisher dens.

164. Logging of live and standing dead trees (snags), thinning, and other treatments that change forest structure or canopy cover degrade habitat for Pacific fishers. Scientific studies have found that fishers avoid using logged areas when denning, resting, and foraging.

165. Pacific fishers are found in all three zones. In the Southern Sierras, Pacific fishers are listed as endangered under the ESA. Fishers are a sensitive species in the Central and North Zones; the U.S. Fish and Wildlife Service ("USFWS") recently agreed to reconsider whether West Coast distinct population segment of fishers in northern California and southern Oregon warrant protection under the ESA.

166. Estimates of the endangered Southern Sierra Nevada (SSN) fisher population before the recent severe drought and fires in the Sierra and Sequoia National Forests range from 100 to 500 individual fishers, including one estimate of 300 individuals, although other estimates have found only 50 to 120 reproductive adult females in that same population.

167. Subsequently, the drought and fires reduced the SSN fisher's denning habitat by 55%. The resulting population loss of fishers result from this dramatic loss of denning habitat is unknown due to the lack of SSN fisher population surveys.

168. The R5 Hazard Tree Project would adversely affect habitat for the SSN Pacific fisher at an elevation band from 3,500 feet to 8,000 feet on the Sierra and Sequoia National Forests within the Southern Sierra Zone. These forests provide habitat for the southernmost population of Pacific fishers in the world.

169. The Southern Sierra EA concludes that the Project may affect but is not likely to adversely affect the SSN fisher, principally on account of the Project design features.

170. The Southern Sierra EA also concludes the Project may affect but is not likely to adversely affect a series of other ESA-listed species and their critical habitat, including Sierra Nevada red fox, Sierra Nevada bighorn sheep, California condor, Lahontan cutthroat trout, Little Kern golden trout, Mariposa Pussypaws, and Springville Clarkia, despite these species' presence in the Project area and likelihood of disturbance from Project activities. The Forest Service summarily labeled the Project's effects "temporary," and cited Project design features.

171. The Southern Sierra EA concludes that the Project may affect and is likely to

adversely affect several amphibian species: Foothill Yellow-legged frog, Mountain Yellow-legged frog, Sierra Yellow-legged frog, and Yosemite toad. Such likely effects to endangered species are a consideration the agency must take into account when evaluating whether a proposed action's effects are significant and therefore must be addressed in an EIS. The Forest Service summarily labeled impacts to ESA-listed amphibians "short-term" and cited design features, but did not rationally explain why the impacts would not be significant.

172. Northern spotted owls, similar to Pacific fishers, require moderate to dense forest canopy cover for nesting and roosting. Northern spotted owls inhabit older coniferous forests in the Cascade Mountains and coastal ranges in the North Zone. They nest and roost in forests that are structurally diverse and offer protection from weather and cover to reduce predation. Both types of habitats must contain sufficient foraging habitat to meet the home range needs of territorial spotted owl pairs throughout the year.

173. Rangewide threats to northern spotted owls include competition with barred owls, habitat loss or degradation from stand-replacing wildfire and other disturbances, loss of the amount and distribution of habitat as a result of past activities and disturbances; the ongoing loss of habitat as a result of timber harvest also continues to exacerbate the owl's decline.

174. The USFWS estimates that fewer than 3,000 individuals are present throughout the owl's entire range. The USFWS determined that the perilous status of the northern spotted owl warrants "uplisting" the species from threatened to endangered.

175. Hazard tree logging operations may affect northern spotted owl in the form of noise and smoke disturbance, direct injury or mortality from tree felling, and habitat modification. Hazard tree logging operations can reduce or eliminate post-fire habitat by increasing forest fragmentation and reducing habitat for prey populations.

176. In the draft EA, the Forest Service concluded that the Project may affect, but is not likely to adversely affect northern spotted owl and designated critical habitat. In the final EA—after any opportunity for public review and comment—the Forest Service reversed course and concluded that the Project may affect, and is likely to adversely affect northern spotted owl and designated critical habitat.

177. The North Zone Final EA attempts to rationalize why the likely adverse effects would not be significant within the meaning of NEPA. The public had no opportunity to review and comment on these rationalizations.

178. The North Zone Final EA contemplates that the recent fires may have eliminated potential nesting and roosting habitat in moderate to high-severity burn areas, and therefore, states that hazard tree removal in these areas may not impact the species.

179. In fact, Northern spotted owl utilize burned forest habitat, particularly for foraging, but also in some cases for nesting and roosting. This habitat, also called "snag forest" or "complex early seral" habitat, offers a diversity of food sources to wildlife (nuts, seeds, berries, nectar, palatable foliage, fungi, insects, etc.) and is used by numerous small mammals and birds. Predators, including northern spotted owl, seek out these burned areas due to their abundance of small animal prey species. Studies in post-fire landscapes have shown that northern spotted owl use forest stands that have been burned, including high-severity burn patches, but generally do not use stands that have been burned and logged.

180. Within the Project area there is evidence of a breeding owl pair utilizing a high severity burn patch for foraging, nesting, and roosting. The Project does not include any surveys for northern spotted owl.

181. The coastal distinct population segment of the Pacific marten (also known as coastal marten) is a threatened species found in the Six Rivers National Forest in the North Zone. (Pacific marten not belonging to the coastal distinct population segment are found on the other forests and are designated as sensitive species.)

182. Coastal marten currently exist in four small populations (fewer than 100 individuals each) in Oregon and California. It has been extirpated from Sonoma and Mendocino Counties, California, and occupies small portions of Humboldt, Del Norte, and Siskiyou Counties.

183. Coastal marten are known to inhabit high elevation (4,500–10,500 feet), late-successional, mature red fir and lodgepole pine forests with large, decadent live trees and snags, and complex physical structure near the ground comprised of an abundance of large dead and downed wood. Coastal marten can inhabit younger forests if important elements of the mature forest are still

present, especially structures for resting and denning.

184. Threats facing marten include habitat loss and fragmentation, especially clear-cutting, fuel reduction treatments, and wildfire. Coastal marten are very sensitive to habitat loss and fragmentation and rarely occupy landscapes after >30% of the mature forest has been harvested.

185. The felling and removal of hazard trees within coastal marten habitat may result in the reduction of protective cover and resting structures. Yet, the North Zone EA concludes that the Project may affect but will not likely adversely affect coastal marten and designated critical habitat.

186. The North Zone EA states that the Project may affect but is not likely to adversely affect a series of other ESA-listed and proposed species and their critical habitat, including gray wolf, marbled murrelet, California condor, Green sturgeon—Southern distinct population segment, Central California Coast Coho salmon, Southern Oregon and Northern California Coasts Coho salmon, California Central Valley Distinct Population Segment Steelhead trout, Northern California Distinct Population Segment Steelhead trout, Sacramento River Winter-run Chinook salmon, California Coastal Chinook salmon, Central Valley Spring-run Chinook salmon, Upper Klamath-Trinity River Chinook salmon, and Keck's checker-mallow.

187. The Forest Service summarily labeled impacts to these species "short-term" and cited design features, but did not rationally explain why the impacts would not be significant.

188. The North Zone EA also avers that the Project may affect and is likely to adversely affect the endangered Franklin's bumble bee, but cites Project design features that would allegedly avoid or minimize effects.

189. The Central Sierra EA states that the project may affect and is likely to adversely affect two amphibians, the California Red-legged frog and the Sierra Nevada Yellow-legged frog.

190. For other ESA-listed species and designated critical habitat in the Central Sierra Zone, the Forest Service concluded "may affect, not likely to adversely affect," including for gray wolf, California Red-legged frog critical habitat, Sierra Nevada yellow-legged frog critical habitat, and Slender Orcutt grass and designated critical habitat. The Forest Service primarily relied on Project design features to support its effects conclusions.

191. The Forest Service engaged in ESA Section 7 consultation over the Project's impacts

to ESA-listed species. The USFWS and NMFS concurred with the Forest Service's may affect, not likely to adversely affect determinations, and issued biological opinions for species with may affect, and are likely to adversely affect determinations.

192. For the dozens of designated sensitive fish, wildlife, and plant species in the Project area, the Forest Service concluded that the Project may impact individuals or habitat, but will not likely contribute to a trend toward Federal listing or a loss of viability to the population or species. For these determinations, the Forest Service relied principally on Project design features.

193. California spotted owls and northern goshawk are sensitive species present in all three zones.

194. The USFWS has recently proposed listing California spotted owl as threatened in the Sierra Nevada Mountains and as endangered in the four Southern California National Forests.

195. Like its cousins the Mexican and northern spotted owls, the California spotted owl is a bellwether of old-growth forests. The California spotted owl is closely associated with habitat similar to that of the Pacific fisher. The R5 Hazard Tree Project area overlaps many California spotted owl protected activity centers and home range core areas.

196. Habitat destruction or degradation from logging activities continues to pose a significant ongoing threat to the California spotted owl. Research findings have consistently documented a correlation between mechanical reductions in canopy cover, as well as removal of snags, and adverse effects to California spotted owls.

197. According to the Forest Service, the felling of trees and snags of all sizes, ages, and decay classes in various fire severities has inherent risks to any California spotted owl that may be occupying the area and using the trees that are deemed a hazard. This is particularly true if the hazard occurs in suitable habitat and/or in an area of increased use by California spotted owls such as a protected activity center, home range core area, or core use area.

198. Goshawk habitat in the Project area consists of mature conifer and deciduous forest with large trees, snags, downed logs and dense canopy cover for nesting, as well as more open habitats for foraging such as meadows, brush patches, and riparian areas. Goshawks will abandon territories with high amounts of canopy loss.

199. According to the Forest Service, the felling of trees and snags of all sizes, ages, and decay classes in various fire severities has inherent risks to goshawks that may be occupying the area and using the trees that are deemed a hazard for nesting/roosting/denning.

200. The Forest Service discounted the Project's effects on California spotted owl and northern goshawk on account of Project design criteria, which apply limited operating periods to areas within ¼ mile of nests or protected activity centers. The Project does not include any surveys for California spotted owl and northern goshawk nests or activity centers.

201. The effects of the Project on ESA-listed and sensitive fish and wildlife species—and the countless other undesignated species in the Project area—are cumulative to the effects other post-fire logging operations (and other activities) on Federal, State, and private lands within the fire footprints.

202. Each EA provides a list of past, present, and future activities within each respective zone. Each EA states that the effects of these activities were "considered," but provides no actual analysis of how such effects, combined with the Project's effects, may affect Project area resources.

203. The EAs provide no site-specific information about any of the proposed, threatened, endangered, or sensitive species, instead relying on generalized conclusions. There is no geographic detail about the location of habitat areas that support critical life cycle functions, such as denning and roosting sites and other biologically critical areas. There is no analysis of any specific road segments targeted for hazard tree logging operations, including whether such operations may impact critical habitat components.

Riparian and Aquatic Areas

204. In total, the Project would affect 379 subwatersheds: 162 in the North Zone (50 on Shasta-Trinity, 26 on Klamath, 15 on Six Rivers, 63 on Mendocino, and 8 outside of Forest Service ownership); 137 in the Central Sierra Zone (52 on Lassen, 77 on Plumas, and 8 primarily outside Forest Service ownership); and 80 in the Southern Sierra Zone (10 on Inyo, 35 on Sequoia, 32 on Sierra, and 3 primarily outside Forest Service ownership).

205. Fifty-six watersheds located upstream of domestic drinking water sources are present in the project area. Of those, 36 are watersheds that have been identified as a municipal watershed or

within a reasonably close upstream proximity of known domestic or municipal drinking water areas.

206. Numerous subwatersheds are listed as water quality impaired for sediment and/or other contaminants under the Clean Water Act.

207. Numerous subwatersheds are functioning at risk or impaired, according to the Forest Service's metrics for measuring water quality.

208. Within the treatment zone are 57 miles of perennial stream, 78 miles of intermittent stream, and 173 miles of ephemeral streams. Approximately 7,100 acres of riparian vegetation are within proposed treatment areas.

209. The 2020/2021 fires significantly changed baseline conditions for riparian and aquatic areas across the Project area and in many cases exacerbated degraded conditions, particularly related to sediment production. Post-fire watersheds are at high risk of increased soil erosion and sediment delivery to streams.

210. The Project's effects would be additive to these conditions. Ground-based logging operations, like those proposed by the Project, disturb soils, causing erosion, which leads to runoff into streams and the resulting sedimentation of streams and other adverse water quality impacts. Studies have shown that removal of trees on steep terrain weakens the roots that increases the risk of erosion and landslides. This risk is heightened in recently burned areas.

211. Skidding operations, storage of logs at landings, use of heavy equipment in and around riparian areas, and log hauling on primitive roads along streams can significantly increase sediment production.

212. Numerous aquatic species are highly vulnerable to increased sediment production, including ESA-listed salmonids. Sediment is a natural feature of aquatic ecosystems and under natural conditions gets transported through the system. Increased sediment above natural levels can cause aggradation, i.e., filling, of stream beds. Aggradation results when the supply of sediment is greater than the amount of sediment the system is able to support.

213. Aggradation can impact aquatic species in many ways. For example, salmonids build their redds (nests) in coarse gravels along the stream bottom. Increased delivery of fine sediment fills the interstitial spaces between the coarser gravels, making areas unsuitable for spawning habitat.

214. Increased sedimentation into streams also increases turbidity. Turbidity (the "cloudiness" of water) is the degree to which suspended material in the water impedes light penetration. Increased turbidity can impact aquatic species in many ways, including by promoting excessive algae growth; reducing dissolved oxygen; and impairing visibility, leading to feeding difficulties.

215. Fires are particularly important for creating new sources of in-stream large wood (called large woody debris or coarse woody debris). In-stream large wood provides critically important habitat conditions for fish and aquatic species, including the formation of pools and reduction of channel erosion. Removal of trees in riparian areas can impair in-stream large wood recruitment.

216. In the North Zone, management activities in riparian areas including hazard tree logging operations are subject to the Aquatic Conservation Strategy ("ACS") of the Northwest Forest Plan.

217. The ACS was designed to maintain and restore the health of watersheds and the aquatic ecosystems contained within them. The ACS serves to protect salmon and steelhead habitat on federal lands managed by the Forest Service.

218. Objectives of the ACS include the maintenance and restoration of water quality, species diversity, habitat for riparian dependent species, sediment regimes, physical integrity of aquatic systems, spatial and temporal connectivity within and between watersheds, and timing, variability, and duration of floodplain inundation and water table elevation. These objectives are safeguarded by standards and guidelines that prohibit or regulate activities in Riparian Reserves that retard or prevent attainment of ACS Objectives.

219. Riparian Reserves consist of streams and other waterbodies and the area directly adjacent to them, and unstable and potentially unstable areas.

220. The North Zone has a higher natural occurrence of hillslope instability and landslide-prone areas because of the base geology, steeper hillslopes, and wetter climates. Approximately 14,628 acres in the North Zone are mapped as unstable soils.

221. For waterbodies, the ACS sets specific buffers for each Riparian Reserve based on

stream or waterbody type: fish-bearing streams; permanently flowing non-fish bearing streams; constructed ponds and reservoirs, and wetlands greater than 1 acre; lakes and natural ponds; and seasonally flowing or intermittent streams. For example, the Riparian Reserve of fish-bearing streams consists of the stream and the area on each side of the stream extending at least 300 feet slope distance (600 feet total). For permanently flowing non-fish bearing streams, the riparian reserve consists of the stream area on each side of the stream extending at least 150 feet slope distance (300 feet total). The Forest Service did not disclose the spatial location or total acres of Riparian Reserves affected by the Project. The Forest Service did not disclose which Riparian Reserves are currently meeting or not meeting ACS Objectives.

222. Within Riparian Reserves, standards and guidelines of the ACS prohibit timber harvest, subject to certain exceptions. To authorize timber harvest in Riparian Areas, including hazard tree logging operations, the Forest Service must demonstrate that such operations are needed to attain ACS Objectives and/or would not impair coarse woody debris objectives. The Forest Service did not analyze, let alone demonstrate compliance with the applicable ACS standards and guidelines for Riparian Reserves.

223. In addition, the ACS establishes key watersheds, or those watersheds that are crucial to at-risk fish species and stocks and provide high quality water. Standards and guidelines of the ACS strictly regulate management activities in these watersheds. In particular, a full "Watershed Analysis" is required prior to any timber harvest.

224. The North Zone comprises 14 key watersheds including the Elk and Grider creeks, and the Salmon River in the Klamath National Forest; the S. Fork Trinity, New and N. Fork Trinity Rivers in the Shasta-Trinity National Forest; the Middle Fork Eel River, Black Butte Creek, and Thatcher Creek in the Mendocino National Forest; and the Lower S. Fork Trinity River, Horse Linto Creek, Red Cap River, Smith River, Wooley Creek, and the lower Salmon River in the Six Rivers National Forest. The North Zone EA does not mention Key Watersheds, let alone analyze impacts to them.

225. Hazard tree logging operations are authorized within Key Watersheds. The Forest Service did not prepare, or refer to a previously prepared, Watershed Analysis for any of the Key

Watersheds.

226. In the Southern Sierra and Central Sierra Zones, management activities in riparian areas including hazard tree logging operations are subject to the standards and guidelines contained in the Sierra Nevada Framework. The Framework sets forth an Aquatic Management Strategy ("AMS") that aims to protect and restore desired conditions of aquatic, riparian, and meadow ecosystems and provide for viability of species. The AMS contains management goals, strategies, and standards and guidelines.

227. The AMS contains a series of objectives for riparian conservation, including objectives to ensure a renewable supply of large down logs, and to ensure that management activities enhance or maintain physical and biological characteristics associated with aquatic- and riparian-dependent species.

228. The AMS allocates riparian areas into riparian conservation areas ("RCAs") and critical aquatic refuges ("CAR").

229. RCAs consist of perennial streams, seasonally flowing streams (includes intermittent and ephemeral streams), streams in inner gorge, special aquatic features or perennial streams with riparian conditions extending more than 150 feet from edge of streambank or seasonally flowing streams with riparian conditions extending more than 50 feet from edge of streambank, and other hydrological or topographic depressions without a defined channel.

230. For each type of RCA, the AMS sets different widths. For example, perennial streams receive 300 feet on each side of the stream, measured from the bank full edge of the stream, and seasonally flowing streams receive 150 feet on each side of the stream, measured from the bank full edge of the stream. The Central and Southern Sierra EAs do not identify or provide the spatial location of any RCAs.

231. CARs are subwatersheds ranging between 10,000 to 40,000 acres, with some as small as 500 acres and some as large as 100,000 acres. CARs contain either: known locations of threatened, endangered, or sensitive species; highly vulnerable populations of native plant or animal species; or localized populations of rare native aquatic-or riparian-dependent plant or animal species. The Central and Southern Sierra EAs do not identify or provide the spatial location of any CARs.

232. The Project authorizes hazard tree logging operations within RCAs and CARs.

233. The AMS contains a series of standards and guidelines applicable to RCAs and CARs. For example, the Forest Service is to evaluate new proposed management activities within CARs and RCAs during environmental analysis to determine consistency with the riparian conservation objectives.

234. The EAs state that the Project is consistent with the standards and guidelines of relevant land management plans, including those applicable to Riparian Reserves, RCAs, and CARs, but provides no supporting analysis.

Designated Wild and Scenic Rivers, Eligible/Suitable Wild and Scenic Rivers and Their Corridors

235. Across all three zones, the R5 Hazard Tree Project area overlaps seven designated wild and scenic river segments along with their protected corridors. Designated river segments within the Project area are classified as "scenic" or "recreational," and their outstandingly remarkable values include fish, historic, scenery, recreation, and geologic resources.

236. Across all three zones, the R5 Hazards Project area overlaps 32 Forest Service-identified eligible/suitable wild and scenic river segments along with their corridors. Eligible/suitable river segments within the Project area are inventoried with "wild," "scenic," or "recreational" classifications, and their identified outstandingly remarkable values include fish, fish habitat, fish population, wildlife population, historic, prehistoric, scenery, recreation, geologic, and other resources.

237. Hazard tree logging is proposed along roads, trails, and other facilities within the corridors of these 39 designated and eligible/suitable wild and scenic rivers. Additional project treatment areas are outside the rivers' corridors but within their scenic viewsheds and within hydrologically connected subwatersheds from which impacts to the rivers and their outstandingly remarkable values may originate.

238. Within proposed treatment areas in the North Zone, there are a total of 11.92 miles of designated wild and scenic river across 6 rivers. The designated wild and scenic rivers include the Trinity River, South Fork Trinity River, North Fork Salmon River, South Fork Salmon River, Middle Fork Smith River, Griffin Creek, and Knopki Creek. Additionally, there are 4.29 miles of

eligible wild and scenic river across 6 rivers; the Forest Service has determined that these rivers are not only eligible but also suitable for designation.

239. Within proposed treatment areas in the Central Sierra Zone, there are 0.71 miles of designated wild and scenic river on the Middle Fork Feather River. There are also 8.4 miles of eligible wild and scenic rivers across 8 rivers.

240. Within proposed treatment areas in the Southern Sierra Zone, there are 14.39 miles of eligible wild and scenic river across 18 rivers.

241. Despite the presence of wild and scenic rivers directly within the Project's hazard tree logging operation areas and within view and downstream of additional hazard tree logging operation areas, the EAs contain no analysis of Project impacts to designated and eligible wild and scenic rivers.

242. Instead, the EAs all summarily state that the Project "would not affect wild and scenic river values" because it is limited in scope and focused on high use roads within the recreational and scenic classified sections of wild and scenic river corridors.

243. The EAs do not identify the geographic relationship between hazard tree logging operations and designated and eligible wild and scenic river segments and their corridors to support the contention that treatments in designated and eligible wild and scenic river corridors would be "limited in scope" or to identify potential impacts to the specific river values of an affected segment. There are no site-specific details about the roads targeted for treatment in designated and eligible wild and scenic river corridors to support the contention that the Project is focused only on "high use" roads in these areas. Even if such roads are "high use," there is no correlation between the usage level of a road and the Project's effect on river values.

244. The EAs do not even identify the specific wild and scenic river segments that may be affected by the Project, nor do the EAs identify each river segment's outstandingly remarkable values, a necessary prerequisite for analyzing whether the Project would adequately protect the river's values.

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CLAIM FOR RELIEF

National Environmental Policy Act (NEPA) Violation

245. The paragraphs above are incorporated herein by reference.

Count 1: Failure to Analyze and Disclose the Project's Direct, Indirect, and Cumulative Impacts

246. NEPA requires an agency to analyze and disclose the direct, indirect, and cumulative effects of a proposed action.

247. The required analysis must amount to a "hard look." To take the required "hard look" at a project's effects, an agency may not rely on incorrect assumptions or data. The agency must provide some quantified or detailed information; general statements about possible effects and some risk, do not constitute a hard look absent justification regarding why more definitive information could not be provided.

248. To fulfill NEPA's public disclosure requirements, the agency must provide the public the underlying environmental data from which the agency develops its opinions and arrives at its decisions.

249. An EA must provide sufficient evidence and analysis, including disclosure and consideration of the environmental impacts of a proposed action and alternatives, to determine whether to prepare an EIS or a FONSI.

250. An agency's analytical obligations under NEPA are dictated by underlying requirements derived from substantive statutes like NMFA, the ESA, and the WSRA.

251. Even for large-scale projects, NEPA requires a detailed evaluation of site-specific impacts when the agency has made a critical decision to act. Here, that threshold was crossed when the Forest Service issued the EAs, FONSIs, and DNs for the Project. The decision to authorize hundreds of thousands of acres of hazard tree logging operations has been made and will not be revisited; the supporting analysis to support the decision was required to be sufficiently detailed and site-specific to meet NEPA's twin aims of public involvement and informed decisionmaking.

252. The Forest Service failed to properly analyze and disclose the Project's direct, indirect, and cumulative effects on, *inter alia*, special status species, designated and eligible Wild

and Scenic Rivers, geologic hazards, climate change, carbon storage, and sensitive riparian areas, which are additive to the environmental baseline.

253. For example, the Forest Service disclosed to the public that the Project was "not likely to adversely" affect northern spotted owl, but the USFWS—the expert wildlife agency—disagreed and found that the Project is in fact "likely to adversely affect" Northern spotted owl and the agencies engaged in formal consultation pursuant to Section 7 of the ESA.

254. For example, the Forest Service's EAs each contain a single, conclusory, sentence regarding the Project's impacts on Wild and Scenic Rivers, without any underlying analysis.

255. For example, the EAs fail to adequately analyze forest plan compliance, including with binding forest plan standards and guidelines applicable to sensitive riparian areas and geologic hazards that would be adversely impacted by the Project.

256. Rather than take a hard look at the Project's direct, indirect, and cumulative impacts, the Forest Service fell back on the Project's design features to allegedly minimize or eliminate effects. But the EA contains no evaluation of the efficacy of the design features, especially when implemented across the huge geographic scale of the Project area.

257. The Forest Service also failed to provide any quantified or detailed information about cumulative effects. The agency merely listed an incomplete selection of past, present, and reasonably foreseeable future projects but did not analyze the combined and synergistic impacts of the Project and multiple post-fire and other projects on overlapping and adjacent Federal, State, and private land. Moreover, the agency used too small of an analytical scale to evaluate cumulative effects, focusing on the narrow roadway treatment corridor and a small buffer around it, an area that could only encapsulate the Project's direct and indirect effects.

258. The Forest Service's failure to properly analyze and disclose the Project's direct, indirect, and cumulative effects violates NEPA and is arbitrary, capricious, an abuse of discretion, not in accordance with, and without observance of procedure required by law.

Count 2: Reliance on an Unreasonably Narrow Purpose and Need and Failure to Analyze a Reasonable Range of Alternatives

259. NEPA requires an agency to study, develop, and describe appropriate alternatives.

The existence of a viable but unexamined alternative renders an EA inadequate.

260. Because the range of alternatives an agency must consider need not extend beyond those reasonably related to the purpose and need of the project, the agency may not define its objectives in unreasonably narrow terms.

261. The Forest Service considered only two alternatives: The "no action" alternative, and the proposed action.

262. The Forest Service impermissibly defined the purpose and need of the Project so narrowly that only the proposed action would achieve the Forest Service's objectives. That purpose and need was limited to the "need to reduce public safety hazards along portions of roads, trails, and facilities[,]" and the "need to reduce fuel loading associated with felled hazard trees[.]"

263. The Forest Service dismissed from detailed consideration other alternatives that were reasonable but for the agency's narrowly drawn purpose and need statement. Even if the purpose and need statement was reasonable, the range of alternatives did not satisfy NEPA.

264. Commenters raised a series of reasonable alternatives, including the exclusion of all or a subset of ML 2 roads, more narrowly tailored operations in certain ecologically critical areas, and application of a higher probability of mortality threshold, to account for the likely survival of many trees.

265. The Forest Service, however, made a front-end policy choice that its pre-determined safety and fuel reduction objectives trump all other values and dismissed other alternatives accordingly; under NEPA, however, such a policy choice only can be made at the back-end, after consideration of alternatives.

266. The Forest Service's pre-determined safety objectives derive from its hazard tree guidelines, which set hazard ratings for trees based on a number of factors, including probability of mortality, failure potential, and potential targets.

267. In effect, the Forest Service's analysis "tiers" to the hazard tree guidelines; the agency in the Project EAs did not independently evaluate the hazard tree ratings but rather, simply adopted those of the hazard tree guidelines.

268. The hazard tree guidelines have themselves never been analyzed in accordance with

NEPA's procedural safeguards. Tiering to a document that has not itself been subject to NEPA review and using it to set standards for tree removal and limiting the range of alternatives violates NEPA.

269. The Forest Service's reliance on an unreasonably narrow purpose and need, failure to consider a reasonable range of alternatives, and reliance on a non-NEPA document violates NEPA and is arbitrary, capricious, an abuse of discretion, not in accordance with, and without observance of procedure required by law.

Count 3: Failure to Prepare an EIS

270. Under NEPA, federal agencies must prepare an EIS for major Federal actions significantly affecting the quality of the human environment.

271. In assessing the question of "significance," the agency should consider the potentially affected environment including resources such as ESA-listed species, as well as the degree of effects including both short- and long-term effects and both beneficial and adverse effects.

272. NEPA requires that an agency prepare an EIS if "substantial questions" are raised about whether its decision may cause significant degradation of some human environmental factor.

273. An agency's decision not to prepare an EIS must be fully-informed and well-considered, supported by a convincing statement of reasons why they are not significant.

274. Rather than prepare an EIS for the Project—or multiple regional EISs—the Forest Service prepared boilerplate EAs and FONSIs for the three regions, relying on project design features to assert that all effects would be insignificant.

275. Substantial questions exist about the potentially significant effects of a 417,000-acre logging project, the largest in California's history. Even at the regional scale (North: 187,880 acres; Central: 131,066 acres; South: 98,262 acres), the logging acreage for each zone would likely be the largest in California's history.

276. The Project would impact countless resources, including thousands of species, among them 350 ESA-listed and Forest Service sensitive species; dozens of designated and eligible Wild and Scenic River corridors, and sensitive riparian areas.

277. The Forest Service declined to select the "no action" alternative because of the

"multiple negative consequences" of taking no action. Conversely, the Forest Service believes that implementation of the selected alternative would yield positive benefits, especially in terms of safety. To the extent such benefits are "significant," an EIS is required. If, however, the benefits are not significant, this provides another reason for which the Forest Service's dismissal of other reasonable alternatives was arbitrary and capricious.

278. Each of the EAs and FONSIs do not contain a convincing statement of reasons why the potential impacts of the Project are insignificant, either at the Project-scale (across nine forests), or the regional scale.

279. The effects of the Project are inherently uncertain, given the Project scale, unverified application of the subjective Hazard Tree Guidelines, and reliance on Project design features whose efficacy has not been analyzed.

280. To the extent the Forest Service split the R5 Hazard Tree Project into smaller component parts to avoid a finding of significance and preparation of an EIS, such segmentation is impermissible under NEPA.

281. The Forest Service's failure to prepare an EIS—or multiple EISs—for the Project violates NEPA and is arbitrary, capricious, an abuse of discretion, not in accordance with, and without observance of procedure required by law.

REQUEST FOR RELIEF

282. For these reasons, Plaintiffs requests that the Court:

a) Declare that the Forest Service has violated the National Environmental Policy Act and its implementing regulations by failing to take a hard look at the direct, indirect, and cumulative effects of the R5 Hazard Tree Project;

b) Declare that the Forest Service has violated the National Environmental Policy Act and its implementing regulations by failing to consider a reasonable range of alternatives;

c) Declare that the Forest Service has violated the National Environmental Policy Act and its implementing regulations by failing to prepare an EIS or multiple EISs;

d) Set aside the R5 Hazard Tree Project Environmental Assessments, Findings of No Significant Impact, and Decision Notices;

e) Compel Defendant to prepare an EIS or multiple EISs for the R5 Hazard Tree Project that properly analyzes the direct, indirect, and cumulative effects of the Project and considers alternatives to the proposed action, and otherwise order Defendants to comply with NEPA before proceeding with further actions;

f) Issue injunctive relief prohibiting the Forest Service from implementing the R5 Hazard Tree Project until such time as the Forest Service can demonstrate compliance with the requirements of the National Environmental Policy Act;

g) Award Plaintiffs their costs of litigation, including reasonable attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

h) Provide such other relief as the Court deems just and proper.

Respectfully submitted this 20th day of July, 2023.

René Voss

Oliver Stiefel, *Applicant Pro Hac Vice*

Kelly Chang, *Applicant Pro Hac Vice*

Attorneys for Plaintiffs