



# Intertribal Timber Council

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September 19, 2024

Director

Ecosystem Management Coordination

U.S. Department of Agriculture, Forest Service

201 14th St. SW, Mailstop 1108

Washington, DC 20250-1124

RE: Comments on Draft Environmental Impact Statement on "Amendments to Land Management Plans to Address Old-Growth Forests Across the National Forest System"

Dear Director:

On behalf of the Intertribal Timber Council (ITC), I am submitting these comments in response to the Draft EIS for Amendments to Land Management Plans to Address Old-Growth Forests Across the National Forest System which was published in June 2024. Please also refer to ITC's August 12, 2022, letter regarding the Forest Service's Request for Information (RFI) on Federal Old-growth and Mature Forests, and the ITC's February 2, 2024, letter in response to the Notice of Intent on this same topic.

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

### Overall Comments

Generally, the ITC appreciates the Forest Service's stated intent of embracing proactive stewardship as the primary means of managing old growth across the landscape. The ITC agrees with the agency's decision not to create a new form of management designation for old-growth forests. The ITC also agrees with the agency's decision, generally, not to consider "mature forest" in conjunction with old-growth forest for all aspects of the amendment.

The ITC is concerned with the potential impact of “identifying and prioritizing areas to be managed for future old-growth forest” and what direct and indirect restrictions might place on current forest management options. The DEIS acknowledges that the “proposed amendment is not intended to recruit all successional stages towards mature and old-growth.” However, we fear that the agency will face extreme pressure to place as much land as possible into this category and to take minimal management actions.

Overall, the ITC believes that the best strategy for maintaining old-growth across the landscape is not a complex regulatory framework, but to better return ALL federal lands to their historic densities and fire regime – letting the land determine when, where and how old growth will emerge and sustain itself. Mankind can only engineer forests so far.

### **FLPMA Requirements**

Procedurally, the ITC continues to have concerns and questions about the Forest Service’s statutory obligations to coordinate with tribes. The DEIS states that the “proposed action represents concurrent plan-level changes that will have programmatic effects.”

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

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

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

While the agency has generally offered tribal consultation, the ITC has continuously noted that tribes need capacity assistance in order for this to be a genuine gesture. The simple offer of consultation does not meet the statutory requirement of coordination of land use plans. Therefore, the ITC requests – again – clarification of the agency’s view of its statutory obligations and its plan to accomplish them.

### **Definitions**

The ITC appreciates the deference to local conversations about what constitutes old-growth. One primary question is when does “old growth” cease to be defined as “old growth”? Recent catastrophic fires have devastated old growth stands leaving no living tree to survive the event. From a silvicultural standpoint, the stand age is now zero, and the forest age clock starts when natural or artificial reforestation is successful. It is unclear in the DEIS how such stands are categorized and managed. The DEIS states that:

“areas that currently meet the definition (and associated criteria) of old-growth could no longer meet the definition/criteria in the future – for example, due to natural disturbance (e.g., wildfire, insect, and disease). Should this occur, these areas would no longer be subject to the old-growth amendment.”

The ITC recommends more clarity on the process for de-designating old-growth forests after catastrophic fire events. It should be a straightforward process that can authorize post-fire management options, rather than invite litigation over whether an entirely dead stand of large trees is still considered old-growth. Time is limited in post-fire situations as dead wood deteriorates and competing vegetation takes hold of a site.

The DEIS states that “regional old-growth criteria rely on structural characteristics and include an attribute that captures the abundance of large trees – specifically, minimum live trees per acre of a minimum size and/or minimum basal area of live trees” [emphasis added]. The ITC recommends that the final EIS/ROD clarify that once a stand falls below these metrics, it is automatically withdrawn from the restrictions of the old-growth amendment and previous management direction is applicable.

If post-fire conditions no longer merit the definition of old-growth, but the *intent* is to return the stand to its former old-growth condition (e.g., it is converted to an old-growth recruitment area), then the DEIS should clarify that proactive stewardship would include removal of dead fuels, planting of seedlings, management of vegetation over time, and other actions needed to restore forest structure and complexity, rather than leaving the stand to potentially re-burn (killing the remaining live, large trees) and convert to a different forest type or non-forest cover altogether.

### **Purpose & Need; Tribal Consultation**

The ITC appreciates and supports the many references to tribes and Indigenous Knowledge in the Purpose & Need section, including:

- “Establish a clear role for Indigenous Knowledge and tribal leadership in the proactive stewardship and furtherance of old-growth forests on National Forest System lands.
- “enable co-stewardship with Tribes and Alaska Native Corporations and collaboration with States, local governments, industry partners, and public stakeholders.”
- “Incorporating Indigenous Knowledge into planning, project design, and implementation to achieve old-growth forest management goals and furthering Forest Service trust responsibilities with Tribes and Alaska Native Corporations”

All of these are important statements but are ineffectual without providing tribes with the capacity to be active partners with the Forest Service. This is echoed in the well-intentioned attempt in this NEPA process to capture tribal input. At the outset of this process, the ITC requested that the Forest Service provide direct capacity assistance to tribes to help them provide substantive feedback. That has not occurred. The ITC is only aware of third-party facilitation contracts and travel reimbursement for various tribal forums.

What the ITC has heard from most tribes is that they need additional internal, technical capacity that can be dedicated to this process, the subsequent local processes, as well as the concurrent Northwest Forest Plan amendment process. Instead, tribes are forced to ask existing staff to de-prioritize work on the tribe’s land and resources in order to participate in this process.

The DEIS states that: “The agency is also collaborating with the Bureau of Land Management to co-host Mature and Old-growth input sessions with Tribal leaders and representatives being key invitees.” The ITC is not aware of any such input session hosted with the BLM.

Again, while the ITC strongly supports the integration of tribal input and knowledge into management decisions and co-stewardship activities, it must be coupled with tribal capacity enhancement. We urge the Forest Service to develop solutions that will complement the purpose and need of this proposed action.

### **Tribal Rights and Interests**

The DEIS states that “All action alternatives promote proactive stewardship in old-growth forests on National Forest System lands. In areas where these types of activities are currently rare, all action alternatives have the potential to cause effects to Treaty Resources, areas of Tribal importance, sacred sites, and cultural keystone species associated with old-growth forests when implemented at the unit level. The amendment does not authorize any specific projects or work on the ground; consultation will be required under all alternatives at the project level to determine the potential for adverse effects from ground-disturbing activities in old-growth forests.”

The ITC is more concerned about the impact of reduced forest management on treaty and tribally important resources than the impact of increased management. Generally speaking, across the landscape, more active management is needed to restore historic stocking densities and fire regimes. The ITC believes that these actions would be more effective at producing resilient old-growth than site-specific management restrictions in current and predicted future old-growth stands. Accordingly, the DEIS must be revised to evaluate the potential impacts of reduced or no forest management on treaty and tribally important resources, including the increased risk of catastrophic wildfire. Only consideration of these impacts will allow the Forest Service to fully evaluate the potential alternatives.

The ITC appreciates that the DEIS directs “units to incorporate Indigenous Knowledge as an equal with Western science in the management of old-growth forests.” Again, the ITC asks the Forest Service to develop a tribal funding mechanism to effectuate this requirement.

### **Timber**

The DEIS states that “(while the amendment proposes constraints on the purpose of vegetation management activities in old-growth forests, it is recognized these are dynamic systems and areas that currently meet the definition (and associated criteria) of old-growth could no longer meet the definition/criteria in the future – for example, due to natural disturbance (e.g. wildfire, insect and disease). Should this occur, these areas would no longer be subject to the old-growth amendment.”

As noted above in the “Definitions” section, the ITC strongly agrees with acknowledging that fire and other natural disturbances can and should de-classify an old-growth stand from regulation under this amendment. As noted earlier, the ITC requests the agency further elaborate on that process to avoid costly litigation and management reticence in post-fire environments.

We do note, however, that the amendment also proposes constraints on non-old-growth forests that are identified for future recruitment. As stated elsewhere, the ITC requests removal of this guideline.

### **Stewardship Activities**

The ITC requests additional clarification with respect to these standards. Standard 2.a allows for proactive stewardship in old-growth stands that could result in the “area no longer meeting the definition of old-growth immediately following vegetation management”... “but could result in the area being more resilient and adaptable to stressors and likely future environments.” The ITC requests the agency provide more specific example scenarios, and how they would be managed. In theory, the ITC supports this management flexibility and asks that the Forest Service make it as explicit and easy to use as possible.

For example, a climate-stressed Douglas Fir stand with high mortality could be converted toward a Ponderosa Pine-dominant condition to make it more climate and fire resilient. But consequent management activities would diminish the Douglas Fir old-growth characteristics for an extended period until the stand transitions to a Ponderosa overstory.

Another example might include aggressive thinning of ladder fuels in the perimeter of an old-growth stand in order to protect the interior from fire intrusion. This would make the entire stand more resilient but could reduce or eliminate old-growth characteristics in a small part of it.

Yet another example should discuss post-fire environments, particularly when some old-growth characteristics remain intact, but the stand faces increased threat from future fires due to the prevalence of fire-killed wood. Fuels reduction treatments in this case would be essential, including removing dead standing timber in places such as the Slater Fire footprint near Happy Camp, California.

Please include the above or similar examples as allowable actions in the FEIS.

Standard 2.b provides direction that the cutting or removal of trees in old-growth forest is permitted when:

- Incidental to the implementation of a management activity not otherwise prohibited by the plan, and
- The area continues to meet the definition and associated criteria for old-growth forest after the incidental tree cutting or removal.

25 U.S.C. § 3055 authorizes the Forest Service to provide to Indian tribes “any trees, portions of trees, or forest products from National Forest System lands for traditional and cultural purposes.” We provide additional comments below but believe that Standard 2.b should explicitly state that the standards and restrictions of this amendment do not apply to or interfere with tribal exercise of that law. In other words, tribes may continue to obtain trees, parts of trees or forest products from within old-growth stands, or potential old-growth recruitment areas regardless of whether such action is part of a qualified proactive stewardship project or its perceived impact on the criteria for an old-growth forest.

### **Statement of Distinctive Roles and Contributions**

The ITC appreciates that the DEIS has revised language that would have categorically and inaccurately placed comparative tribal value to old-growth stands. The DEIS now states that: “Tribal and Indigenous practices have maintained resilient forest structure and composition of forests that harbor high structural and compositional diversity, with particular emphasis on understory plants and fire-dependent wildlife habitat.”

One illustration of the importance of this Indian forest management practices to create diverse forest compositions includes the following account:

"Basketry materials such as bear grass and hazel required “burning off” prior to collection and preparation for weaving. Each fall, people would go to the mountains and set fires in the areas where the best grass and sticks were growing. When they returned the following summer, the bear grass would have grown into fresh clumps ready for harvesting. Hazel needed to grow for another season after burning and was harvested the following spring when the sap started flowing again (Thompson [1916] 1991, 331). Burning, a necessary technology for many aspects of tribal life, was applied to control weeds and to produce new shoots for berry production. The Kalapuya seasonally burned the Willamette Valley to enhance the harvest of tarweed seeds (Lemolo sapolil, “wild grain” in Chinook Jargon), and by this practice made it a garden-like parkland (Boag 1992). Regular burning not only prevented the growth of brush and cleared out the understory of old-growth forests, but it also produced extensive grassy prairies on the ridges and southwestern slopes of the coastal mountains. On these ridges, people dug deep pits, staggered in series along a ridge line; here immense elk herds could be driven, and some elk would inevitably fall

in. Seasonal burning along the Oregon coast was so regular and noteworthy that the area was known to some sailors as Fire Land.”<sup>1</sup> [Emphasis added] t.”

### **Goal 1 (NOGA-FW-GOAL-01)**

The DEIS states: “Interpretation and implementation of the old-growth amendment is grounded in recognition and respect for tribal sovereignty, treaties, Indigenous Knowledge and the ethic of reciprocity and responsibility to future generations. Implementation of the old-growth amendment enables co- stewardship, including for cultural burning, prescribed fire, and other activities, and occurs in consultation with Tribes and Alaska Native Corporations to fulfill treaty obligations and general trust responsibilities.”

The ITC recommends the following changes:

- In addition to mention of “treaties,” the DEIS should recognize general rights and interests of tribes, stewardship of fish and wildlife on NFS lands, and subsistence interests.
- The DEIS should clarify that the NOGA itself does not “enable” tribal co-stewardship (including cultural burning). These activities are based on additional, pre-existing, or separate authorities and are not limited to or constrained the NOGA. Cultural burning is a Tribal right that falls under tribal sovereign law and authority. Each Tribal community defines cultural burning for itself and burns in line with its place-based Indigenous knowledge, practice, and belief systems. While the Forest Service can and should support and accommodate cultural burning, this should be recognized as a Tribal right and practice, not limited, or constrained by NOGA.

### **Management Approach 1.a (NOGA-FW-MA-01a)**

Subsection (iv) states that Forests will “Identify tribal priorities and opportunities to support cultural, medicinal, food, and ceremonial values, practices and uses.” If so, there should be specific authorization of and funding for tribal eco-cultural stewardship and activities within current old-growth stands. Without additional clarity, “tribal priorities” may simply be identified but never implemented. For example, a 2008 congressional wilderness designation on a National Forest required the Forest Service to collaborate with tribes on a First Foods management plan. No such plan was ever developed, let alone implemented.

Not only could this direction in the amendment be ignored, but it could also erect barriers to huckleberry patch restoration, meadow restoration, beargrass recruitment and other site-specific activities – replicating historically accurate conditions and fire regimes in current old-growth stands.

Subsection (vi) states that Forests will “Engage in climate adaptation using explicit resistance, resilience, or transition approaches to address climate risks and achieve desired conditions, or otherwise intentionally accept alternative climate-driven outcomes.” The ITC requests additional clarification of this approach, particularly the term “transition approaches.” For example, if a currently Douglas Fir-dominant forest is experiencing extreme mortality due to climate-driven factors, can the stand be actively managed to transition toward more climate resilient species, such as Ponderosa Pine? At what point and under what circumstances is it acceptable to live with “alternative climate-driven outcomes” such as stand replacement wildfire?

Subsection (viii) states that Forests will “Recognize the role of other successional stages that are important for ecological integrity.” The ITC supports this acknowledgement. For Indigenous cultural, subsistence and treaty exercise purposes,

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<sup>1</sup> George B. Wasson, “Worldviews And The American West” (2000)

other successional stages may actually be more important than old-growth stands. This should also be a factor if the agency maintains the provision in the DEIS regarding identifying specific areas for future old growth recruitment. If so, it should be weighed against historic conditions and tribal cultural and treaty needs for a diversity of successional stages to produce priority outcomes.

### **Management Approach 1.b (NOGA-FW-MA-01b)**

This section of the management approach is focused on identifying and prioritizing areas to recruit and develop future old-growth forests. This concept is potentially troubling to the ITC, particularly in light of the agency's stated intention of not creating new management designations. Will these "areas" be identified and mapped? Is there any limit to how many acres will be identified? How will management change from current direction?

Many of the directions provided in the DEIS for these recruitment areas should apply everywhere (save for wilderness areas), such as promoting long-term resilience and reducing fire hazard, spread or severity, or the spread of potential insect or disease outbreaks. However, limiting management actions in these areas to those conducive to old-growth characteristics will likely conflict with existing direction that has been promulgated through public processes. Since this DEIS states that the more restrictive standard applies, land managers will be given fewer options across the landscape.

As noted above, any identification of potential old-growth areas must also be weighed against historic conditions and fire regimes, and the importance of other successional stages to tribes and eco-cultural values.

The ITC is also concerned about the demonstrable futility of predicting such things as "fire refugia." As the Forest Service points out elsewhere in the DEIS, fire has played a disproportionate role in "reserved" areas – contrary to the original intended purpose of reserves.

Likewise, the notion of old-growth "connectivity" (see subsection (iv)) has been largely invalidated in forests managed under the Northwest Forest Plan, where millions of acres of actual old-growth and future potential old-growth has been lost in catastrophic wildfire.

We are concerned that the level of planning, analysis, monitoring, and other time-intensive activities will drain limited Forest Service resources, complicate forest management activities and ultimately be made irrelevant by actual wildfire events, climate-driven vegetative changes, and other threats.

The ITC recommends that the best strategy for recruitment of future old-growth is simply to better manage fire and reduce its intensity over the landscape. The DEIS appears to only direct proactive stewardship (on extremely limited bases) in two areas: existing old-growth and potential future old-growth.

While the DEIS states that it is not intending to create management direction for "mature" stands, this management approach appears to be doing just that. It potentially eliminates forest management activities that do not specifically drive a stand toward future old-growth conditions. As with old-growth per se, this could interfere with eco-cultural activities intended to restore historic conditions and to promote cultural and treaty-reserved resources.

Also, under (vi), it is unclear what "culturally significant" attributes are intended to mean. The ITC requests further clarification.

On the whole, the ITC recommends elimination of this costly and largely academic management direction and instead focus on more effective tools to reduce fire intensity across the landscape to achieve desired old-growth conditions over time.

**Desired Conditions 1-4**

As with the above management approach, the ITC believes that restoring historic stocking conditions and fire regimes is the primary action needed to protect and foster mature and old growth forest conditions (see USFS GTR 966 Synthesis of Science to Support the Northwest Forest Plan Area). As reiterated in the DEIS, wildfire is the greatest threat to old growth forests. A major reason for this is the cessation of Indigenous burning and fire exclusion/suppression policies. Therefore, restoration of fire regimes based on Indigenous Knowledge and restoration of conditions conducive to the Tribal revitalization of cultural burning should be included within the desired conditions – if not made the primary condition itself.

Success can be measured by how closely the current fire regime (including pattern, frequency, intensity, fire return intervals, etc.) is to pre-colonization fire regimes (as described by Indigenous peoples and through Indigenous Knowledges).

The greater this function is achieved, the more the land will produce the best solutions for other desired conditions. It will successfully determine where old-growth is capable of abundance, its distribution and so on. As we mention above, the Forest Service has limited capacity to embark on highly academic exercises of mapping out where it thinks old growth can and should be over long periods of time. Fire is already doing that on a much greater scale and faster timeline than the agency can. We must work with fire across the landscape, rather than attempt to predict where it will occur and how it will behave.

**Objective 1 (NOGA-FW-OBJ-01)**

This objective seeks to require unit-level old-growth conservation strategies within 2 years, in consultation with tribes, ANC's and other interests. As with this NEPA process and the amendment to the Northwest Forest Plan, the Forest Service is not providing direct support for tribes to build capacity to provide necessary input. Many tribes have multiple National Forests within their ancestral landscape. Tribes are demonstrably and severely under-funded to manage our own trust lands and are finding it difficult to dedicate existing resources to provide substantive input toward these efforts, even though many of these lands are within Tribe's ancestral territories and contain tribal interests and tribal trust assets.

Unless the Forest Service provides a source of funding directly to tribes for engagement, the agency's laudable goals of tribal inclusion will not reach fruition. One possible solution, which has been implemented with at least one tribe, is to provide Forest Service funding to each tribe for a dedicated position to collaborate with National Forests within the tribe's area of interest.

**Objective 2 (NOGA-FW-OBJ-02)**

This objective requires, within one year of completing Objective 1, to initiate at least three proactive stewardship projects/activities in the planning area to contribute to the achievement of old-growth forest desired condition. It is unclear if the "planning area" is at the national, forest, or unit level.

While the ITC appreciates the goal of active stewardship to protect old-growth from primary threats – namely wildfire— we are concerned that the timeline for both Objective 1 and 2 would require a dramatic re-prioritization of existing, limited Forest Service (and tribal) resources.

Due to staffing shortages and other factors, National Forests are generally underperforming across multiple metrics. Would this directive override existing management priorities for each forest, such as landscape scale fuels reduction? The Forest Service should consider these directives to be dependent upon additional appropriations from Congress specifically for implementing this policy.



Likewise, the ITC recommends an incentive-based program that provides National Forests with funding for old-growth stewardship projects that it plans, particularly those with tribes, similar to the funding structure for the Joint Chiefs Landscape Restoration Partnership.

### **Objective 3 (NOGA-FW-OBJ-03)**

This objective requires, within two years of completing the “Adaptive Strategy,” to initiate at least one co-stewardship project with interested Tribes for the purpose of proactive stewardship. Again, we support the spirit of this objective, but it must provide tribes with partnership capacity not only to develop the “Adaptive Strategy” but to generate co-stewardship projects.

The ITC recommends making funds specifically available to any tribe that wishes to engage in this process, help develop the Adaptive Strategy and forge co-stewardship projects.

### **Standard 2a. (NOGA-FW-STD-02a)**

This standard limit vegetation management in old-growth forests to those needed for proactive stewardship. The ITC recommends that eco-cultural objectives be listed as one of the categories of proactive stewardship, or that eco-cultural stewardship be listed separately and alongside proactive stewardship. This would more clearly emphasize the potential of tribal co-stewardship and the integration of tribal knowledge and values. Instead, the standard simply refers to “culturally significant species or values, to include key understory species.”

The ITC also requests clarity of what proactive stewardship means after large, intense fire events. The agency should better clarify when an old-growth forest ceases to function as one because of wildfire or other natural disturbances. For example, if 90% of an old growth stand is killed in a fire, is the removal of fire-killed trees to reduce re-burn potential considered proactive stewardship? Or is that stand no longer considered old growth and no longer subject to these management restrictions?

### **Standard 2b. (NOGA-FW-STD-02b)**

This standard deals with the cutting and removal of trees from old-growth forests other than pursuant to proactive stewardship activities. First, the ITC recommends that this standard be clarified to refer to the cutting and removal of “live” trees. As stated above, the removal of fire-, disease- or insect-killed trees to protect the remaining live trees should be a categorically acceptable practice either as a proactive stewardship measure or otherwise. Likewise, the Forest Service should better clarify when these restrictions no longer apply in a stand whose old-growth condition may be altered by fire or another natural event.

The ITC also recommends clarifying that this standard in no way affects federal statute (25 USC 3055) that authorizes the Forest Service to provide to Indian tribes “any trees, portions of trees, or forest products from National Forest System lands for traditional and cultural purposes.” See additional comments below.

### **Standard 2c (NOGA-FW-STD-02c)**

This allows for deviations from the above restrictions on the cutting/removal of timber under certain circumstances. This allows for deviation if “the responsible official determines that vegetation management actions or incidental tree-cutting or removal are necessary for the following reasons and includes the rationale in a decision document or supporting documentation...” [emphasis added]. These reasons include both “to comply with other statutes or regulations” and “for culturally significant uses as informed by tribes.”

Unfortunately, this may create a new regulatory hurdle for tribes to obtain forest materials under existing statute. Instead, the Forest Service should explicitly state that the standards in this EIS simply do not apply to circumstances covered by 25 U.S.C. § 3055. It should not take an additional “decision document” that could be appealed or litigated for the Forest Service this existing provision of law.

The ITC also believes that greater latitude should be given to forest management activities pursuant to a Tribal Forest Protection Act project. Subsection (i.) should be amended to read: “In cases where this standard would preclude achievement of wildfire risk management objectives within municipal watersheds, **a Tribal Forest Protection Act project area**, or the wildland-urban interface (WUI)...”

In subsection (vi.), the ITC supports the agency’s addition of “Indigenous Knowledge” with respect to determining what is beneficial for a species or forest type.

### **Standard 3 (NOGA-FW-STD-03)**

These standard states that “Proactive stewardship in old-growth forests shall not be for the purpose of timber production.” The ITC appreciates the clarification that commercial and non-commercial timber harvest may be necessary for proactive stewardship. This is similar to stewardship contracting which allows, and is often funded by, the sale of commercial timber generated by stewardship activities.

Perhaps this standard could be further clarified by stating that proactive stewardship shall not be for the sole or primary purpose of timber production.”

### **Guideline 1 (NOGA-FW-GDL-01)**

This guideline would restrict vegetation management activities in areas to those that further future old growth conditions. This seems to contradict the agency’s stated intent to both avoid creating an old-growth management designation and its intent not to regulate “mature” forests. This will create *de facto* old growth reserves in which any management activity could be legally challenged for its impacts to theoretical future old growth conditions.

Regardless of regulatory prescriptions, wildfire will continue to shape what is and will become old growth, and when it does so (or not). The ITC does not support the general idea of creating restrictions in old growth recruitment areas. Again, the greatest threat to current and future old growth comes from large high severity wildfire and this management concept only complicates the tools available to forest managers. A simpler approach would be to direct management toward returning these areas to historic conditions and fire regimes.

### **Guideline 2 (NOGA-FW-GDL-02)**

This guideline states that if there are preexisting land management plans for old-growth, the more restrictive takes precedent. The ITC opposes this new guideline. Many past plans, including the Northwest Forest Plan, were developed without a full understanding of the destructive impact wildfire would have on old-growth and certain types of forest habitat. While we commend this DEIS in its recognition of active stewardship to protect against fire, it could be rendered useless by an outdated management plan that ignores the impact of fire.

Instead, the ITC recommends management direction to embrace a strategy that creates the greatest resilience of forests to fire and other threats.

**Guideline 3 (NOGA-FW-GDL-03)**

This guideline appears to provide specific protection for individual old trees outside of old-growth stands/areas. While the DEIS states that the “guideline is not intended to apply to every old tree,” we fear that this will only invite threats of and actual appeals and litigation of any project that harvests any comparatively older tree – living or dead.

The ITC believes this guideline should be removed and the agency should avoid tedious regulatory battles over each tree.

**Plan Monitoring 2 (NOGA-FW-PM-02)**

In addition to the “regular updates” on actions taken pursuant to the amendment, the ITC believes that the Forest Service should provide the public with real-time information about loss of old-growth in each federal wildfire incident – rather than only when “new national inventory information is available.”

**Statement of Distinctive Roles and Contributions (NOGA-FW-DRC)**

The ITC supports the statement that “What constitutes old-growth forest is informed by best available science, which includes Indigenous Knowledge.” This can be based on meaning from “traditional and subsistence uses” and “Tribal and Indigenous histories, cultures, and practices.”

We further agree that “Tribal and Indigenous practices have maintained resilient forest structure and composition of forests that harbor high structural and compositional diversity, with particular emphasis on understory plants and fire-dependent wildlife habitat.” It is especially important that the Forest Service recognizes this, and thus does what it can to reduce undue restrictions on Tribal forest managers and communities who are seeking to restore resilient forest structures and fire regimes.

**Cultural Burning Falls Under Tribal Sovereign Authority**

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

Cultural burning is briefly referenced in the proposed action Goal on page 20 of the DEIS. We agree with the first portion which states the goal that “interpretation and implementation is grounded in recognition and respect of tribal sovereignty, treaties, Indigenous Knowledge, and the ethic of reciprocity and responsibility to future generations.” However, the second sentence of the Goal states that “Implementation should enable co-stewardship, including cultural burning, prescribed fire, and other activities, ...” This reference may be problematic, depending on how co-stewardship is defined

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

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

### **Conclusion**

ITC member tribes strongly agree with the Forest Service that the most pressing threat to old growth forests is wildfire, followed by insects and disease. However, increasing complexity of Forest Service plans make it difficult for the agency to respond to these threats and the ITC is concerned that the proposed action will add even more obstacles to forest management actions needed to reduce threats to old growth. In our NOI comments, the ITC referred to the case of the Sequoia National Forest and the Tule River Tribe's TFPA request to protect giant sequoias from fire through active management. Procedural delays prevented proactive management until fire began seriously impacted the sequoias.

If this plan amendment were in place, how would that outcome be different? Will there be more or less proactive management in the old growth stands?

In either case, the ITC remains concerned that these decisions and projects will lack tribal input and knowledge because of tribal capacity challenges. Likewise, this amendment will place a massive compliance burden on National Forests that will impact existing functions, such as fuels reduction and management outside of old-growth stands.

The ITC believes that only a landscape scale restoration of historic, climate-adjusted stocking conditions and fire regimes will ensure a sustainable existence of old-growth forests over time. The creation of *de facto* reserves does not address the systemic threat of fire.

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

Sincerely,



Cody Desautel  
President