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Forest Service Planning NOI
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The National Association of Forest Service Retirees (NAFSR) thanks the USDA Forest Service for the opportunity to comment on the Notice of Intent (NOI) to prepare an environmental impact statement for revision of the forest planning regulations under the National Forest Management Act of 1976, published in the December 18, 2009 Federal Register Notice (Vol. 74, No. 242, pages 67165-67169).

Our Association consists of men and women who have worked at all levels and mission areas in the agency. Our membership includes scientists, administrative specialists, line officers, and technical specialists, members of interdisciplinary teams, appeals specialists, and planners. With a significant level of forest planning experience represented in our organization, we believe that our comments will be useful for improving and streamlining the current cumbersome planning process.

Our comments are based on a review of the statutory authorities, previous efforts to revise the existing planning regulations, and a canvas of the experiences of our members. A team consisting of Ronald Stewart, Dick Pfilf, and Steve Eubanks were charged with coordinating our response.

We address a number of fundamental and overarching issues, concepts and principles, followed by responses to some of the specific questions posed in the Federal Register Notice.

Sincerely,

James W. Golden

Ronald E. Stewart

General Comments

We believe that any planning effort will fail unless it can address the fundamental purposes for national forest management. Although these purposes have been encoded in law-- for example multiple-use, timber supply, watershed protection—they continue to be the most significant issues in both the plans themselves and in specific management actions taken to implement those plans. Commercial activities, including timber harvest, grazing, and mining are most at issue. Other issues such as access and new forms of outdoor recreation are also important and need to be specifically addressed in planning. We also strongly endorse having the rule specify that plans should be strategic and a foundation for future action, and not make project decisions.

Planning has become primarily a land zoning/classification process, allowing, restricting or prohibiting certain activities. This process is totally contrary to true ecosystem management. The result is to identify some areas primarily managed for natural features (Wilderness, Scenic Areas, Research Natural Areas, etc.), animal habitat, mixed use, or commercial activities. The end is to create zoological parks that must be connected by migration corridors, and industrial zones where commercial activities are permitted. Since no one likes an industrial zone in their backyard, the battle immediately focuses on those areas zoned for commercial use. Ecosystems, and their associated flora and fauna, occur across the landscape as a dynamic mosaic influenced by chance, environment, and natural and man-caused disturbance and should be considered in the aggregate with the needs being addressed locally and designed, in as much as possible, to harmonize uses, rather than to optimize them.

A related issue that must be addressed is the NFMA requirement for maintaining viable populations of all species across the landscape. This continues to be the major sticking point in all previous efforts to redesign and streamline the planning process. Unfortunately, final resolution may only come out of Congressional action. A workable, streamlined appeals process is also needed. The new process must not reduce the public's long term right to object to decisions they do not support. However, planning processes designed to find broader agreement on outcomes, and that is considered by stakeholders as procedurally fair, may ultimately reduce appeals.

The approach to any new rule should be to find the best of what the agency has learned and use those principles and processes that work. Obviously past planning rules featured contrasting approaches: the prescription/process-oriented rules of the 1980s and the goal/objective rules of the 2000s. Conversations with current employees (planners and others) suggest that the rules of 2005/2008 and guides to planning in manual and handbook direction may be working. Any adjustments to the planning rule should be based on the need to change (which could include court decisions). But the NOI is not clear about the intent of the Forest Service on the role of existing knowledge, experience and direction.

A useful planning rule would describe the planning process not so much by enumerating the specific activities that make up the planning process but rather by specifying the successful outcomes of the process. The root cause of the failed attempts to revise the planning rule is the failure to distinguish between planning (the process that NFMA requires be specified in regulations) and plans that result from the planning process. The planning process should describe the manner by which the plan for managing the National Forests is created to address

the most pressing current issues. Plans are the outcomes of the planning process not the process itself. The set of issues to be addressed in the planning process vary from place to place and from time to time. A set of current big issues to be addressed in plans today, such as those in the NOI, are a matter of policy, not regulation. As NFMA specifies, the planning rule should describe as succinctly as possible the planning process. Only the issues that NFMA requires be addressed by plans should be included in the planning rule. All other “big” issues should be addressed in other policy instruments such as Forest Service Manuals and Handbooks.

The focus on responding to global climate change is disturbing. The history of the Earth clearly shows that the climate has fluctuated widely from warm and wet to dry and cold. Given the current quiet state of the Sun, it is reasonable to believe that we may be entering a period of cooling. So, what future climate do you manage for? It seems reasonable to assume that a management philosophy that promotes healthy ecosystems and well-designed monitoring in an adaptive management context, will be the best long term strategy.

Coordination vs Cooperation with Local Governments

NFMA (16USC 1604(a)) requires that land management **must** be coordinated with the land and resources planning processes of state and local governments and other federal agencies. There has been a move toward the concept of coordinating agencies with relationships established formally in a Memorandum of Understanding (MOU). This formal arrangement, if it properly spells out the roles and responsibilities of the involved agencies, can be helpful. However, it requires a commitment from the local Forest Service unit to assure that it does not become a document of unfulfilled promises. Further, many counties, other local governments, and Native American tribes do not have the resources to be full partners in the planning process. Yet, they have a strong vested interest in the outcome. Plans on the local forest can and will affect the well-being of the local community. Therefore, many local officials reflect the sentiments of one local county supervisor who stated that he didn't want input, he wanted influence. This will be a sensitive issue, and the attitude of the local forest and its line officers will, in the long run, be critical to successful engagement of local officials and other stakeholders. Depending on local resources, the planning process must be flexible and allow for formal coordination or cooperation, as appropriate. In the end, no one can take away the fundamental dilemma of balancing the needs of the resource with those of local communities and national interests. Open processes and wisdom will always be needed, no matter what planning process is ultimately defined.

Principles, Objectives, and Practices

We believe that it is important to distinguish between principles, objectives and practices. According to the Webster's dictionary, a principle is a comprehensive and fundamental law, doctrine or assumption; a rule or code of conduct. With the Forest Service, fundamental laws, doctrine and assumptions should constitute its core values. Objectives are goals intended to be attained and which are believed to be attainable. In contrast, a practice is an actual performance or application; a repeated or customary action. Principles should be grounded in law, and therefore, should have some permanence. Whenever possible, principles should be referenced to their underlying statutes. Objectives come directly out of the principles while practices are those management actions used to achieve those objectives. Practices are generally grounded in

current science and local experience and, therefore, will likely change as information and experience provide new approaches.

It is our opinion that the planning rule should enumerate and expound on principles and core values that will guide the planning activity. Practices then become the way to realize results that come out of these principles and core values that are more appropriately addressed in site specific management actions. Conservation, sustainability, protection of watersheds, multiple-use of land and resources, protection of wildlife species and their habitat, and consideration of local economies are all based in law and are fundamental principles to be addressed in land management planning. Objectives could include statement of desirable future conditions, improved resiliency of ecosystems, etc. The current thinking, as expressed in the NOI, seems to confuse principles and practices. For example, the NOI lists:” ***Substantive Principles for a New Rule***

1. Land management plans could address the need for restoration and conservation to enhance the resilience of ecosystems to a variety of threats.”

This statement, by definition is a practice. Stating a principle based on core values founded by legislation could strengthen it, as illustrated by the following. Principle: NFMA Sec.6(g)(2)(C) requires “identify(ing) special conditions or situations involving hazards to the various resources and their relationship to alternate activities”. Practice: 1. Land management plans could address the need for restoration and conservation to enhance the resilience of ecosystems to a variety of threats.”

See our comments elsewhere in our response regarding the term “restoration” as used here.

Planning Processes

We agree that the planning process must be collaborative, but we go a step further. We believe that the agency must find ways, including seeking appropriate legislation, to make the decision making itself more collaborative. Collaboration requires developing long term relationships and commitments between agency decision makers and outside stakeholders. Research and experience show that one key problem the agency faces is lack of trust by the public. Development of trust can only be accomplished by building relationships over time and by being trustworthy. Given the long time frame of current planning, stakeholders can develop a relationship with a decision maker who may or may not be there to make the final decision. Some consideration of longevity of line officers, or mechanisms to deal with the fact that building trust requires time, is needed.

It is our observation that it is easier to find commitments and agreement on objectives and practices at the local level. Local stakeholders (the so called “community of place”) have a greater vested interest in the outcomes, must live and work with each other after the decisions are made, and can more readily become engaged. But, the national forests belong to all the people, and diverse groups and individuals locally and nationally (the larger “community of interest”) also care about what is happening on their forests. Given the access to appeals and litigation to any individual or group involved in a specific plan, it is incumbent on the agency to find new ways to engage these diverse and dispersed publics. Fortunately, there are new tools available using the Internet that can facilitate such interactions. Further, there is a growing body of

literature on participatory processes, especially the development of learning networks that should be considered and used by the agency. The expectations, role and responsibility of local governments (state, county, and municipality) and Native American tribes should be clarified in the new planning regulations. Iterative and interactive processes offer some hope in resolving complex planning issues (National Research Council (NRC) 1996).

It is also our observation that most disagreements in planning and implementation are framed around uncertainties in the science. Given the long term nature of ecosystem response and the relative lack of complete understanding of ecosystems, these disagreements are understandable and are exploited in appeals and litigation. The end result is the development of longer, more complex analysis and documents. Since the agency applies the best available science and analytical techniques, why does it still face dissatisfaction with its decisions? We believe that this is because the underlying issue is not uncertainties in the science, but in unspoken and unidentified fundamental differences in stakeholder values and preferences for certain outcomes, management actions, or acceptance of certain risks. *Lands Council v. McNair*, No. 07-35000 (9th Circuit) July 2, 2008 provides a useful example for minimizing litigation involving differences. Unless these differences are explicitly identified and considered by the decision maker, the end result will be the same. Techniques, such as conjoint analyses, analytic hierarchy and multidimensional scaling are available for measuring human perceptions and preferences.

While scientific uncertainties are generally recognized, there are other sources of uncertainty that are equally important. These include administrative uncertainties (changing leadership at the Presidential and agency level, including forest supervisors and district rangers who bring their own preferences and values to the decision process; changing budgets; changing law; and litigation) that affect implementation and can bring about changes in decisions and processes. Finally, there are randomly occurring and unpredictable factors, termed stochastic uncertainties.

Based on a review of the current literature on participatory processes and on experience, we have identified eight design considerations that should be addressed in formulating a strategy for public participation (from Stewart et al. 2004):

1. The agency must commit to public participation, including the necessary time and resources and willingness to accept different public values and concerns as legitimate.
2. Identify and engage appropriate stakeholders. Defining stakeholders can be an extremely complex process, and as the scope and geographic area of the plan increases, this becomes even more difficult.
3. Clearly state objectives for participation. In each case, the agency needs to convey their reasons for the participation effort, accurately define their own roles and those of the participants, and then follow through on their commitments. Stakeholders are more likely to trust public officials who candidly state their rationale for being included in decision making and then follow through with those commitments.
4. Assess the knowledge necessary for effective participation. This knowledge base must be made available to the participants. At the same time, the agency needs to move away from an environment where information is owned by the agency and simply disseminated, to one where information is gathered and converted into group knowledge. This requires some time in getting agreement on what information is to be considered. The process should accommodate both scientific and experiential knowledge.

5. Evaluate the agency's organizational structure to determine its willingness to accept and act on knowledge gained through the participation effort. A continual effort is needed by leadership to assure that broad public involvement is considered desirable and essential to the agency's success.
6. Build in procedural fairness. Public perceptions of procedural fairness in the decision making process have as much effect on overall satisfaction as the decision's substantive outcome.
7. Active, two-way communication should take place throughout the process. The deliberation process must accommodate a genuine opportunity to explore preferences in a manner that is not manipulative, deceptive or coercive.
8. Monitor and evaluate the participation effort's effectiveness. Participant feedback is as important as scientific feedback.

Finally, as the geographic scope of planning and time horizon increases, the combination of expanding and conflicting stakeholder interests, values and preferences and increasing uncertainties (scientific, administrative, and stochastic), the probability of encountering a wicked problem also increases. The characteristics of such problems have important implications. Based on research on the Northwest Forest Plan and the Sierra Nevada Forest Plan Amendment processes, we believe that planning must be collaborative and iterative, implemented through adaptive management, and explicitly consider and incorporate stakeholder values and preferences. This is essential, since arguments are usually framed about uncertainties in the science, but are actually driven by differences in values and preferences that are rarely expressed, identified, or considered. Failure to deal with these differences results in preparation of more complex documents and analysis without resolving the underlying issues around values and preferences. Building of long term relationships and learning networks is essential.

Committee of Scientists

We do not believe that NFMA requires that a Committee of Scientists be formed for every revision of the planning regulations. In fact, we believe that the long experience of the Forest Service in planning, the history learned from litigation, and existing resources should be used to develop the current revision of the planning regulations. Specific issues might be addressed by specialists, when necessary. If the Secretary of Agriculture does decide to appoint a Committee of Scientists, we would like the opportunity to recommend members.

Many of the above more general comments respond to a number of the specific questions asked in the NOI. However, we also address a number of specific questions in the following discussion.

Specific Questions Related to Substantive Principles for a New Rule

- Q. What do you see as the biggest threats to forest and grassland health and ecosystem resiliency?
 - A. Catastrophic wildfire, insect and disease infestations, invasive species, and landscape fragmentation/urbanization. However, other issues that must be addressed include the role of multiple-use, roadless areas, and access. Overuse of certain areas also needs to be addressed in the planning process.

Q. How do you define restoration? What is your concept of restoration? How can the planning rule foster restoration of NFS lands?

A. The common definition of restoration is a set of processes or practices designed to return an ecosystem to some predetermined former state. Planning should identify the end objective or desired state, not the specific practices to be used. However, the likely practices could/should be stated. The desired state can include such a concept as ecosystems “within the natural range of variation.”

We suspect that the whole concept of restoration (restoration to what?) can become the new biological diversity trap. It sounds good, but is defined in the eye of the beholder--one of the characteristics of a wicked problem is that there is no single definition of a problem, each person defines it in his/her own terms. Further, there is no legislative authority to manage for "restoration." Even the concept of desirable future conditions (DFC), that also sounds great, is filled with difficulty. It is so broad that it may be possible to get agreement on DFC, but have total disagreement on the practices used to get there.

Q. What kinds of conservation efforts can enhance ecosystem resiliency and prevent degradation?

A. Note our earlier discussion about principles and practices. Specific practices should be identified and discussed in the environmental documentation for individual projects conducted under the forest plan. Standards and guides for their specific use can be developed where needed. A general principle of restoration and maintenance of ecosystem resiliency implies various forms of active management of the landscape. The underlying issues are related to ecosystem health and resiliency. If forest and grassland ecosystems are healthy and resilient we believe that watersheds, wildlife habitat and communities will also be healthy. To achieve healthy and resilient ecosystems, there needs to be **purposeful** management--active management in some places, passive management in others, but purposeful in either case.

Q. How should the planning rule address uncertainty?

A. Managing in the face of uncertainty has an added and essential requirement to identify and characterize risk. The presence of risk and uncertainty does not mean that a definite management decision cannot be made, but it emphasizes the agency's need to think in terms of probability and risk assessment. **Uncertainty is a neutral analytical property of an event, relationship, phenomenon, or other important consideration that may be reduced through better science, but generally cannot be eliminated.** In this context, we mean by uncertainty the likelihood of the occurrence of an event, relationship, phenomenon, or other important consideration. This likelihood of occurrence may be unknown, or may have a distribution of possible values, but it is not under the immediate control of Forest Service decision makers.

There are three broad categories of uncertainty in the decision context facing the Forest Service: scientific, administrative (or implementation), and stochastic. To say that something is *scientifically uncertain* is to acknowledge that forests are complex systems and that our knowledge of them is incomplete. As a result, no one can state with

certainty the long-term outcome of any given management strategy, including maintaining the status quo. Scientific uncertainty is often expressed as a calculated or estimated confidence interval around a predicted value or outcome.

Administrative or implementation uncertainty refers to the vagaries of managing in a political environment in which public goals and priorities, societal needs and conditions, and organizational capacities change over time. Finally, *stochastic uncertainty* refers to those events that are largely random, unpredictable, and uncontrollable, such as lightning-caused ignitions or random changes in species populations.

In describing and representing the scientific and stochastic uncertainties inherent in long term ecosystem planning and decision making, analysts face a dilemma. On one hand, simple and accessible characterizations of the multiple uncertainties are likely to be misleading, biased, or wrong. But the alternative poses its own challenges. Detailed characterizations of uncertainty are likely to be difficult to understand and describe, and consequently may not be useful to either the public or decision makers. There is no scientific or technical solution for this dilemma. The resolution focuses on the decision processes employed. To be effective, such processes must carefully integrate analysis and broader deliberation, and should allow all participants to understand where scientists agree, where they disagree, and where their relative certainty ends ((Stern and Fineberg 1996).

Defining risk is fundamentally an expression of the values of those framing the decision problem. Risk is a concept with a long pedigree in a variety of disciplines, but in virtually all technical discussions, risk is represented as having three components:

- one or more potential stressors (sometimes called hazards);
- a probability that these stressors will occur (often called exposure); and
- the likely adverse effect that will result if the stressors do occur.

It is common to compare risks based on the product of the magnitude of the loss that will occur and the probability of its occurrence. Such calculations are referred to as “expected values.” In one recent example produced by the National Academy of Public Administration ((Fairbanks et al. 2001), the NAPA panel finds that many federal risk assessment methods consider mostly the magnitude of hazards. The panel argues that it is necessary to develop methods that clearly include all three components of risk:

- *Hazard*: e.g., an area’s fuel loading and dryness conditions;
- *Risk or exposure*: e.g., the probability of ignition; and
- *Value*: e.g., the physical, social, and economic costs of the potential damage.

An important observation regarding the role of value judgments in assessing risk is also made by Slovic (Slovic 2000) and is incorporated in a recent study by the National Research Council (NRC) (Stern and Fineberg 1996). In any characterization of risk, these studies argue, two critical value judgments are at least implicit. First, there is the judgment that a particular process or outcome merits serious attention. The decision to focus on wildland fire hazards or old-forest owl habitat, rather than, say, the economic vitality of adjacent communities or the potential harm to black oaks, is a value judgment made by key actors. Because of the influence of those key actors, one set of values

prevails in characterizing the risks in a given decision. Other actors at different times could have made, and have made, different judgments. Second, there is the judgment about what constitutes an unacceptable level of outcome. To say that some number of acres of stand-destroying fires is unacceptable reflects again the values of the decision makers. Between these two judgments, there is much room for analysis in modeling, measuring, and calculating, but these important analytical efforts should not obscure the central observation that focusing on some outcomes and not others, and on some outcome levels and not others, is a reflection of the value judgments and priorities of those making the decision. Again, which perceptions prevail in determining acceptable threshold levels of risk is a function of the influence of key actors. Our point is simply that these choices are neither objective nor purely scientific, nor could they be.

How people perceive risk depends on:

- what they value;
- how the risk is framed; and
- their level of trust in the responsible organization or institution.

It is well known, for example, that there is an inverse relationship between perceived risk and perceived benefit, and the relationship is linked to an individual's general affective evaluation of a hazard. If an activity is "liked" people tend to judge its benefits as high and its risks as low. If the activity is "disliked" the judgments are the opposite—benefits tend to be perceived as low while risks are perceived as high (Slovic 2000). Further, and perhaps even more important, every way of presenting risk information is a "frame" that can shape the judgments of participants in a risk decision. If the issue is framed in a positive light, people are more likely to dwell on the positive aspects of the decision, and vice versa. One often cited example is the observation that summarizing medical risks in terms of mortality rates yields very different perceptions compared to when the same information is presented in terms of survival rates. If a given treatment is described as having a mortality rate of 10 percent, for example, it is perceived very differently than if the same treatment is said to have a survival rate of 90 percent. The evidence also shows that experts are not immune to these framing effects. The effect is as strong when subjects are physicians as when they are lay people. As the NRC report concludes: Numerous research studies have demonstrated that different but logically equivalent ways of summarizing the same risk information can lead to different understandings and different preferences for decisions (Stern and Fineberg 1996, p. 57).

It should be noted that this is not an issue that can be resolved with better science. There is no scientific way to determine that one summary of risk is more accurate or less biased than another when both accurately reflect the data. Consequently, the problem of generating a single unbiased summary of risk information to meet the needs of participants in a risk decision has no purely technical solution.

As with uncertainty, the resolution of this dilemma focuses on the decision processes employed. In this light, it is also important to note a corollary to the affective evaluation principle mentioned above: if participants trust the organization presenting the risk information, they are more likely to accept the characterization. And the level of trust is a byproduct of the decision process (Shindler and Toman 2003). Experience in a variety of settings suggests that such trust is easily damaged and difficult to restore.

Communicating risk and uncertainty to stakeholders generally occurs in the form of one-way or two-way communication activities, but recent literature suggests that more participatory forms of risk communication may often be necessary. Such communication must be open, continuous, begin early in the planning process, and clearly identify what is known and what is uncertain. We suggest reviewing Covello and Allen's work including *Seven Cardinal Rules of Risk Communication* (Covello, McCallum, and Pavlova 1987). Ecological and other models used in planning should include an estimate of certainty, using confidence limits if available. If not, then the elements of uncertainty should be clearly displayed and discussed with the stakeholders. Because outcomes of decisions over long periods of time are inherently uncertain, all decision making must include elements of the precautionary principle, but also incorporate adaptive management as an implementing practice. However, in accepting use of the precautionary principle, it must be acknowledged that doing nothing is not necessarily the least risky option. Further, the precautionary principle, when applied to the extreme, can prevent needed treatments and conflict with the concept of adaptive management as it has in implementation of the Northwest Forest Plan and Sierra Forest Plan Amendment. Finally, adaptive management only addresses scientific uncertainty. It does not deal with other sources of uncertainty nor does it directly address the issue of differing stakeholder values or preferences. However, the latter may be partially resolved as the stakeholders work together and gain experience from the outcomes of adaptive management.

Specific Questions Related to Process Principles for a New Rule

- Q. What kind of administrative review process should be offered to the public in the planning rule?
- A. We prefer a pre-decisional objection.
- Q. How can the planning rule support the creation of a shared vision for each planning area through the planning process?
- A. Through an open, transparent, iterative process that is designed to build learning networks (Shindler and Cheek 1999; Bormann et al. 1994; Stubbs and Lemon 2001).
- Q. "Much discussion has been centered on how land management plans should be viewed; are they strategic documents that lay the foundation for specific future actions to help meet unit goals? Or, should land management plans also make project or activity decisions?"
- A. Our Association strongly endorses the idea of having the rule specify that plans should be strategic and a foundation for future action, not project decisions. The Forest Service must not waste an important Supreme Court opinion that could save it countless hours, expense and frustration.

“As this Court has previously pointed out, the ripeness requirement is designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative

decision has been formalized and its effects felt in a concrete way by the challenging parties.” *Abbott Laboratories v. Gardner*, 387 U.S. 136 <<http://www.law.cornell.edu/supct/cgi/get-us-cite?387+136>> , 148—149 (1967).

SUPREME COURT OF THE UNITED STATES

No. 97—16

OHIO FORESTRY ASSOCIATION, INC., PETITIONER v. SIERRA CLUB et al.
ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR

Based on the clear language of the law, we question the need to have an EIS for the Rule itself.

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Review Team and Process

This report represents the experience of the members of the National Association of Forest Service Retirees. A request for comments was sent to our membership and their responses were compiled by a team consisting of Ronald Stewart, Dick Pfilf, and Steve Eubanks. We also reviewed existing statutory authorities and previous efforts to revise the regulations guiding Forest Service planning under the National Forest Management Act of 1976. A report was prepared by the team and then reviewed and approved by the NAFSR Board of Directors.

Review Team Chair Ronald Stewart served in senior leadership line officer and staff positions in the field and national office in several mission areas of the Forest Service. Dick Pfilf and Steve Eubanks served in the field in both line officer and staff positions. All three have experience in planning at the regional (Stewart) or forest level (Pfilf and Eubanks), including decision making and plan implementation. This team's experience spans the agency's history before the National Forest Management Act of 1976 to its more recent application in the late 20th and early 21st Centuries.