

1/24/2013

Los Padres National Forest
406 South Mildred Ave.
King City, California 93930

Attn: Jeff Kwasny

Re: Strategic Community Fuelbreak Improvement Project
File Code: 1950-3

Dear Mr. Kwasny,

Thank you for this opportunity to comment on the United States Forest Service ("USFS") proposed action for the Strategic Community Fuelbreak Improvement Project as described in the November 20, 2012 scoping letter ("Scoping Letter"), File Code: 1950-3 (sometimes hereinafter the "Project"). Some signatories to this letter have participated in Firescape Monterey meetings and workshops and understand the genesis and rationale behind the Project.

We believe that the Project is an important first step for the USFS in (1) recognizing the importance of the Big Box firebreaks for fire suppression, (2) recognizing the need for pre-suppression fuelbreak work to promote effectiveness of the Big Box firebreaks and firefighter safety, (3) reducing potential for negative impacts from suppressing fires in Wilderness and, (4) protecting at-risk communities and forest resources.

Accordingly, we fully support the direction of the USFS in putting forth the Strategic Community Fuelbreak Improvement Project. However, we request that the Project be modified to fulfill the purpose and needs set forth in the Scoping Letter, to conform with Federal law and the adopted Monterey County Community Wildfire Protection Plan ("MCCWPP"), and for additional reasons explained below.

Fuelbreak Purpose And Need, And Public Safety, Health And Welfare.

We recommend that fuelbreak design, construction and maintenance focus on the Project's purpose and need, which are protecting the safety, health and welfare of at-risk communities around the Monterey Ranger District, while preserving and protecting natural resources. At the same time, the signatories recognize, appreciate and support the importance of maintaining the aesthetic characteristics and ecological health of the forest environment, whether Wilderness or Non-Wilderness, while working to protect lives and property.

As stated in the Scoping Letter, the purpose for the fuelbreaks is to "enhance protection for at-risk communities from wildfire," and the need for the fuelbreaks is to (1) increase wildland fire suppression efficiency for protecting adjacent communities or improvements; (2) reduce exposure of firefighters to hazards; (3) reduce wildfire risk to life and property; (4) reduce suppression costs, and; (5) reduce fire suppression impacts on the landscape. If the Project does not achieve the above purpose and need, then the Project's potential benefits to life, property and the environment will be compromised.

It is important to note that the MCCWPP, which was signed by the USFS and other agencies and organizations, includes the following recommendation, which was written in collaboration with the USFS and other entities, and is consistent with the purpose and needs for the Project set forth in the Scoping Letter:

Reduce the risk to communities by maintaining the Ventana [Big Box] Fuelbreak, and treatment on both sides of it in a condition and for such distance that will ensure a high probability the fuelbreak or other treatment will be effective under adverse weather conditions and permit effective tactical suppression actions. The fuelbreak should serve to allow firefighters to work safely in the area; to change fire direction; to drop fire to the ground; and to stop the spread of wildfire under adverse fire conditions. The width of treatment should be determined utilizing such factors as fuel loads, topography, predominant winds, values at risk and fire behavior modeling. To the extent the Ventana Fuelbreak and the treatments on both sides of it are on non-federal land, this recommendation should be construed as recommending that federal funds be made available for their maintenance (e.g., through grants).

The foregoing is from the MCCWPP recommendation to the Secretary of Agriculture in section 9.1.1. Section 9.1.2 is similar. The fuelbreaks referred to are parts of the historic Big Box.

An artificial maximum width of 150 feet (and 300 feet in some locations) for the fuelbreaks may not be sufficient to meet the purpose and needs of the Project and could result in hazardous conditions for firefighters and at-risk communities. In some areas, a 150-foot wide fuelbreak may be sufficient to meet the stated purpose and need. In other areas, a wider fuelbreak may be needed.

We ask that the USFS perform a thorough review of each line in segments, i.e., perform segment by segment analysis, and establish the width for each segment based on the description of the characteristics of the fuelbreak as described in MCCWPP sections 9.1.1 and 9.1.2. (as above), rather than place an arbitrary limitation on the width of the fuelbreaks. The resulting area would then become the area analyzed for National Environmental Policy Act ("NEPA") purposes, rather than an arbitrary maximum width. The segment-by-segment analysis would ensure that the Project's purpose and need would be met.

For all locations, the Project description should provide for a minimum fuelbreak width of 150 feet, but not less than the width that will conform with the language taken from MCCWPP sections 9.1.1 and 9.1.2. above.

Additionally, during the December 6, 2012 scoping meeting, USFS representatives indicated that fuelbreaks would be "feathered" or otherwise blended with surrounding vegetation for aesthetic purposes.

Such feathering should be outside the 150-foot minimum width and outside any other width that conforms with the MCCWPP language quoted above, to avoid aesthetics diminishing the promotion of safety, health and welfare of people living in communities around the Monterey Ranger District, or causing the Project to not meet its purpose or need as expressed in the Scoping Letter. We believe that NEPA requires such considerations, as explained below.

Fuelbreak Construction And Maintenance

The Scoping Letter limits the tools available for the Project to chainsaws, hand and machine piling, pile burning and mastication for fuelbreaks in Non-Wilderness; and only chainsaws, hand piling and pile burning, with maintenance using traditional tools for fuelbreaks in Wilderness. Limiting the tools available for the Project could cause the Project to become economically infeasible for implementation due to the costs and resources needed to construct and maintain the fuelbreaks.

We ask that the USFS consider other tools and methods as part of the Project. There are a number of tools and methods available for use in the Wilderness and outside of the Wilderness, and these are discussed in detail in the MCCWPP. More specifically, we request that you consider the following options that are cost effective and can be accomplished relatively more efficiently than those discussed in the Scoping Letter:

- 1) Prescribed burn using black and wet lines — Burning under desirable conditions restores fire to the ecosystem and is normally one of the most cost effective methods for strategically reducing hazardous fuels. Use of black line in conjunction with water or other fire retardant liquid allows for control and the ability to direct low-intensity fire. This method reduces the risk of escape and is extremely cost-effective and efficient. Use of this method has been found to allow the construction of a mile-long fuelbreak in an hour.
- 2) Use of appropriate herbicides — Direct application of registered herbicides to foliage upon initial construction would stunt the growth of the fuels and change species composition, thus, allowing for longer periods between maintenance.
- 3) Use of livestock — Fuelbreaks can be constructed and maintained using livestock, such as goats, cattle, horses. Whether fenced or herded, goats and other livestock can be used to accomplish the construction of the fuelbreaks by naturally consuming large proportions of vegetation.
- 4) Fireline explosives — Use of fireline explosives that are approved and accepted for wilderness use.
- 5) Mechanical means — Tracked and wheeled vehicles using gasoline and/or diesel-powered engines, and such tools as gasoline-powered chainsaws and brush cutters.
- 6) Type conversion — Type conversion may consist of such methods as replacing brush species with grass species, or re-establishing grass species in impacted areas. Consider re-establishing native trees in some locations.
- 7) Low flying aircraft — Use of low-flying aircraft for such purposes as reseeding, logistical support of crews, aerial ignition, aerial application of fireline explosives.

It is important to note that not only the fuelbreaks will need to be maintained, but also the roads/trails leading to and from the fuelbreaks will need to be maintained. The above tools are effective and efficient for maintaining both.

Additional Consideration For Protecting Property

In the Scoping Letter, the USFS identified (as one of several needs for this Project) the need to "reduce wildfire risk to life and property." "Property" includes structures and infrastructure. "Property" also includes watersheds, including those that serve as water sources for urban areas such as Salinas and the Monterey Peninsula, and for rural communities such as Big Sur, and other urban and rural communities in Monterey County.

Watersheds in the Monterey Ranger District also serve as a source of irrigation water for agricultural production.

Monterey County's agricultural industry contributed \$8.2 billion to the local economy and provided more than 73,000 jobs in 2010—more than one in five jobs in the county.¹

Whereas headwaters of both the Nacimiento and San Antonio Rivers are located in the Los Padres National Forest, preserving the watersheds within the forest is essential to farmers and to the economic engine of Monterey County.

Because the watersheds within the Los Padres National Forest are essential to Monterey County, we ask that additional consideration be given to expand the scope of the Project to include protecting essential watersheds within the Forest and protecting downstream agricultural production lands through wildfire fuel mitigation measures.

The aftermath of high-intensity wildfires can result in life and property-threatening debris flows, significant erosion, mudflows, and sedimentation of watersheds and reservoirs. This has been devastating in Monterey County in the past, not only to communities and agriculture but also to natural resources within watersheds.

Congress has expressed the intent that watersheds managed by the USFS be protected from wildfire to promote their value as sources of water and other values. For example, see 16 USC §§ 6501(1) and (3), 6511(12), 6512(a)(2) and (3), and 6513(a).

Include The Northern Portion Of The Historic Peripheral Fuelbreak In The Project.

As currently shown on the map accompanying the Scoping Letter, the Project omits an approximately 10-mile portion of the historic fuelbreak on the north, which runs from near Botchers Gap on the west to Los Padres Dam on the east.

A 1968 USDA report to then-President Johnson on the proposed Ventana Wilderness refers to this portion of the fuelbreak being constructed inside the then-proposed Ventana Wilderness.²

¹ 2011 Monterey County Crop Report, which may be downloaded at http://ag.co.monterey.ca.us/assets/resources/assets/252/cropreport_2011.pdf or <http://tinyurl.com/c75r5fs>

² See the USDA report to President Johnson at stamped-page-number 3603, where the report says, "For portions of approximately 12 miles of Wilderness boundary around the north end of this unit, provision is made for additional protection by means of a hand constructed fuelbreak inside the Wilderness if necessary." The entire report can be downloaded using this link <http://tinyurl.com/c9hzrfr>

This portion of the historic firebreak was successfully used as a primary control line to stop both the 1977 Marble Cone Fire and the 2008 Basin Fire, and was reopened during the Kirk Fire. It helps protect the at-risk community of Carmel Valley, where thousands of homes and many business and other structures and infrastructure are located, and also protects the at-risk communities of Palo Colorado, Carmel Highlands, White Rock, Rancho San Carlos, Jamesburg and Cachagua.

To omit this section from the project would break the continuity of the Big Box and jeopardize all listed at-risk communities. The USFS should continually address its responsibility to maintain and use historic fuelbreaks and firebreaks within its jurisdiction, and not rely on secondary lines outside the national forest.

The photograph below is taken looking to the south. It shows the Basin Fire burning up to the northern portion of the historic firebreak during the Basin Fire, as it burned toward Carmel Valley, which is shown under fog in the foreground.



Including this northern portion of the historic line in the Project will help promote the safety, health and welfare of people in the at-risk communities of White Rock, Palo Colorado, Carmel Highlands, Rancho San Carlos, Carmel Valley, Jamesburg and Cachagua, and help ensure the stated purpose and need of the Project is fulfilled.

It will also implement the intent that the fuelbreak be maintained regardless of its inclusion in wilderness, as was stated during contemplation of the Ventana Wilderness area's creation.

Include Tassajara Road And Church Ranch In The Project.

During the Basin Fire the Tassajara Zen Center, the Church Ranch and other areas were left unprotected due to lack of fuel reduction work along critical access roads. The Project should be expanded to include roadside treatments in these areas to enhance public and firefighter safety.

The 10-Year Period Mentioned In The Scoping Letter Must Be Clarified To Embrace More Immediate Action.

During the December 6, 2012 scoping meeting, it was explained that the language in the Scoping Letter about Project completion within 10 years was not intended to mean that the Project might not be completed for 10 years.

It was explained that the language was meant to say, though the fuelbreak would be completed by an earlier date, the full scope of the Project, including ongoing maintenance after the fuelbreak is initially completed, is being planned for a period of 10 years.

To help ensure the health, safety and welfare of the citizens of Monterey County, and fulfillment of the purpose and need of the Project, the Project description should be changed to make clear that the fuelbreak will be completed within a reasonable timeframe.

The MCCWPP provides that if the peripheral fuelbreak is not maintained as described within three years of the MCCWPP's execution, a recommendation is made to Congress to pass legislation to allow and require the USFS to maintain the historic fuelbreaks.³

The three-year period in the MCCWPP was written in collaboration with the USFS. As of the date of this comment letter it has been about two years since execution of the MCCWPP.

The signatories to this letter realize that such projects can take more time than anticipated. However, we urge the USFS to modify the Project to indicate that the Project will be completed in a timely manner, keeping in mind that there is potential for major wildfires in the area essentially every fire season, including potential for loss of life and property and harm to watersheds and other resources.

Update "At-Risk Communities" To Also Include Those In The MCCWPP.

The Scoping Letter states the purpose of the Project is "[To] enhance protection for at-risk communities from wildfire."

During the December 6, 2012 scoping meeting USFS maps and comments indicated the USFS may be relying on incomplete data for the location of "at-risk communities" in Monterey County.

³ The recommendation to Congress is at MCCWPP section 9.3.

Title 16 USC § 6511(1) contains the definition for at-risk communities, which includes two ways of identifying them.

One way to identify an at-risk community is for the community to be listed in the notice referenced in 16 USC § 6511(1)(A)(i) and meet the conditions in paragraphs (B) and (C) ("listed at-risk communities").

The other way to identify an at-risk community is for the community to meet the definition of an at-risk community in 16 USC § 6511(1)(A)(ii), and meet the conditions in paragraphs (B) and (C) ("descriptive at-risk communities").

During drafting of the MCCWPP the definitions for both "descriptive at-risk communities" and "listed at-risk communities" were applied to determine which communities in Monterey County are at-risk communities pursuant to either means of identification in 16 USC 6511(1). The results are listed in MCCWPP Table 13, starting on page 50, per the table's notes A and B on page 52.⁴

The USFS should base the communities the Project will help protect on the at-risk communities named in MCCWPP Table 13 rather than sources that rely only on the notice referenced in 16 USC § 6511(1)(A)(i).

It should be kept in mind that many at-risk communities do not have mapped boundaries. In such cases it is important to also include all portions of the at-risk community that would meet the definition of 16 USC § 6511(1)(A)(ii) and paragraphs (B) and (C).

Update Wildland-Urban Interface To Also Include Wildland-Urban Interface Areas In The MCCWPP.

Title 16 USC § 6511(16) defines the term wildland-urban interface ("WUI") in both § 6511(16)(B) and § 6511(16)(A), with the latter defining WUI to be where it is indicated to be in a community wildfire protection plan.

The MCCWPP was finalized in December of 2010, and contains a map as Appendix B-7 showing the location of WUI. The MCCWPP's WUI information should be added to the USFS's WUI data if it has not yet been included.

Title 16 USC § 6512 *et seq.* provides benefits to the USFS when conducting certain fuel reduction Projects in certain areas that are located in WUI.

By way of example, 16 USC § 6514(d)(1) provides that for an authorized hazardous fuel reduction project proposed to be conducted in WUI, the Secretary of Agriculture "is not required to study, develop, or describe more than the proposed agency action and 1 action alternative in the environmental assessment or environmental impact statement prepared pursuant to section 102(2) of the National Environmental Policy Act of 1969."

Moreover, 16 USC § 6514(d)(2) provides, if an authorized hazardous fuel reduction project proposed to be conducted in WUI is no further than 1½ miles from an at-risk community, the Secretary of Agriculture is, "not required to study, develop, or describe any

⁴ MCCWPP Table 13 also lists "communities at-risk," which are based on a list maintained by the California Fire Alliance, which does not require the community to be adjacent to Federal land. See, http://www.cafirealliance.org/communities_at_risk/

alternative to the proposed agency action in the environmental assessment or environmental impact statement prepared pursuant to section 102(2) of the National Environmental Policy Act of 1969," provided that, pursuant to 16 USC § 6514(d)(3), "In the case of an authorized hazardous fuel reduction project described in paragraph (2), if the at-risk community has adopted a community wildfire protection plan and the proposed agency action does not implement the recommendations in the plan regarding the general location and basic method of treatments, the Secretary shall evaluate the recommendations in the plan as an alternative to the proposed agency action in the environmental assessment or environmental impact statement prepared pursuant to section 102(2) of the National Environmental Policy Act of 1969."

Consistent with 16 USC § 6514(d)(3) Monterey County has adopted a community wildfire protection plan, which recommends in sections 9.1.1 and 9.1.2 that the USFS maintain the fuelbreaks described in the Project in the condition described in such sections.⁵

Notwithstanding the foregoing paragraphs under this heading, the provisions of law described therein do not apply to authorized hazardous fuel reduction projects proposed to be conducted in wilderness. (16 USC § 6512(d).)

Include Private Land Owned By Willing Participants In The NEPA Process And In The Project.

The Firescape Monterey process referenced in the Scoping Letter was intended to be an "all lands" approach to address the threat of wildfires.

The concept is that wildfire does not recognize political or ownership boundaries, so a comprehensive approach across all ownerships would best address the problem. The Project map accompanying the Scoping Letter indicates that portions of the historic fuelbreak that cross over private land will not be included in the Project. The original Firescape concept was to perform the NEPA process across both Federal and state lands, including private lands owned by willing participants.

The benefit of including private lands of willing participants is that the NEPA process is considered to be "functionally equivalent" to the process required by the California Environmental Quality Act (CEQA). Areas included in the NEPA process should not require CEQA review to perform the same work analyzed under NEPA.

As a result, performing NEPA for the fuelbreak on private lands that the historic firebreak crosses would remove a substantial financial burden and greatly reduce the time required for private landowners to perform fuelbreak work on their land, should they desire to participate. Similarly, including private land owned by willing participants in the actual on-the-ground work, would make it more likely the fuelbreak would be completed in more areas.

Additional Rationale For The Foregoing

Due to Monterey County's topography, vegetation types and density, weather, and other factors, the potential for loss of life, property and resources from catastrophic wildfires cannot be overstated. Time is of the essence. This Project should be accomplished within the shortest time possible.

⁵ The MCCWPP can be downloaded from www.firesafemonterey.org/mccwpp

As one long-time-resident and concerned citizen summarizes it, during fire season, "We are living on the head of a match."

The Monterey Ranger District has been the origination point for some of the largest and most costly wildfires in the history of the United States. Among them the 173,000 acre Marble Cone Fire (1977, lightning), the 86,000 acre Kirk Complex Fire (1999, lightning) and the 134,000 acre Basin Fire (2008, lightning).

This wildfire danger, and the need to prepare for it before fires start, has long been recognized in Federal legislation, Congressional reports and Los Padres National Forest documents.⁶

An example is the 1968 US Department of Agriculture ("USDA") report to then-President Johnson on the proposed Ventana Wilderness area, which the President forwarded to Congress, which states,

"The boundary of this proposed Wilderness is very important and has been intentionally established wherever possible to allow the construction of peripheral fuelbreaks, and fire control access. [¶] Approximately 70 percent of the boundary of this area would be located 250 feet below the crest of the ridge to permit the machine construction of effective fuelbreaks."⁷

Another example is House Report 98-40 on H.R. 1437 (P.L. 98-425), 98th Congress 1st session, March 18, 1983, House Committee on Interior and Insular Affairs, speaking on additions to wilderness, including in the Monterey Ranger District, which states,

"Fire management—Due to the arid climate, high seasonal temperatures and buildup of fuel that exists in so many California roadless areas, especially in Southern California, fire management is a key concern. ... Not only does the threat of wildfire pose a danger to public safety, but uncontrolled fires can also cause severe damage to watersheds, water quality and other beneficial wilderness values. To address this concern in the [Wilderness Act of 1984], the Committee reiterated the fire provisions of Section 4(d)(1) of the Wilderness Act. ... As the Committee stressed ... this provision is intended to grant the Forest Service with the means of utilizing such measures or tools as it deems "necessary" and "desirable" in the control of [sic] pre-suppression of fire in wilderness areas. In some instances, the Forest Service has exercised this broad authority [for] fire roads, fuel breaks or other management. ... The major point to be made however, is that the Wilderness Act permits the Forest Service to utilize measures necessary to control wildfire, or the threat of fire, in wilderness areas." [Emphasis added.]

Pre-suppression means before fire starts. Despite such long-time statements of intent to prepare for wildfires before they start, including in wilderness, little has actually been done on the ground in the Monterey Ranger District of the Los Padres National Forest to prepare and maintain fuelbreaks alongside historic firebreaks before fires start.

⁶ See *Monterey County Community Wildfire Protection Plan* section 3.3.1 for an overview of some of these Federal statutes and documents, available for download at www.firesafemonterey.org/mccwpp.

⁷ The entire report can be downloaded from <http://tinyurl.com/c9hzrfr>. The quote is from stamped-page number 3603.

Fire professionals and concerned citizens in at-risk communities around the Monterey Ranger District therefore greatly appreciate that the USFS is recognizing the critical importance of the peripheral fuelbreak by pursuing this Project to provide fuelbreaks along historic firebreaks around the Monterey Ranger District, some of which are roads that also serve as escape routes during wildfires.

Nevertheless, we believe that the improvements above should be made to the Project. We believe the improvements included in these comments are supported by the National Environmental Policy Act ("NEPA"). For example, NEPA, as codified at Title 42 United States Code ("USC") § 4331(a) states,

"[I]t is the continuing policy of the Federal Government ... to use all practicable means and measures ... in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." [Emphasis added.]

Stating further in pertinent part at subsection (b),

"In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may –

"2. assure for all Americans safe [and] healthful ... surroundings;

"3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences ..." [Emphasis added.]

Case law explains that NEPA's concern for human health and safety ensures that neither the Endangered Species Act nor NEPA put a priority on protecting plants or animals over protecting humans. For example, a court has said,

"This case is at the intersection of harm to threatened species and humans and their environment. Congress has not nor does *TVA v. Hill* elevate species protection over the health and safety of humans." [Emphasis added.]⁸

Stating further,

"NMFS and Reclamation have not complied with NEPA. This prevented in-depth analysis of the potential RPA Actions through a properly focused study to identify and select alternative remedial measures that minimize jeopardy to affected humans and their communities, as well as protecting the threatened species." [Emphasis added.]⁹

⁸ *Consolidated Salmonid Cases*, 713 F.Supp.2d 1116 (E.D. Cal., 2010) at page 1169.

⁹ *Consolidated Salmonid Cases* at page 1171.

USFS statements at the December 6, 2012 scoping meeting indicate that species protection is not an issue for this Project. However, the same NEPA concerns for human safety, health and welfare apply to analysis of any Federal project subject to NEPA.

The express intent of Congress in NEPA ensures that other concepts, such as wilderness, or advocacy by political action groups, do not have priority over protection of human health, safety or welfare. With regard to wilderness, neither the Wilderness Act of 1964 nor any of the other wilderness acts applicable to the Monterey Ranger District require otherwise.

Moreover, as noted above, applicable wilderness acts contain language authorizing the USFS to perform pre-suppression measures in preparation for wildfires, to protect communities and watersheds from wildfires that start in the national forest, and to protect the forest from fires that start outside the national forest.

We believe the Project should be improved to provide for the safety, health and welfare of the people of Monterey County, and to fulfill the purpose and need of the Project, by including the above modifications.

Adopting a "no-action" alternative for this Project would mean that unplanned fires in the Monterey Ranger District would have the potential for widespread threat to lives, property and resources.

Conclusion

The signatories to this letter fully support the direction set forth by the USFS in the Strategic Community Fuelbreak Improvement Project and ask that there be modifications to the Project to ensure that the Project meets the purpose and need set forth in the Scoping Letter, and promotes the safety, health and welfare of people who live in communities around the Monterey Ranger District.

We look forward to collaboratively working with you on the Project.

Approved by vote of the Board of Directors of, and respectfully submitted by,

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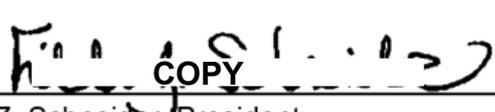
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