

Exhibit 4

Email from Southern
Environmental Law Center to
the USFS about FOIA Request

Bob Halstead

From: Sam Evans
Sent: Tuesday, August 24, 2021 1:52 PM
To: Darr, Melissa - FS
Subject: Re: Forest Service Request 2019-FS-WO-04832-F

Hi, Melissa. I hope you're doing well. Could you give me a status update on this request? Thank you,

From: Sam Evans
Sent: Thursday, January 28, 2021 3:00 PM
To: Darr, Melissa - FS
Subject: Re: Forest Service Request 2019-FS-WO-04832-F

Melissa, thanks so much for following up with me on this. I admit that I'd let it fall off my to-do list to circle back around after the final rule was out. Based on the changes to the final rule, I think we can make some further changes. First, I'm comfortable striking all the categories we *didn't* prioritize below. (Previously, I had said that we could defer them, but not strike them. Now, we can let them go for good.) In addition, we can strike categories 6, 14, and 23 (as numbered below). The remaining categories, as narrowed and clarified below, are the only ones we are still pursuing. For convenience, the categories we're seeking are copied and pasted here:

1. Forest Service procedures and/or criteria, including but not limited to procedures and/or criteria required by 40 C.F.R. 1507.3(b), for the identification of categories of action that do not normally require an environmental assessment or environmental impact statement, and all records of the application of such procedures or criteria to develop the new or revised categorical exclusions proposed at 84 Fed. Reg. 27,544 through 27,559.

This category (1) remains of immediate interest.

2. All information relied upon in the development of proposed 220.5(e)(3), (e)(16), (e)(23), (e)(24), (e)(25), (e)(26), and (e)(27).

We note that this category (2) overlaps somewhat with succeeding categories. For example, data received in response to a data call (category #3) or analyses and syntheses of prior projects (category #4) may also have been relied on in the development of the proposed CEs.

8. For all projects for which primary documents, data, summary, analysis, evaluation, or synthesis were sought, gathered, or submitted in connection with the development of proposed 36 C.F.R. 220.5(e)(26), including but not limited to the 718 projects referred to in the Supporting Statement for the CE:

(a) All NEPA documents (including pre-scoping, scoping, draft analysis, final analysis, supplemental analyses, findings of no significant impact, decision notices or memos);

(b) All documents responding to an administrative appeal or objection or amending a decision, and all supplemental information reports; and

(c) All other data, summary, analysis, evaluation, or synthesis referring to such projects.

For clarification, we are seeking these documents (category 8) only to the extent they were collected and considered in the development of proposed CE 26. In other words, we seek these documents only to the extent they exist in the files of the custodians who were responsible for the development of CE 26.

10. All records summarizing, evaluating, analyzing, grouping, or differentiating projects and/or their effects using any metric, methodology, or criterion (for example, without limitation, acreage, ecosystem or community type, project purpose, suitability of affected lands for timber production or other uses, road mileage, slope or soil type, watershed characteristics, wildlife or plant species affected, road density, presence of extraordinary circumstances, effect on invasive species infestations, or number or substance of public or agency comments received) and all records related to the development or selection of any such metrics, methodologies, or criteria.

This category (10) may be limited to the files of the custodians who were responsible for the development of proposed CEs 23, 24, 25, and 26. This request is intended to reach records of how projects were considered in the development of those CEs, including how completed projects were compared or contrasted.

22. All records related to categories of action considered for categorical exclusion, including different versions of the categories proposed for action, but not ultimately included in the proposed rule, along with all records documenting their likely effects and all records documenting the reasons they were not included in the proposed rule.

Hopefully these changes make the request more manageable. I'm open to further discussion if there are hangups, but I'm not sure how to narrow any more from my end.

Do you have a sense of where we're at? Have you received anything back from the custodians yet? Thanks again,

From: Darr, Melissa - FS <Melissa.Darr@usda.gov>
Sent: Thursday, January 28, 2021 2:43 PM
To: Sam Evans
Subject: RE: Forest Service Request 2019-FS-WO-04832-F

Hi Sam,

I hope you are doing well and staying safe. I wanted to follow up to see how you wanted proceed with this request given then new administration. I'm still waiting for more responsive documents from the program office so now is the perfect time to make any changes to the search. Please let me know how, or even if, you would like us to proceed. I know there was a lot of uncertainty about what would be in the final rule when we last spoke but since it has been finalized, hopefully we could come up with a plan for the remaining portions of your request.

Pleas let me know how you would like to proceed. I would be happy to have another call, if that would be easier. Just let me know.

Best Wishes,
Melissa

From: Darr, Melissa - OGC, Washington, DC
Sent: Thursday, September 24, 2020 10:01 AM

To: Sam Evans <sevans@selcnc.org>

Subject: RE: Forest Service Request 2019-FS-WO-04832-F

Sam,

Thank you for getting back to me! This helps immensely to get this request started back up to know which parts are of the most immediately value to you. I will reach out to the Program Office to get the next set of searching done so we can hopefully get some documents to you soon. Once we get those documents to you and the final rule is published, we can reevaluate which parts of the request remain of interest and reprioritize if need be.

In the meantime, if you have any questions or would like to discuss your request further, please let me know.

Best Wishes,
Melissa

From: Sam Evans <sevans@selcnc.org>

Sent: Wednesday, September 23, 2020 8:30 PM

To: Darr, Melissa - OGC, Washington, DC <Melissa.Darr@usda.gov>

Subject: Re: Forest Service Request 2019-FS-WO-04832-F

Melissa,

I apologize that it has taken a while for me to get back to you. When we last spoke, I mentioned that some elements of the Forest Service's proposed NEPA rule (the subject of our FOIA request) now appear less likely to be included in the Final Rule. Given this expectation, we would like to prioritize the categories of our request most directly related to the proposed categorical exclusions, which we still expect to see in some form in the Final Rule. For the remainder, I will be happy to reevaluate after the Final Rule is released and let you know which of the outstanding categories remain relevant.

For present purposes, here are the categories (with some additional narrowing) that I hope will zero in on the records of greatest immediate interest. Thank you for your help getting this request back on track; I'm glad that the FOIA office is getting staffed up again. Please let me know if there's anything I can do to further clarify.

1. Forest Service procedures and/or criteria, including but not limited to procedures and/or criteria required by 40 C.F.R. 1507.3(b), for the identification of categories of action that do not normally require an environmental assessment or environmental impact statement, and all records of the application of such procedures or criteria to develop the new or revised categorical exclusions proposed at 84 Fed. Reg. 27,544 through 27,559.

This category remains of immediate interest.

2. All information relied upon in the development of proposed 220.5(e)(3), (e)(16), (e)(23), (e)(24), (e)(25), (e)(26), and (e)(27).

We note that this category overlaps somewhat with succeeding categories. For example, data received in response to a data call (category #3) or analyses and syntheses of prior projects (category #4) may also have been relied on in the development of the proposed CEs.

8. For all projects for which primary documents, data, summary, analysis, evaluation, or synthesis were sought, gathered, or submitted in connection with the development of proposed 36 C.F.R. 220.5(e)(26), including but not limited to the 718 projects referred to in the Supporting Statement for the CE:
- (a) All NEPA documents (including pre-scoping, scoping, draft analysis, final analysis, supplemental analyses, findings of no significant impact, decision notices or memos);
 - (b) All documents responding to an administrative appeal or objection or amending a decision, and all supplemental information reports; and
 - (c) All other data, summary, analysis, evaluation, or synthesis referring to such projects.

For clarification, we are seeking these documents only to the extent they were collected and considered in the development of proposed CE 26. In other words, we seek these documents only to the extent they exist in the files of the custodians who were responsible for the development of CE 26.

10. All records summarizing, evaluating, analyzing, grouping, or differentiating projects and/or their effects using any metric, methodology, or criterion (for example, without limitation, acreage, ecosystem or community type, project purpose, suitability of affected lands for timber production or other uses, road mileage, slope or soil type, watershed characteristics, wildlife or plant species affected, road density, presence of extraordinary circumstances, effect on invasive species infestations, or number or substance of public or agency comments received) and all records related to the development or selection of any such metrics, methodologies, or criteria.

This category may be limited to the files of the custodians who were responsible for the development of proposed CEs 23, 24, 25, and 26. This request is intended to reach records of how projects were considered in the development of those CEs, including how completed projects were compared or contrasted.

22. All records related to categories of action considered for categorical exclusion, including different versions of the categories proposed for action, but not ultimately included in the proposed rule, along with all records documenting their likely effects and all records documenting the reasons they were not included in the proposed rule.

From: Darr, Melissa - OGC, Washington, DC <Melissa.Darr@usda.gov>

Sent: Friday, August 21, 2020 11:11:33 AM

To: Sam Evans

Subject: Forest Service Request 2019-FS-WO-04832-F

Hi Sam,

Thank you for speaking with me this morning about your request. As we discussed, once I know more about which parts of the request, such as the categorical exclusions, you'd like us to focus on next, we can get moving forward with processing. If you have any questions, please let me know. I'd be happy to discuss your request so we can get and keep this moving as much as possible.

Best Wishes,
Melissa



Melissa Darr
FOIA Analyst
Departmental FOIA Office
Office of the General Counsel
US Department of Agriculture
1400 Independence Ave., SW, Room 2025A
Washington, DC 20250
✉ Melissa.darr@usda.gov

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.