

Exhibit 101



June 28, 2023

Freedom of Information Act Officer
U.S.D.A Forest Service
Southwest Region - Region 3
333 Broadway SE
Albuquerque, New Mexico 87102

SENT VIA U.S. MAIL - RETURN RECEIPT REQUESTED

RE: Freedom of Information (“FOIA”) Request of Santa Fe Forest Collation

Dear FOIA Officer,

The Santa Fe Forest Coalition (“Coalition”) is an all volunteer nonprofit that educates the public, the media, and policy makers on critical issues concerning forest and wildlife preservation in New Mexico. Member groups include Wild Watershed, Once a Forest, Multiple Chemical Sensitivities Taskforce, La Cueva Guardians, Tree Huggers Santa Fe, and over 200 individual members. Consistent with its mission, the Coalition hereby requests copies of records from the U.S. Forest Service under the Freedom of Information Act (“FOIA”), as described in this request below.

I. REQUEST

The term “record” or “records” will be used in this request. This term is defined in 5 U.S.C. § 552(f)(2)(A). For this request, the term “records” refers to documents, correspondence (including inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails including attachments, letters, notes, recordings, telephone records, telephone notes, telephone logs, text messages, chat messages, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form.

Furthermore, agencies must preserve all the records requested herein while this FOIA request is pending or under appeal. The agency shall not destroy any records while they are the subject of a pending request, appeal, or lawsuit under the FOIA. If any of the requested records are destroyed, the agency and responsible officials are subject to attorney fee awards and sanctions, including fines and disciplinary action. A court held an agency in contempt for “contumacious conduct” and ordered the agency to pay plaintiff’s costs and fees for destroying “potentially responsive material contained on hard drives and email backup tapes.” In another case, in addition to imposing a \$10,000 fine and awarding attorneys’ fees and costs, the court found that an Assistant United States Attorney prematurely “destroyed records responsive to [the] FOIA request while [the FOIA] litigation was pending” and referred him to the Department of Justice’s Office of Professional Responsibility.

Santa Fe Forest Coalition requests from the U.S.D.A Forest Service - Regional Office, pursuant to FOIA:

Santa Fe Mountains Landscape Resiliency Project, Santa Fe National Forest, Española and Pecos-Las Vegas Ranger Districts:

- 1) All records which discuss or describe information provided to the Forest Service Chief and Santa Fe National Forest Supervisor by Forest Service employees in the Southwestern Regional Office concerning the Santa Fe Mountains Landscape Resiliency Project #55088
- 2) All records which discuss or describe communications to and from Members of Congress concerning the Santa Fe Mountains Landscape Resiliency Project #55088;
- 3) All records which discuss and describe the studies of Dr. William Baker, Dr. Chad Hanson, Dr. Dominick Della Sala and Dr. Dennis Odion in relation to the Santa Fe Mountains Landscape Resiliency Project #55088;
- 4) All records which discuss and describe the study Baker, W. L. 2017. Restoring and managing low-severity fire in dry-forest landscapes of the western USA. PLoS ONE 12: e0172288 in the Santa Fe Mountains Landscape Resiliency Project #55088;
- 5) All records which discuss and describe communications with the U.S. Fish and Wildlife Service concerning impacts to migratory birds and Endangered Species Act listed species in relation to the Santa Fe Mountains Landscape Resiliency Project #55088;
- 6) All records that discuss and describe communication with the New Mexico Environment Department and the New Mexico Department of Health regarding prescribed fire impacts to air quality and public health from the Santa Fe Mountains Landscape Resiliency Project #55088;

- 7) All records which discuss or describe communications with the Council on Environmental Quality within Executive Office of the President in relation to the Santa Fe Mountains Landscape Resiliency Project #55088;
- 8) All records which discuss and describe the unique characteristics and impacts to Inventoried Roadless Areas within the Santa Fe Mountains Landscape Resiliency Project #55088;
- 9) All records which discuss and describe management of five-needle white pines (Southwestern white pine *Pinus strobiformis*, limber pine *Pinus flexilis* and Rocky Mountain bristlecone pine *Pinus aristata*) within the Santa Fe Mountains Landscape Resiliency Project #55088;
- 10) All records which discuss and describe the management of Mexican Spotted Owl (*Strix occidentalis lucida*) populations and habitat within the Santa Fe Mountains Landscape Resiliency Project #55088;
- 11) All records which discuss and describe the protection, recruitment and promotion of old growth forests within the Santa Fe Mountains Landscape Resiliency Project #55088;
- 12) All records which discuss and describe the social cost of Greenhouse Gas (GHG) Emissions in relation to the Santa Fe Mountains Landscape Resiliency Project #55088.

The Santa Fe National Forest Land Management Plan:

- 13) All records produced in the development of the Santa Fe National Forest Land Management Plan which discuss and describe communication with the Biden Administration's initiative to conserve 30% of U.S. lands and waters by 2030 to combat climate change and prevent biodiversity loss;
- 14) All records which discuss and describe the publication: Reynolds, R.T., A.J. Sánchez Meador, J.A. Youtz, T. Nicolet, M.S. Matonis, P.L. Jackson, D.G. DeLorenzo and A.D. Graves. 2013. Restoring Composition and Structure in Southwestern Frequent-Fire Forests: A Science-Based Framework for Improving Ecosystem Resiliency. USDA For. Serv. Rocky Mtn. Res. Sta. Gen. Tech. Rep. RMRS- GTR-310. Fort Collins, CO in relation to the Santa Fe National Forest Land Management Plan #16318;
- 15) All records which discuss and describe studies of Dr. William Baker, Dr. Chad Hanson, Dr. Dominick Della Sala and Dr. Dennis Odion in relation to the Santa Fe National Forest Land Management Plan #16318;
- 16) All records which discuss and describe the study Baker, W. L. 2017. Restoring and managing low-severity fire in dry-forest landscapes of the western USA. PLoS ONE 12: e0172288 in the Santa Fe National Forest Land Management Plan #16318;

17) All records which discuss and describe management of five-needle white pines (Southwestern white pine *Pinus strobiformis*, limber pine *Pinus flexilis* and Rocky Mountain bristlecone pine *Pinus aristata*) in the Santa Fe National Forest Land Management Plan #16318;

18) All records which discuss and describe the social cost of Greenhouse Gas (GHG) Emissions in relation to the Santa Fe National Forest Land Management Plan #16318.

The Gallinas Watershed Prescribed Fire, Las Dispensas Unit and the Hermit's Peak/Calf Canyon Wildfire, Santa Fe National Forest, Pecos-Las Vegas Ranger District:

19) All records which discuss or describe communications to and from Members of Congress concerning the Gallinas Watershed Prescribed Fire, Las Dispensas Unit and the Hermit's Peak/Calf Canyon Wildfire;

20) All records which discuss and describe the Burned Area Emergency Response (BAER) and Burned Area Rehabilitation (BAR) reports prepared in response to the Hermits Peak/Calf Canyon Wildfire;

Miscellaneous Requests:

21) All records that discuss and document the total acres by year of successfully completed prescribed fires on each of New Mexico's five national forests from 2015 to the present;

22) All records which discuss and describe the U.S. Supreme Court case *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* in connection with the Santa Fe Mountains Landscape Resiliency Project #55088, Santa Fe National Forest Land Management Plan #16318 and the Gallinas Watershed Prescribed Fire, Las Dispensas Unit, and the Hermits Peak/Calf Canyon Wildfire.

This request is not meant to exclude any other records that, although not specifically requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or have made a determination to withhold any records that could reasonably be construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. Should you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release, please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and

2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material.

Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation. If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit.

The Coalition is willing to receive records on a rolling basis.

FOIA's "frequently requested record" provision was enacted as part of the 1996 Electronic Freedom of Information Act Amendments, and requires all federal agencies to give "reading room" treatment to any FOIA-processed records that, "because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records."

Also, enacted as part of the 2016 FOIA Improvement Act, FOIA's Rule of 3 requires all federal agencies to proactively "make available for public inspection in an electronic format" "copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times."

Therefore, we respectfully request that you make available online any records that the agency determines will become the subject of subsequent requests for substantially the same records, and records that have been requested three or more times.

II. APPLICATION FOR EXPEDITED PROCESSING

The Coalition requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a "compelling need" for these records, as defined in the statute, because the failure to obtain the information sought could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or individuals. 5 U.S.C. § 552 (a)(6)(E)(i)(II).

A. The Urgency of Obtaining the Requested Records

Expedited treatment of this request is necessary because of the imminent risk to the lives of community members caused by the escape of prescribed fire. Both the Santa Fe Mountains Landscape Resiliency Project and the Santa Fe National Forest Land Management Plan authorize and promote prescribed burning on a scale never before seen in northern New Mexico. The Santa Fe Mountains Landscape Resiliency Project states that burning and other activities "can begin immediately . . . pursuant to regulations at 36 C.F.R. 218 . . ." The Santa Fe National Forest Land Management Plan went into effect in August 2022. Recent prescribed burning in the area has led

to devastating consequences, including loss of human life, serious injury, and inhabitable conditions.

These exact consequences have been seen as recently as April of 2022, with prescribed burning leading to three deaths, the loss of homes, clean drinking water, and other injuries. Despite extreme dryness and windy spring weather, on April 6, 2022 a crew from the Santa Fe National Forest intentionally started a fire near Las Vegas, New Mexico. The fire quickly escaped to become the Hermits Peak/Calf Canyon wildfire that burned more than 340,000 acres, the largest wildfire in New Mexico history. Nearly a thousand structures in one of the poorest rural regions in the U.S. were burned to the ground. Three people died in post-fire flooding. The Watershed provided drinking water to more than 17,000 people who were devastated by the loss of their homes and access to potable water. A review by the Office of the Chief of the Forest Service of the Gallinas Watershed Prescribed Fire, Las Dispensas Unit and the Hermit's Peak/Calf Canyon Wildfire found that the “. . . environmental conditions in which the plan was executed generated unforeseen challenges.” The review recommended changes to how intentional ignitions are managed. (Ex. 101).

Additional escape prescribed fires have escaped on public lands in New Mexico in recent decades. The Cerro Grande Fire of 2000, precipitated by a prescribed burn, destroyed more than 200 homes in Los Alamos, New Mexico, and burned 47,650 acres of the Santa Fe National Forest and Bandelier National Monument; the Dog Head Fire of 2016 started by a spark from a Forest Service masticator consumed 12 homes and burned 17,912 acres of the Cibola National Forest.

The Santa Fe County Commission unanimously passed Resolution 2022-050 on July 12, 2022, requesting that an Environmental Impact Statement be prepared to address the legitimate concerns of its constituents. The resolution specifically asked that all burning cease until “. . . risk reduction provided by these reviews is in place.” (Ex. 102) The controversy over how to safely manage national forests is frequently aired in the local media (Ex. 103). There is clear community concern over the consequences of prescribed burns, spurred by devastating consequences of past prescribed burns.

It is unclear in an era of accelerating climate change whether additional procedural measures will be effective in preventing a recurrence of tragedy caused by past prescribed burns. Seemingly oblivious to the risk posed by its actions, the Santa Fe National Forest is pressing ahead with the riskiest of intentional burns. In 2006 the Santa Fe National Forest analyzed the risk of an escape fire just east of Santa Fe Mountains Landscape Resiliency Project. The Environmental Assessment for the Gallinas Municipal Watershed Wildland-Urban Interface Project found that “. . . Prescribed burns may escape control measures . . . Burning unthinned stands may pose the highest risk of fire escape.” (Ex. 104). Despite the risk unthinned stand were ignited in the Gallinas watershed resulting in the devastating Hermits Peak/Calf Canyon wildfire.

The Santa Fe Mountain Landscape Resiliency Project will burn up to 38,000 acres and thin up to 18,000 of those acres. This means over half of the acres treated will be done in a manner that according to the Forest Service, poses the highest risk of escape. However, the Project calls for up to 20,000 acres for forest that had not been previously thinned to be burned with potentially catastrophic consequences. The expedited procurement of the above requested records is necessary for the Santa Fe Forest Coalition to assist in protecting the health and lives of community members.

III. HOW RESPONSIVE RECORDS SHOULD BE PROVIDED

Under FOIA, you are obligated to provide records in a readily accessible electronic format and in the format requested. “Readily accessible” means text-searchable and OCR-formatted. Pursuant to this requirement, we hereby request that you produce all records in an electronic format and in their native file formats. Additionally, please provide the records in a load-ready format with a CSV file index or Excel spreadsheet. If you produce files in .PDF format, then please omit any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily accessible. Please do not provide the records in a single, or “batched,” .PDF file. We appreciate the inclusion of an index.

If you should seek to withhold or redact any responsive records, we request that you:

1. Identify each such record with specificity (including date, author, recipient, and parties copied);
2. Explain in full the basis for withholding responsive material; and (3) provide all segregable portions of the records for which you claim a specific exemption.¹¹ Please correlate any redactions with specific exemptions under FOIA.

IV. CONSEQUENCES OF AGENCY FAILURE TO COMPORT

An effect of the 2007 Amendments was to impose consequences on agencies that fail to comply with FOIA's requirements. *See* S.Rep. No. 110-59. To underscore Congress's belief in the importance of the statutory time limit, the 2007 Amendments declare that “[a]n agency shall not assess search fees ... if the agency fails to comply with *any time limit*” of FOIA. § 552(a)(4)(A)(viii) (emphasis added). *Bensman v National Park Service*, 806 F.Supp.2d 31 (DCD 2011).

Therefore, the Coalition would appreciate your assistance in expressly identifying any exempt responsive records (or portions thereof) and the applicable FOIA exemptions for any responsive materials withheld for this FOIA request. Please inform both the Santa Fe Forest Coalition and myself in writing if there are any “unusual circumstances” that will cause delay in

responding to this FOIA request, or providing the records which are requested, and in addition, please provide the approximate date that you anticipate a final response will be provided.

V. ESTIMATED DATE OF COMPLETION REQUESTED

Santa Fe Forest Coalition specifically requests the agency to provide an estimated date of completion for this request.

VI. RECORD DELIVERY

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. Failure to comply within the statutory timeframe may result in the Santa Fe Forest Coalition taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. You may email or mail copies of the requested records.

If you find that this request is unclear, or if the responsive records are voluminous, please email me to discuss the scope of this request.

VII. REQUEST FOR FEE WAIVER

FOIA was designed to provide citizens with a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard.

FOIA's fee waiver requirement is "liberally construed." The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as the Coalition with access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and non-profit public interest groups." As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information"

VIII. The Coalition Qualifies for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The U.S. Department of Agriculture's regulations that govern FOIA requests to the Forest Service establishes the same standard.

Thus, the Forest Service must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns “the operations or activities of the Federal government,” (2) whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. As shown below, the Coalition meets each of these factors.

A. The Subject of This Request Concerns “The Operations and Activities of the Government.”

The subject matter of this request concerns the operations and activities of the Forest Service. This request asks for records concerning the Forest Service’s gathering of information about, weighing of alternatives and implementation of the Santa Fe Mountains Landscape Resiliency Project, the Santa Fe National Forest Land Management Plan #16318, the Gallinas Watershed Prescribed Fire, Las Dispensas Unit, and the Hermit’s Peak/Calf Canyon Wildfire.

This FOIA will provide the Coalition and the public with crucial insight into how the Santa Fe Mountains Landscape Resiliency Project together with related projects will be implemented. It is clear that a federal agency’s management of public lands is a specific and identifiable activity of the government, and in this case, it is the executive branch agency of the Forest Service. Thus, the Coalition meets this factor.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public. Disclosure of the requested records will allow the Coalition to convey to the public information about Santa Fe National Forest projects. The Forest Service apparently intends to implement the Santa Fe Mountains Landscape Resiliency Project in 2023. Once the records are made available, the Coalition will analyze and present the information to the media, the Coalition’s members, and the public through its website, in a manner that will meaningfully enhance the public’s understanding of this topic.

Thus, the requested records are likely to contribute to an understanding of the Forest Service’s operations and activities.

C. Disclosure of The Requested Records Will Contribute To A Reasonably-Broad Audience Of Interested Persons’ Understanding of the Government’s Compliance with Relevant Laws.

The requested records will contribute to public understanding of whether the Forest Service's actions are consistent with public safety, and local and federal laws. As explained above, the records will contribute to public understanding of this topic. Activities of the Forest Service generally, and specifically its controversial Santa Fe Mountains Landscape Resiliency Project are areas of interest to a reasonably broad segment of the public. The Coalition will use the information it obtains from the disclosed records to educate the public at large about this topic.

Through the Coalition's synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained in and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter.

Indeed, the public does not currently have the ability to easily evaluate the requested records because they are not in the public domain. As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations....” *McClellan Ecological Seepage v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987).

Disclosure of these records is not only “likely to contribute,” but is also certain to contribute to public understanding of the environmental and safety impact of the Santa Fe Mountains Landscape Resiliency Project on public lands and public safety. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about this topic.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Coalition is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public's understanding of whether the Forest Service has completed the Santa Fe Mountains Landscape Resiliency Project and is moving forward with the controversial plan to, potentially, set thousands of acres of public lands on fire in an area where a previously catastrophic fire occurred only a few months ago. Indeed, public understanding will be significantly increased as a result of disclosure because the requested records will help reveal more about this subject matter. The records are also certain to shed light on the Forest Service's compliance with local and federal laws. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, the Coalition meets this factor as well.

E. The Coalition has a Demonstrated Ability to Disseminate the Requested Information Broadly.

The Coalition is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues, particularly as applied to the Santa Fe National Forest. The Coalition mission is to ensure the public is kept abreast of the critical issues concerning the preservation of biological diversity and public health.

The Coalition need not show how it intends to distribute the information, because “[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity.” It is sufficient for the Coalition to show how it distributes information to the public generally.

IX. SFFC QUALIFIES FOR AND REQUESTS A FEE WAIVER

SFFC, a non-commercial and public-interest requester, hereby requests a waiver of all fees associated with this request because disclosure “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This request satisfies both statutory and regulatory requirements for granting a fee waiver, including fees for search, review, and duplication. See 7 C.F.R. pt. 1, subpt. A, app. A § 6(a)(1)(i)-(vi). Fee waiver requests must be evaluated based on the face of the request. See *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep’t of Justice*, 602 F. Supp. 2d 121, 125 (D.D.C. 2009).

X. COALITION’S COMMERCIAL INTERESTS

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Coalition's role of educating the general public. Founded in 2017, the Coalition is a 501(c)(3) nonprofit conservation organization (EIN: 82-3756574) with more than 200 members and thousands of online activists dedicated to the protection of the Santa Fe National Forest.

The Coalition has no commercial interest and will realize no commercial benefit from the release of the requested records.

XI. CONCLUSION

Please provide a receipt for this request and provide a tracking number so that we may inquire about the status of this request.

If you have any questions regarding this FOIA request or need help locating documents, or if I can be of any other assistance, please feel free to contact me via email at peter@sorensonfoialaw.com. Thank you in advance for your assistance. All records and any related correspondence should be sent to my attention at the address below.

Best,

C. Peter Sorenson
Sorenson Law Office
PO Box 10836
Eugene, Oregon 97440
peter@sorensonfoialaw.com

Attachments: Ex 101 - La Dispensas Review; Ex 102 - Resolution; Ex. 103 - Sarah Hyden Op-Ed; Ex. 104 - Gallinas Environmental Assessment.

CERTIFICATION STATEMENT

I, Sam Hitt, certify that the statements made in this document are true, accurate, and complete.

Name

Date

Exhibit 101



Forest Service
U.S. DEPARTMENT OF AGRICULTURE

Office of the Chief | April 2022

Gallinas-Las Dispensas Prescribed Fire Declared Wildfire Review

Santa Fe National Forest, Southwestern Region



Executive Summary

The Gallinas Watershed Prescribed Fire, Las Dispensas Unit, is located on the Santa Fe National Forest Pecos-Las Vegas Ranger District in New Mexico. Test fire ignitions began the morning of April 6, 2022. The test fire was determined successful at 1234, and ignitions continued. The prescribed fire was declared a wildfire (Hermit's Peak Fire) about four hours later. On May 10, 2022, USDA Forest Service Chief Randy Moore launched a review team to conduct a Declared Wildfire Review of the incident.

In addition to examining the parameters set forth in the Interagency Prescribed Fire Planning and Implementation Procedures Guide (PMS 484) for Declared Wildfire Review, the team was asked to provide ([Appendix A](#)):

- A description of the overall fuels and wildfire situation on the Santa Fe National Forest and the overall context within which these events took place;
- An assessment of the planning and analysis related to the Gallinas Prescribed Fire Wildland Urban Interface (WUI) project, including the purpose and need for treatment as well as factors that contributed to the overall design and sequencing of planned treatments;
- An assessment of the prescribed fire planning specific to the Las Dispensas Prescribed Fire;
- An assessment of the information related to fuel conditions, weather and other key factors that informed decisions leading up to the implementation of the Las Dispensas Prescribed Fire up until the declaration of the Hermit's Peak fire on April 6, 2022; and
- A summary of factors that contributed to the declaration, along with proposed recommendations to improve policies, protocols or performance.

In order to maintain and restore existing fire-dependent ecosystems, prescribed fires are often conducted in areas absent of recent fire history. These areas typically have higher densities of vegetation and concentrations of downed woody debris, creating a situation where the ecosystem is heavily departed from the natural range of variability within the fire regime.

The review team found that the personnel assigned to the Las Dispensas Prescribed Fire followed their approved prescribed fire plan. There was confidence they were within the approved prescription limits, and they had a plan to suppress the fire and cease ignitions if the prescription parameters were exceeded. However, a post-prescribed fire analysis of fuel and weather revealed that the implementation was occurring under much drier conditions than were recognized. Persistent drought, limited overwinter precipitation, less than average snowpack, fine fuel accumulation—post mechanical treatment, and increased heavy fuel loading after fireline preparation all contributed to increasing the risk of fire escape.

Competing obligations limit the ability of the workforce to prioritize and focus on prescribed fire projects. Increasing agency goals for prescribed fire treatments and, in this case, expectations from the forest, district and the Burn Boss to begin catching-up after 2 years of delays due to government shutdowns, a global pandemic, and Mexican Spotted Owl regulations have led to unrealistic expectations. These expectations, coupled with the opportunity to implement during a narrow window when the crew was available, smoke dispersion was good and the prescribed fire area was forecasted to be in prescription, led to acceptance of unforeseen risk.

The prescribed fire plan appeared to be complete and in compliance with current policy. However, the fire environment is in constant flux. The environmental conditions in which the plan was executed generated unforeseen challenges. Training of prescribed fire personnel is highly weighted toward developing and implementing the plan to ensure adherence to policy.

While innovative tools associated with robust analysis of the fire environment have been developed and are readily available, they are not routinely internalized into the planning and implementation process of

prescribed fire. Training and education efforts are often outdated and do not incorporate the latest tools or the latest fire science available to consider the fire environment (fuels, topography, climate, and weather) when developing and implementing prescribed fire plans. There are very few subject matter experts (SMEs) with the skillsets associated with robust analysis and interpretation of potential fire behavior and weather patterns. In addition, the number of specialists is diminishing due to some of the requirements needed to attain qualifications. Furthermore, these SMEs are not always readily available due to conflicting needs within their fire management positions. **Although essential, these skills are not currently required as elements in prescribed fire qualifications or position descriptions for fire management employees.**

This report begins with the setting in which the incident took place, followed by a narrative chronology of events. The team analyzed both planning and implementation elements of the operation. There are findings and lessons learned in the areas of: weather, fire behavior and fuels, communications, prescribed fire planning and design, and other socio-political influences. The team makes recommendations in these areas as well as in the prescribed fire plan implementation process, (fire) qualifications, capacity building and organizational learning.

Setting

National

In recent years the Forest Service has treated up to 3 million acres per year for hazardous fuels and forest health across the nation. The historic Infrastructure Investment and Jobs Act (IIJA) signed in November 2021 directed \$3 billion toward restoring ecosystems and reducing wildfire risk over the next five years. The related USFS Wildfire Crisis Strategy is driving the agency toward treating 20 million acres over the next 10 years. The expectations are for the Forest Service to increase treatments to 4 million acres per year on National Forest System lands and support our partners in treating an additional 30 million acres per year on other federal, state, tribal and private lands. Depending upon our role with partners, this means that the Forest Service will be expected to treat between 5 and 8 million acres of hazardous fuels using all the tools available.

Over the past dozen years, prescribed fire has accounted for an average of 51% of the acreage of hazardous fuels reduction accomplished, or an average of 1.4 million acres per year. Meeting the objectives of the IIJA is likely to require the Forest Service to conduct prescribed fires on between 2.5 and 4 million acres annually, nationally. However, because the majority of the additional fuels reduction effort will be focused in the West, some regions may actually be expected to quadruple their hazardous fuel reduction efforts. Prescribed fire is the most ecologically appropriate, and often the most economical, way to maintain healthy forest ecosystems and to reduce or maintain fuel loads. Prescribed fire at a national scale becomes even more critical as a tool to maintain fuels after the initial reduction efforts.

To accomplish this level and frequency of prescribed fire on the landscape, we must ensure that practitioners have access to the best science and the best tools, and that they are confident and practiced in using both. In the past, fire suppression has had a higher utilization of science and technology, while prescribed fire has typically been more or less a collateral effort. If we are truly expected to meet these landscape restoration needs across the nation, the agency's commitment to prescribed fire will need to be commensurate with the effort that is invested in wildland fire suppression.

Exhibit 102

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

RESOLUTION NO. 2022 – 050

Introduced by:

Commissioner Anna Hansen and Commissioner Anna T. Hamilton

A RESOLUTION URGING THE UNITED STATES DEPARTMENT OF AGRICULTURE FOREST SERVICE (USFS) TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT IN ACCORDANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT ON THE SANTA FE MOUNTAINS LANDSCAPE RESILIENCY PROJECT; TO REQUEST NEW RISK, COSTS, AND BENEFITS ASSESSMENT OF USFS FOREST FUELS TREATMENTS ON THE SANTA FE NATIONAL FOREST INCLUDING THEIR RISK TO NEW MEXICO HEALTH, WATER SUPPLIES AND ECONOMIES; TO PUBLICLY ASSESS USE OF ALTERNATIVE TREATMENTS UNDER ACCELERATING CLIMATE CHANGE; AND TO REQUEST THAT THE USFS CEASE INTENTIONAL BURNS IN SANTA FE COUNTY UNTIL THESE PUBLIC REVIEWS

WHEREAS, the Santa Fe National Forest (SFNF), United States Department of Agriculture Forest Service (USFS), issued a draft Decision Notice (DN) and Finding of No Significant Impact (FONSI) based on analysis in an Environmental Assessment (EA) for the Santa Fe Mountains Landscape Resiliency Project (SFMLRP) to conduct extensive ground disturbing activities in forests east of Santa Fe in March 2022; and

WHEREAS, The DN and FONSI for the Project selected Alternative 2 which calls for cutting and intentional burning of vegetation on 38,680 acres across a 50,566-acre project area over the next 10 to 15 years (all areas would be treated multiple times); and

WHEREAS, this area and the entire SFNF provide recreation and outdoor enjoyment to more than 100,000 Santa Fe County residents and thousands of visitors each year and is home to the Santa Fe Ski Basin, Hyde Memorial State Park, portions of the Pecos Wilderness and Tesuque and Nambe Pueblos, extensive inventoried roadless areas and high value habitat for breeding birds and other wildlife; and

WHEREAS, the Santa Fe County Board of County Commissioners (Board) passed Resolution No. 2019-53, on April 4, 2019, encouraging the USFS to conduct a comprehensive and objective analysis for the SFMLRP; provide effective notice to the public including presentations in downtown Santa Fe, NM; and incorporate a broad range of forest and fire ecology research before taking any action; and

WHEREAS, the Board passed Resolution No. 2010-110 on June 29, 2010, in support of Wilderness designation for Inventoried Roadless Areas adjacent to the Pecos Wilderness that will be impacted by the SFMLRP and other SFNF projects; and

SFC CLERK RECORDED 07/19/2022

WHEREAS, National Environment Policy Act (NEPA), often described as the United States Magna Carta for the environment, helps public officials make decisions based on comprehensively understanding environmental consequences before actions are taken and mandating, to the fullest extent possible, citizen involvement in such decisions; and

WHEREAS, NEPA requires analysis of the direct, indirect, and cumulative impacts of the SFMLRP on a variety of resources, including the risks of intentional burning on national forest lands bordering private property and impacts to air quality and public health, threatened and endangered species, inventoried roadless areas, water quality, soils, vegetation and wildlife; and

WHEREAS, on May 10, 2022, the Chief of the USFS (Chief) called for a review of the Hermit's Peak Fire (Chief's Review) which was a consequence of the escaped Las Dispensas intentional burn on the Pecos/Las Vegas Ranger District of the Santa Fe National Forest; and

WHEREAS, the Hermit's Peak/Calf Canyon Fire has destroyed at least 400 homes, forced up to 18,000 people to evacuate their properties, cost more than \$248 million in firefighting expenses and burned more than 341,000 acres; and

WHEREAS, the Chief's Review found that megadrought and climate disruption are presenting unforeseen challenges to the planning and executing of intentional burns; and

WHEREAS, USFS will undertake thousands of acres of intentional burns per year similarly endangering Santa Fe County this fall, adjacent to densely populated areas, without substantive changes to their (flawed) methods, use of personnel, or strategy for climate change; and

WHEREAS, neither the Chief's Review, nor other communications, analysis, or strategies by the USFS on the SFNF, specifically re-evaluates the viability of SFNF projects and plan of forest treatments given extreme drought and accelerating climate change; and

WHEREAS, the growth of grasses and other fine fuels following fuel reduction activities, together with debris generated by fireline construction, contributes to increased fire risk; and

WHEREAS, unacceptable risks are taken by personnel conducting planned burns because they are pressured to "accomplish the mission"; and

WHEREAS, an Environmental Impact Statement (EIS) is appropriate because the EA for the SFMLRP did not disclose or analyze the significant impacts to resources of an escaped intentional burn resulting from global heating and increased fine fuels produced by management and bureaucratic pressure to meet targets; and

WHEREAS, the risks and impacts of escaped intentional burns were not identified in the EA for the SFMLRP or other SFNF projects, although the issue was raised in public comments.

SFC CLERK RECORDED 07/19/2022

NOW THEREFORE, BE IT RESOLVED, that the Board of County Commissioners of Santa Fe County hereby:

1. Encourages the USFS to prepare a comprehensive EIS for the SFMLRP that would in every respect engage the public, respond to a full and fair discussion of significant environmental impacts, examine alternatives, including preserving forests in their natural condition, and document unavoidable adverse effects prior to commencing any action.
2. Urges the USFS to investigate tactical and strategic alternatives to large-scale fuel reductions, both to restore the forest and to address wildfire risk, including costs and benefits of all current treatments and alternatives. Specifically, we request that additional experts in regenerative agroforestry, indigenous and historical approaches be consulted, with public access to presentations, and that additional science and community approaches be sought through public meetings.
3. Requests that the USFS use an EIS or additional tools, agencies, or monies to investigate, analyze and disclose to the public, the risks of an escaped intentional burn, specifically under pervasive conditions of drought and climate-change, in comparison to the risk of alternative approaches and plans.
4. Requests that the USFS re-evaluate the recent scientific literature on combined fire/heating/climate change impacts on high-altitude forests in their risk calculations for intentional burning, including critical parameters that now best predict forest mortality and regeneration failure, such as vapor pressure deficit, soil dryness, and maximum soil temperature, and implement new required metrics on both forest condition and in assessing conditions for intentional burning.
5. Requests the USFS use an EIS and additional tools to assess the impacts of USFS forest fuels' treatments on the ecosystems comprising the SFNF, including future catastrophic loss of tree regeneration and ecosystem integrity, and the risk of those treatments to New Mexico citizens, water supplies, and economies.
6. Requests the USFS cease all prescribed burns on the SFMLRP area until the greater understanding and concomitant risk reduction provided by these reviews is in place.

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BE IT FURTHER RESOLVED, that the Board of County Commissioners of Santa Fe County requests that the County Manager forward this Resolution to the United States Secretary of Agriculture Tom Vilsack and Under Secretary of Agriculture for Rural Development Xochitl Torres Small, U.S. Secretary of the Interior, the Bureau of Land Management Director, the U.S. Forest Service National Director, New Mexico's Senators and Representatives in Congress, the New Mexico Governor, and State Senators and Representatives in the New Mexico Legislature representing Santa Fe County and Counties in the Sangre de Cristo Mountain Range (The Santa Fe National Forest).

PASSED, APPROVED, AND ADOPTED ON THIS 12TH DAY OF JULY, 2022.

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: Anna Hamilton
Anna T. Hamilton, Chair

ATTESTATION:

Katharine E. Clark

Katharine E. Clark
Santa Fe County Clerk

Date: 7/19/22



Approved as to form:

Cristella Coley for

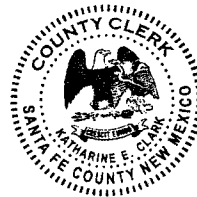
Jeff Young
Santa Fe County Attorney

COUNTY OF SANTA FE) BCC RESOLUTIONS
STATE OF NEW MEXICO) ss PAGES: 4

I Hereby Certify That This Instrument Was Filed for
Record On The 19TH Day Of July, 2022 at 02:22:27 PM
And Was Duly Recorded as Instrument # 1993277
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark

Deputy *Destiny Romero* County Clerk, Santa Fe, NM



SFC CLERK RECORDED 07/19/2022

Exhibit 103

MY VIEW SARAH HYDEN

Act now: Cutting, burning about to start in forest

• By Sarah Hyden Apr 15, 2023 [1](#)

Trust us, we know what we're doing. That's the message from the U.S. Forest Service.

The Forest Service intends to finalize the Santa Fe Mountains Landscape Resiliency Project decision within a few weeks, and hopes to start the project next month — despite intense public opposition to aggressive tree-cutting and prescribed burn treatments in our local forest. Forest Service officials have refused to do full analysis, an environmental impact statement, even through over 98% of public project scoping comments requested such analysis.

After the Forest Service ignited the 341,000-acre-plus Hermits Peak/Calf Canyon Fire with two separate escaped prescribed burns, which burned out entire communities and severely damaged water quality and acequias, the public clamored for safeguards on prescribed burns. The Forest Service should have considered the potential for an escaped prescribed burn in the Santa Fe project analysis. They did so in the adjoining Gallinas Municipal Watershed Project analysis in 2005, when they called the potential for escaped prescribed burns one of three key project issues. Why, now that the climate is warmer and drier, does the

Forest Service refuse to analyze the project's potential for escaped prescribed burns and provide safety mitigations?

The National Environmental Policy Act was designed to safeguard against federal projects becoming environmental disasters. It ensured the public would be included in the planning of projects and that a range of alternatives would be considered for impactful projects. It was our environmental bill of rights. One by one, the Forest Service has dismantled those safeguards and rights. The Forest Service chief recently issued a memo that, practically by fiat, allows the Forest Service to streamline project analysis and public involvement to such a degree that they may no longer meaningfully exist.

Forest Service officials have declared many forests across the West, including our local forest, under their emergency authority. They have also placed the Hermits Peak and Calf Canyon burn area under emergency authority, with no mention that they caused that disaster. This new directive can only be considered martial law over much of our forests and our communities, and our homes could burn as a result.

Even though funding for the Forest Service has increased, it is struggling to find qualified personnel to carry out this ill-conceived agenda. Agency morale is low, and in the analysis of the

Hermits Peak Fire, the agency identified serious problems with Forest Service culture.

The Santa Fe Mountains Landscape Resiliency Project should be planned with the consensus of the public. The Forest Service has instead chosen to bulldoze over public concerns and fears, and over the Santa Fe County Commission's Resolution 2022-50 that urged the Forest Service to complete an environmental impact statement for the project to utilize a range of up-to-date research and to genuinely consider climate change.

Conservation organizations have been eager to help the Forest Service develop a project plan that does not rely on widespread and aggressive tree-cutting and burning, but instead utilizes conservation strategies to retain water, as moist forests are healthier and more fire-resistant. They have urged the Forest Service to promote fire safety from homes and communities outward, not by risky and aggressive treatments out in the forest.

A few weeks remain to email our elected representatives and tell them we will only vote for those who stand for our forest and for us, and urge the Forest Service to complete an environmental impact statement for the project. Officials' email addresses are at theforestadvocate.org/officials/.

Sarah Hyden is the co-founder of The Forest Advocate, theforestadvocate.org. She lives by the Santa Fe National Forest.

Exhibit 104

Chapter 3 – Environmental Consequences

This project may contribute to regional haze, which can result from multiple days of burning and/or multiple owners using the airshed over too short a period of time.

Potential for Escaped Fire

The issue related to fire behavior is:

Prescribed burns may escape control measures and threaten the water supply and resources in and around the Watershed. Burning unthinned stands may pose the highest risk of fire escape.

Forest Vegetation, Fuels, and Fire Behavior – Affected Environment

Potential for Escaped Fire: The potential for escape is difficult to predict since escapes are accidental. Burning unthinned areas would pose the greatest risk for escape; therefore, the evaluation criteria for risk of escape is the number of acres to be broadcast burned without prior thinning. We used a computer model called FVS/FFE (Forest Vegetation Simulator, Fire and Fuels Extension) to predict fire behavior and stand structure. Initially developed in 1973, FVS/FFE is the Forest Service's nationally supported framework for forest growth and yield modeling (<http://www.fs.fed.us/fmnc/fvs/>). A complete report describing our methodology and assumptions is in the project record. It is important to note the modeling results are used to compare alternatives and are not intended to be precise predictions of what would occur.

Wildfire Behavior: Wildfire behavior is governed by weather, topography, and fuels. Changing the latter is the objective of this project. When weather is held constant, changing the structure and composition of live and dead fuels will change fire behavior. FVS/FFE models fire behavior in individual stands; therefore, we selected a representative stand from each of the main stand types (ponderosa pine, Douglas-fir, and white fir) in the treatment area. For the purposes of this analysis, our assumption is that all treated stands would behave similarly to these representatives. In addition to modeling treatments, we modeled a wildfire after treatments had been completed to compare the stands' response to treatment. FVS/FFE describes three different kinds of wildfire behavior:

- Surface – fire is carried primarily by surface fuels and remains on the ground
- Passive – fire that can torch individual or small groups of trees, but is driven by a surface fire
- Active – fire that produces a solid flaming front in the crowns of trees but is coupled to a surface fire

The evaluation criteria for wildfire behavior will be these descriptors.

Fuel Models: Fuel conditions, defined by quantity and arrangement, have been categorized into 13 standard descriptive fuel models (Andersen 1982). Fuel models are one of the inputs to the FVS/FFE computer model to determine a wildfire's flame length and intensity. We used the fuel models selected by FVS/FFE because they match what we see on the ground, and how we think a fire would behave.

Table 14. Existing and desired fuel models in stands proposed for treatment

	Ponderosa Pine Stand	Douglas-fir Stand	White Fir Stand
Current Fuel Model (from FVS/FFE)	10	10	12
Desired Fuel Model	9	8	8

Fires burn differently in the fuel models under the same weather conditions. During average fire conditions, when dead fuel moisture averages 8 percent, live fuel moisture is 100 percent, and the effective wind speed at mid-flame height is 5 miles per hour (mph) a fire in each of the fuel models will have the characteristics identified in Table 15.

Table 15: Predicted fire behavior in Fuel Models 8, 9, 10, and 12 (Anderson 1982)

Fuel Model	8	9	10	12
Flame Length (feet)	1 to 2	2 to 3	4 to 5	7 to 8
Rate of Spread (feet per hour)	105	495	521	858

Torching and Crowning Indices: The torching index is the wind speed at which a fire will climb up into and torch individual or small groups of trees. The lower the wind speed necessary to cause torching, the higher the intensity of the fire. When conducting a prescribed burn, the Forest Service usually expects a certain amount of torching. FVS/FFE indicates torching by the descriptor “passive.”

The crowning index is the wind speed at which a fire will travel through the crowns of trees, usually killing them. As with the torching index, a low crowning index represents a potentially severe wildfire. The Forest Service does not expect any crowning when conducting prescribed burns. FVS/FFE indicates crowning by the descriptor “active.”

Table 16 shows the torching and crowning index expected in each stand under existing conditions.

Table 16. Torching and crowning index expected in each stand under existing conditions in 97.5 percentile weather conditions

Stand	Torching Index (miles per hour)	Crowning Index (miles per hour)
Ponderosa pine	0	12.3
Douglas-fir	5.8	12.5
White fir	0	13.3

Flame Length: Flame length is the distance measured from the tip of the flame to the middle of the flaming zone at the base of the fire. It is measured on a slant when the flames are tilted due to the effects of wind and slope (Figure 56).

Chapter 3 – Environmental Consequences

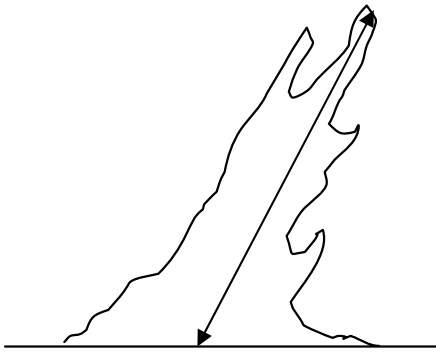


Figure 56. Measuring flame length.

Flame lengths affect firefighters’ ability to suppress fires. At 4-foot flame lengths, hand crews generally are able to attack fires safely, while dozers may be used in fires having flame lengths up to 8 feet. Flame length also indicates severity, since long flame lengths usually mean that a fire is in the crowns of trees.

We modeled flame lengths at the 90th and 97.5 percentile weather using FVS/FFE in each of the three stands under existing conditions.

With the exception of the Douglas-fir stand at 90th percentile weather, neither hand crews nor heavy ground equipment would be effective at suppressing a potential wildfire (Table 17).

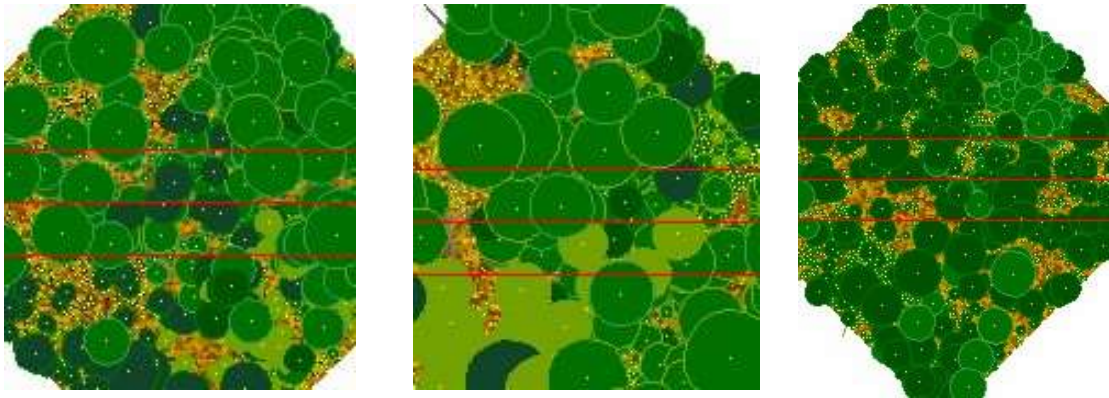


Figure 57. Existing canopy closure in representative stands (Douglas-fir, white fir, and ponderosa pine, respectively).

Table 17. Predicted flame length at the 90th and 97.5 percentiles under existing conditions

Stand	Flame Length (feet)	
	90%	97.5%
Ponderosa pine	13.2	70.7
Douglas-fir	2.1	82.2
White fir	16.5	106.6

Surface Fuels: The dead and down fuel loading ranges from 5 to 13 tons per acre, averaging 9 tons per acre. The surface fuel loading is gradually increasing because trees stressed from competition die and fall over. Areas that were fuel model 8 are becoming a fuel model 10, which has more branches and logs on the surface than a model 8, as dead trees fall over and add to the fuel load.