

Exhibit 1

March 10, 2023

Via Electronic Mail

FOIA Officer
Forest Service – Region 8
1720 Peachtree Street, NW
Atlanta GA 30309
SM.FS.R8FOIA@usda.gov

Re: Freedom of Information Act Request Regarding Stewardship Contracting Information

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 and 7 C.F.R. Part 1, the Southern Environmental Law Center (“SELC”) hereby requests access to the following documents or other public records in the possession of the Southern Region of the Forest Service (“Region 8”):

- All stewardship contracts, agreements, or project proposals which were drafted or executed since October 1, 2016, are active, or are currently being considered. This includes but is not limited to master agreements and supplemental project agreements.
- The approval record for all stewardship contracts, agreements, or projects which were executed since October 1, 2016, are active, or are currently being considered. This includes but is not limited to documentation of the involvement of non-Forest Service parties in the development of stewardship contracts, agreements, or projects.
- Any reviews and monitoring reports, including annual reviews, for individual stewardship contractors, the overall stewardship contracting program, or specific stewardship projects prepared since October 1, 2016. This includes reviews with information about the value of Forest Service products conveyed and services received.
- Any records since October 1, 2016, documenting the calculation and use of residual or retained receipts under stewardship contracts, agreements, or projects. This includes but is not limited to the annual regional report of retained receipt balances referenced in FSH 2409.19, Ch. 60.42a(5).
- Any “supplemental direction” issued pursuant to FSH 2409.19, Ch. 60.42a(8) that has been active anytime since October 1, 2016.
- All transaction evidence appraisal summaries, preliminary appraisals, and final appraisals prepared since October 1, 2016, for stewardship projects.

- All estimates prepared since October 1, 2016, for the values of services and products for stewardship projects.
- All workplans for active stewardship projects or stewardship projects proposed or executed since October 1, 2016.
- Documentation of collaborative involvement for stewardship projects. This request is date limited from October 1, 2016 to the date the agency begins searching for responsive documents.
- All documents regarding who will be allowed to mark timber, and by what method, for active stewardship projects or those proposed or executed since October 1, 2016.
- Documentation as referenced in FSH 1409.19, Ch. 61.6 of stewardship projects approved since October 1, 2016.
- All Integrated Resource Timber Contracts and Integrated Resource Service Contracts executed since October 1, 2016.
- Any Determinations and Findings submitted since October 1, 2016, for the use of multi-year contracts.
- Any proposals for stewardship projects pending as of the date of this request.
- All documents, including guidance documents, related to the determination referenced in FSH 1409.19, Ch. 62.71 that contractors are not constructing “temporary roads in lieu of building specific roads needed for future management of the area.” This request is not date limited.
- Documentation of the rationale for the selection process chosen whenever the Forest Service has used less than full and open competition when awarding contracts since October 1, 2016, as part of any stewardship project, contract, or agreement;
- Any timber harvesting and removal specifications issued since October 1, 2016, in connection with stewardship projects.
- Current Forest Service policies or guidelines related to creation of early successional habitat that are not publicly available.

This request for documents or other records includes, but is not limited to, all reports, studies, correspondence, memoranda, e-mails, analyses, meeting notes or other notes of any kind, drafts and working papers, and every other document, recorded communication, or record of any kind (including records which exist electronically). In addition, we request access to each version of a record or document, whether it is a draft, has been electronically deleted, has attachments, bears annotations, etc. Please include records up to the date that the agency commences its search for responsive records.

This request excludes documents or other records which are publicly available including on the Forest Service’s website. For example, we are aware that stewardship Memorandums of

Understanding between various states and the Forest Service are available online: <https://www.fs.usda.gov/detail/r8/workingtogether/?cid=fseprd660559>. Those records are excluded from our request. We recognize that there may be overlap in some of the categories above. We have identified categories based on publicly available information about the agency's stewardship program including information in the Forest Service Handbook and Manual. To the extent there is overlap in the categories, we are only requesting that the agency provide the information once.

Our understanding is that Mae Lee Hafer is the Stewardship Coordinator for Region 8 and we expect many but not all of the requested documents to be in her possession. We would be happy to work with the agency to attempt to identify other staff that may have responsive documents.

If you take the position that any of the above-described public records are not open to public inspection under the FOIA, please explain the basis for your position and identify any statute, rule of law, or other authority upon which you rely. Please note that claims of exemption under 5 U.S.C. § 552(b)(5) must not only qualify for the exemption technically; they must also be accompanied by a determination that withholding the records is necessary to accomplish the purpose of that exemption. 5 U.S.C. § 552(a)(8)(i).

To reduce costs and expedite delivery, we request that information be delivered electronically, by a file-sharing service, removable storage, or email, to the extent possible.

The Southern Environmental Law Center requests that any fees associated with this request be waived because disclosure of information in the requested records would be in the public interest. The FOIA provides that “[d]ocuments *shall* be furnished without any charge or at a charge reduced below the fees established . . . if 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 government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii) (emphasis added); *see also* 7 C.F.R. § 1.12(p) (fees should be waived because this disclosure is in the public interest and SELC has no “commercial interest” in the disclosure). Congress’ stated main purpose in amending the FOIA in 1986 was “to remove any roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under FOIA.” 132 CONG. REC. S16,496 (Oct. 15, 1986) (statement of Sen. Leahy). Congress intended the amendment to the FOIA’s public interest provision “to be liberally construed in favor of waivers for noncommercial requesters.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); *McClellan Ecological Seepage Situation v. Carlucci*, 853 F.2d 1282, 1284 (9th Cir. 1987) (both quoting 132 CONG. REC. S14,298 (Sept. 20, 1986) (statement of Sen. Leahy)).

Fee waiver is appropriate in this case because disclosure of this information “is likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 7 C.F.R. § 1.12(p)(1)(i). The regulations identify four factors to be considered under this public interest requirement:

- (i) The subject of the request must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public’s understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the requester’s individual understanding. A requester’s expertise in the subject area as well as his or her ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media, as defined in appendix A of this subpart, will satisfy this consideration.

(iv) The public’s understanding of the subject in question must be enhanced by the disclosure to a significant degree. However, components will not make value judgments about whether the information at issue is “important” enough to be made public.

7 C.F.R. § 1.12(p)(3).

The Forest Service’s stewardship contracting program appears to be an increasingly common way for agency to pursue its timber harvest and early successional habitat goals. For example, last October the Forest Service entered into a 20-year stewardship contract with the National Wild Turkey Federation worth at least \$50 million.¹ Despite the importance of this and other stewardship contracts to public lands management—and the expenditure of a significant amount of public funds—the stewardship program is not well understood by the public. Our requests seek information to help the public understand this program better.

The first fee waiver factor is met, as the above requests are directly related to “identifiable operations or activities of the Federal government.” As to the second factor, our requests seek information that would increase public understanding of how stewardship contracts, agreements, and projects are created, implemented, and monitored by the Forest Service. To our knowledge, the requested records are not already in the public domain. Given the general lack of clarity around the stewardship program, the requested information will lead to greater public understanding of the operations of the federal government. The third factor is also met, as the requested disclosure would benefit not only SELC, but our partner groups, their collective members and constituents, and the public at large. As a nonprofit environmental protection organization, a large part of our work consists of keeping citizens informed about government activities affecting natural resources and public health, such as the Forest Service’s stewardship program. We disclose information through our website, newsletters, by speaking at events, through the press, and through numerous other channels.² Thus, we are not seeking this information solely for any “individual understanding,” and we have significant experience

¹ See <https://www.nwtf.org/content-hub/usda-forest-service-signs-50-million-agreement-with-the-nwtf-for-innovative-long-term-national-master-stewardship-agreement>.

² See, e.g., <https://www.southernenvironment.org/news/the-biodiversity-crisis-threatens-southern-ecosystems-and-calls-on-us-for-solutions/>.

conveying information to the public. This disclosure would be “significant,” in part, because there is little publicly available information on this issue.

In addition to the demonstrated public interest in the information sought here, SELC has no commercial interest in the disclosures. 7 C.F.R. § 1.12(p)(4). SELC is a nonprofit organization with a public interest mission and, by definition, no commercial interests. SELC seeks the disclosure solely in the public interest of obtaining information about activities and operations of the Forest Service related to the implementation of its stewardship program. Although SELC is a legal organization, SELC does not profit, or otherwise have a commercial interest, in litigation. SELC does not charge its clients for attorney time or enter into contingency agreements. Further, it would not be improper for the Forest Service to claim that, just because SELC is a legal organization, there is some abstract possibility of future litigation which creates a commercial interest, since any such possibility is not itself a commercial interest. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1287 n.4 (9th Cir. 1987).

If you have any questions, please do not hesitate to contact me. I am happy to work with you to clarify the scope of our request and to facilitate the production of the requested public records. Thank you in advance for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Patrick Hunter".

Patrick Hunter
Managing Attorney
phunter@selcnc.org