

MEMO – FIX OUR FORESTS ACT



To: Members of the House of Representatives
From: Megafire Action
Subject: Fix Our Forests Act of 2024
Date: September 19th, 2024

This memo provides a summary and analysis of the Fix Our Forests Act (FOFA) as Members and staff consider their position on the bill as it heads to the House floor next week. This memo includes a section-by-section summary of the bill and provides an in depth assessment of key provisions including the Fireshed Center (Sec. 102) and categorical exclusion expansion (Sec. 106). Note – this memo addresses the bill as of September 19th, before amendments.

Fireshed Center – Sec. 102

Wildfires burn across jurisdictional lines, necessitating cooperation between local, state, federal agencies, and Tribes and also between the private and public sectors. FOFA establishes a Fireshed Center (otherwise known as a Wildfire Intelligence Center or Fire Environment Center) modeled closely after the Fire and Environment Center proposed by the [Wildfire Mitigation and Management Commission](#) and proposals included in the [PCAST report](#) on Modernizing Wildland Firefighting. The Fireshed Center would provide decision support across the entire wildfire lifecycle of prevention, suppression, and recovery efforts, thereby minimizing inequalities between different jurisdictions and allowing stakeholders to retain their autonomy while holistically addressing the wildfire crisis.

In the Fix Our Forests Act, the Center is established jointly within the Forest Service and United States Geological Survey (USGS), with additional representatives from DOI, DOD, DHS, DOE, FEMA, NSF, NOAA, NASA, and NIST. The purpose of the Center is to comprehensively assess/predict fire and smoke impacts across the Wildland-Urban Interface (WUI), informing land and fuels management, reducing risks to communities, public health, and the built environment, and supporting fire response and post-fire recovery. It would provide data aggregation, real-time predictive services, and science-based decision support, while reducing fragmentation and duplication among federal agencies. The Center also promotes coordination and data sharing between federal agencies, states, Tribes, local governments, academic institutions, and private entities. The Center ensures public access to data, models, technologies, and fire weather forecasts.

Crucially, the Center can guide land managers in deciding at the moment of detection whether to put out a new fire based on a variety of factors, including topography, humidity, fuel loads, and community risk. Under a unified and improved decision support system, state, Tribal, and local agencies would retain their autonomy and their ability to experiment with new technologies and approaches.

Megafire Action wrote a [full piece](#) on the need for a Fireshed Center (Wildfire Intelligence Center) that provides additional commentary on the pressing need for the Center and how it would function.

Expanding NEPA Categorical Exclusions to 10,000 Acres – Sec. 106

FOFA seeks to accelerate urgent forest and landscape management projects while maintaining critical environmental protections for forests and communities. The legislation expands acreage



limitations for categorical exclusions (CE) under the National Environmental Policy Act (NEPA) from 3,000 acres to 10,000 acres, providing land managers with the flexibility to do critical work *now* on the highest risk areas guided by applicable forest management plans.

These CEs are necessary. The State of California has requested that Congress “Expand US Forest Service Categorical Exclusion authority from 3,000 to 10,000 acres for fire-prone areas in the western US.”¹ This request was borne out of the success California had with the 2016 Water Infrastructure Improvements for the Nation Act, which created a 10,000 acre CE for fuels reduction projects in the Lake Tahoe Basin. This enabled more land to be treated faster, helping to maintain forest health, create defensible space, and protect communities. The Chief of the Forest Service, Randy Moore, stated in a FY25 budget hearing that Lake Tahoe’s congressionally designated 10,000 acre CE was “very beneficial” to halting the Caldor fire in South Lake Tahoe, potentially preventing the significant loss of property and lives.²

Under FOFA, forest management projects receiving up to a 10,000 acre CE must first be identified by a fire-shed assessment. FOFA mandates that fire-shed assessments comply with applicable forest plans which are developed with community input, incorporate the best available science and traditional ecological knowledge from Indian Tribes, and allow for local government participation in their formulation. These added guardrails ensure that CEs will not be used for projects that harm our forests.

While sensitivities around changes to NEPA are justified, it is important to note that FOFA does not amend, alter, or rollback NEPA or the Endangered Species Act (ESA). Agencies must still adhere to all rules and regulations governing the use of categorical exclusions and CEs must only be used in appropriate areas and not used in areas where work is prohibited. It is also important to note that while the original draft eliminated acreage limitations for the utilization of categorical exclusions, the current version sets the acreage limitation to 10,000 acres. FOFA would not enable agencies to “stack” CEs any more than they are able to under the current 3,000 acre limitation.

To further understand the practitioner perspective on categorical exclusions, Megafire Action interviewed Kelly Martin, Ret. Chief of Fire and Aviation at Yosemite National Park, and Type 1 Incident Management Team member in Operations and Fire Behavior, who provided important insights on CEs:

Categorical exclusions (CE) are a key tool for forest resilience and wildfire mitigation. Currently, there is an over-allocation of funding and human capital dedicated to planning and revising existing NEPA Environmental Impact Statement (EIS) or Environmental Assessment (EA) documents sometimes 5 to 10 years in the making. This favors what seems like endless and duplicative planning efforts compared to implementing beneficial actions on the ground that we know are based on solid science and research. CEs help us streamline the public review process and start putting meaningful projects on the ground faster to meet existential wildfire threats.

¹ https://www.cdfa.ca.gov/Farm_Bill/pdfs/2023_Farm_Bill_Priorities_FINAL.pdf

² Response to Congressman McClintock, Subcommittee Oversight Hearing, June 4, 2024, Examining the President’s FY 2025 Budget Request for the U.S. Forest Service | Federal Lands Subcommittee | House Committee on Natural Resources.



Unfortunately, projects done under the current 3,000 acre CEs fall woefully short of what is needed to meet the ever increasing size of contemporary wildfires. Smaller CEs often don't provide the buffer or resiliency needed to change conditions on the ground at a meaningful scale. In contrast, the value of a 10,000 acre CE is that you're not just looking at small sections, you're starting to look at the entire landscape and how it can withstand future challenges to watersheds, biodiversity, and key ecosystem services we deeply care about.

A common mindset around CEs is that they represent a rollback of environmental protections, but CEs are really about accelerating the implementation process for projects that have already been vetted and approved in existing land management plans backed by an EIS or EA. CEs are nothing new, they've been an important part of public engagement and meaningful land management actions for years. The CE reduces planning and analysis tied to existing EISs and EAs and reduces the need for a redundant round of review for each specific project. This is not about returning to clear cut logging, going into sensitive areas, or removing mature growth old timber. We're talking about targeting areas that are accessible, where intervention can make a meaningful difference to landscape resilience. While forestry in the past, particularly in the early 1900s, often led to negative outcomes, those earlier mistakes should not cloud the judgment of today's forest management strategies, which are vastly more informed by modern science. We're not going back to those days.

Fireshed Management Areas and Registry – Sec. 101 & 103

FOFA designates Fireshed Management Areas and the Fireshed Center will develop/maintain a Fireshed Registry – a publicly available dataset that will include information on wildfire exposure, completed and planned fuels treatments, percentage of the fireshed burned, and status of environmental permitting. The data will be available to help communities compose Community Wildfire Protection Plans.

Shared Stewardship – Sec. 104

FOFA requires USDA to enter into a shared stewardship agreement with a state or Indian Tribe within 90 of receiving the state's request. If requested by the state or Tribe, the Secretary of Agriculture may designate additional Fireshed Management Areas.

Fireshed Assessments – Sec. 105

FOFA enables land management agencies to conduct fireshed assessments that evaluate wildfire exposure risks and identify projects for the Fireshed Management Area. Tribal and local governments can request to participate in the assessments, which are exempted from NEPA. Fireshed assessments are analytical tools that are used to evaluate wildfire risk across large landscapes. As an evaluation tool that does not directly authorize any federal action, it is not subject to NEPA. This is in line with other forms of research, environmental monitoring, and long-term strategic plans that do not, in themselves, require assessment under NEPA. Wildlife surveys, water quality testing, climate modeling, and other forest management plans are likewise not considered federal actions for NEPA purposes.

Expanding Collaborative Tools – Sec. 111, 112, 113, & 114

FOFA modifies the Good Neighbor Authority (GNA) to enable retention of funds from forest product sales by Tribes for the purpose of undertaking restoration actions. It also modifies



Stewardship End Results Contracting to be authorized for retention and expansion of forest products infrastructure, in addition to land management goals to meet local needs.

FOFA also establishes interagency teams to support NEPA review and analysis, ESA consultations, and consultations under the National Historic Preservation Act. Strike teams can also be used to prepare or implement fire-shed management projects. The ten-member teams can include NGOs, States, Tribes, academic or private institutions. It also raises the financial cap on unappraised timber sales from \$10,000 to \$55,000 and allows proceeds from such timber sales to be used in fire-shed management projects.

During markup, an amendment was adopted that reauthorizes and enhances the Collaborative Forest Landscape Restoration Program and the Joint Chiefs Landscape Restoration Partnership program.

Litigation and Consultation Reform – Sec. 121 & 122

FOFA prohibits enjoinder of a fire-shed management project if the court determines the plaintiff is unlikely to succeed on the merits and directs the court to consider both the short- and long- term effects of both action and no action when reviewing injunction requests. Claims seeking judicial review must be filed within 120 days of the notice in the Federal Register and the claim must be filed after the record of decision.

As currently written, claimants must also have submitted a public comment during the public comment period that was sufficiently detailed to put the applicable agency on notice of the issue upon which the party seeks judicial review. Megafire Action understands concerns from different groups about the public comment requirement and is supportive of an amendment that would remove it from this section.

The bill also changes Forest Service and Bureau of Land Management planning requirements to eliminate the need to reinitiate ESA consultation when a new species is listed or critical habitat is designated.

Community Wildfire Risk Reduction Program – Sec. 201 & 202

Inspired by Recommendation 1 from the Wildfire Mitigation and Management Commission, FOFA establishes a Community Wildfire Risk Reduction Program to support interagency coordination. The section identifies five core purposes of the program, including advancing research and science, supporting local adoption of codes and standards, supporting local efforts to address wildfire impacts including property damage as well as air and water quality, encouraging public-private partnerships for fuel reduction work, and providing technical and financial assistance to communities. The bill also requires USDA, DOI, and FEMA to create a unified/simplified process for community applications for financial or technical assistance.

The bill also expands the Joint Fire Science Program by adding a research program focused on innovative designs to create wildfire-resistant structures and communities and establishes a competition for innovative designs in these areas.

Utility Rights-Of-Way – Sec. 203 & 204

FOFA expands CEs for hazard tree management adjacent to power lines from 10 to 150 feet and sets automatic approval timeframes (generally 120 days) for some plans prepared under the Federal Land Policy and Management Act. The CE doesn't apply in wilderness areas or in



areas where Congress has previously restricted or prohibited vegetation removal and does not allow for the establishment of permanent roads.

Seeds of Success – Sec. 205

FOFA requires the USDA, DOI, and DoD to develop a strategy to enhance domestic supplies of seeds. The strategy should facilitate interagency coordination, promote re-seeding of native or fire-resistant grasses, build regional programs/partnerships, expand seed-chain infrastructure, and shorten permitting timelines.

Biochar Innovations and Research – Sec. 301

FOFA establishes a biochar demonstration partnership program to support development and commercialization of biochar. Biochar demonstration projects should use at least 50% of their feedstock from forest thinning and management activities conducted on USFS or BLM managed lands. The bill includes provisions for research related to the demonstration projects and includes a research and development grant program.

Reporting on the Effectiveness of Hazardous Fuels Reduction Treatments – Sec. 302

FOFA requires publicly available annual reports on hazardous fuel treatments on federal land while seeking to eliminate “double counting”. Reporting must include information on treatment types, cost per acre, whether treatments were inside of the WUI, and the effectiveness of treatments in reducing wildfire risk. These reporting requirements are an important step towards ensuring scarce resources are funding the highest-ROI treatments.

Wildfire Technology Deployment and Testbeds – Sec. 303

FOFA creates a multi-agency public-private wildfire technology testbed program that identifies and advances key technologies in a competitive pilot program with private companies, nonprofits, and institutions of higher learning. Specific priorities include technologies that would advance hazardous fuels reduction treatments, dispatch communications, remote sensing/detection/tracking, safety equipment, and common operating pictures or operational dashboards. This provision is a substantial step forward in getting critical new technologies in the hands of those who desperately need them, when they need them.

Studies – Sec. 304 & 305

FOFA requires a GAO study of the effectiveness of Forest Service firefighting operations, Forest Service budget transparency and accountability, and the feasibility of establishing a new federal wildfire agency. The bill also directs the Forest Service to conduct a study evaluating potential locations for, and benefits of, creating a western headquarters for the Forest Service.

