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August 1, 2022

Los Padres National Forest
United States Forest Service
1980 Old Mission Drive
Solvang, CA 93464

Submitted via Electronic Mail: andrew.madsen@usda.gov

Re: Expedited FOIA Request for Records Related to the Ecological Restoration Project on the Los Padres National Forest

Dear Mr. Madsen:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552-552a *et seq.*, Los Padres ForestWatch ("ForestWatch"), respectfully requests the following records:

- *All records pertaining to a contract with the consulting company DJ&A as it relates to the "Ecological Restoration Project" ("Project") on the Los Padres National Forest, including but not limited to any application and all attachments and supporting documents, grant agreement, award letter, and communications;*
- *All records related to funding from PG&E for the Project including but not limited to any application and all attachments and supporting documents, grant agreement, award letter, and communications;*
- *All other funding proposals related to the "Project;" and*
- *All other records related to the "Ecological Restoration Project" on the Los Padres National Forest.*

Time is of the essence because ForestWatch plans to engage the public regarding land management regulations and activities that are ongoing or are under consideration by your agency.

For the purpose of this FOIA request, the term "records" includes, but is not limited to, documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, recordings, telephone records, voicemails, telephone notes, telephone logs, text messages, chat messages, expense reports, meeting minutes, memoranda, comments, files, presentations, consultations, papers, reports, studies, photographs and images, data (including raw data, spreadsheets, GPS or GIS data, UTM, etc.), maps, and/or all other responsive records, in draft or final form.

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

Exemptions and Withholdings

If your agency invokes a FOIA exemption to withhold in full or in part any responsive records, please include sufficient information for ForestWatch to assess the basis for the exemption, including:

1. Basic factual material about each withheld record, including the author and reviewers, date, length, general subject matter, and location; 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, and your written justification may help to avoid litigation. If your agency determines that portions of records are exempt from disclosure, we expect that the remaining portions of the records will be segregated and released by the statutory deadline.

Even if requested records fall within the purview of a FOIA exemption, the FOIA Improvement Act of 2016 requires your agency to release such records if release “would not reasonably harm an exemption-protected interest and if its disclosure is not prohibited by law.” *Judicial Watch, Inc. v. United States Dep't of Justice*, No. 19-CV-800 (TSC), 2020 WL 5798442, at *2 (D. D.C. Sept. 29, 2020). See FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A). To that end, please identify any interests that would be harmed by release for all withheld records.

Preservation of Records

Agencies must preserve all the records requested herein while this FOIA 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. See, e.g., 40 C.F.R. § 2.106; 43 C.F.R. § 2.68; 7. C.F.R. § 1.11. “[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under FOIA or the Privacy Act.” *Chambers v. U.S. Dept. of Interior*, 568 F.3d 998, 1004 (D.C. Cir. 2009). 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.” *Landmark Legal Found. v. EPA*, 272 F. Supp. 2d 59, 67 (D. D.C. 2003), see also *Judicial Watch, Inc. v. Dept. of Commerce*, 384 F. Supp. 2d 163, 169 (D. D.C. 2005) (awarding attorneys’ fees and costs because, among other factors, agency’s “initial search was unlawful and egregiously mishandled and ...likely responsive documents were destroyed and removed”), *aff’d* in relevant part, 470 F.3d 363, 374-375 (D.C. Cir. 2006) (remanding in part to recalculate attorney fees assessed). 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. *Jefferson v. Reno*, 123 F. Supp. 2d 1, 6-7 (D.D.C. 2000).

Expedited Processing

First, sufficient exigency exists to grant expedited processing because the subject of this FOIA request concerns a matter of public controversy associated with a discrete and immediate timeframe. See *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D. D.C. 2005). **The Project is subject to a 30-day comment period.** Further, the proposed Project will begin imminently, and will be subject to intense public interest and scrutiny due to the fact that it will have direct impacts on federal public lands. **The timeframe is discrete and immediate because the comment period ends on August 28, 2022.**

Second, a significant delay in the release of requested records would result in injury to a recognized interest, because the requested information is vital to evaluating the legality of the proposed activities on federal land. *Protect Democracy Project, Inc. v. U.S. Dep't of Def.*, 263 F. Supp. 3d 293, 299 (D.D.C. 2017). The specific requested records are necessary for ForestWatch to assess the potential impact of the Project on the ecosystem and to meaningfully comment on the proposal. ForestWatch needs greater resolution of the Project to fully analyze the extent of proposed activities. The Forest Service has provided only vague information about the Project to date. **Delay would devalue the significance and usefulness of the requested records because project approval will occur without the meaningful public comment as required by the National Environmental Policy Act.** Further, if the Project is approved, environmental damage will occur by the time this request is processed on a normal schedule. See 7 C.F.R. § 1.6.

Third, ForestWatch qualifies for expedited processing of this request because it is primarily engaged in information dissemination. See, e.g., *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D. D.C. 2005). ForestWatch has a long and successful history of disseminating information to the public about proposals such as this one; indeed, disseminating information is fundamental to ForestWatch's mission.

Finally, I certify that the above explanation in support of ForestWatch's request for expedited processing of this FOIA request is true and correct to the best of my knowledge and belief. 5 U.S.C. § 552(a)(6)(E)(vi).

Record Delivery

Please provide us with a tracking number for this request within ten (10) days, as well as an estimated date by which the agency will complete action on the request. 5 U.S.C. §552(a)(7)(A) and (B).

To reduce resource use and expense, we request that copies of all responsive records be provided to us in a readily accessible electronic format as described below. See 5 U.S.C. § 552(a)(3)(B). Unless otherwise specified, we hereby request that you produce all other 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. Please provide all photographs to us in electronic format via either a link to a downloadable online folder, flash drive, or CD, with the following minimum specifications for each photograph: 300dpi, 24-bit color, original size, jpg file format. We appreciate the inclusion of an index.

Offer to Assist

To reduce any potential delays, ForestWatch has invested in a high-speed portable scanner and laptop. We're willing to travel to obtain the requested information in person. We hope this will eliminate some of the copying costs associated with this and future requests.

We're also more than willing to assist in any way we can with file searching and coordinating the pick-up of documents. Our scanner is unable to accept bound documents, so to save your agency valuable staff time, we again extend our offer to visit the respective offices and manually copy any bound documents ourselves using an available copy machine. These measures should be able to free up significant time for your staff and will hopefully result in our obtaining the requested documents within the twenty-day statutory deadline.

Request for Fee Waiver

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny." *Dep't of Air Force v. Rose*, 425 U.S. 352, 372 (1976). In order to provide public access to information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the requestor satisfies the statutory standard. 5 U.S.C. § 552(a)(4)(A)(ii)-(iii).

"Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requestors.'" *Cause of Action v. Fed. Trade Comm'n*, 961 F. Supp. 2d 142, 154 (D.D.C. 2013) quoting *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir.1987) (citation omitted). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations like LPFW 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*." *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (emphasis added, internal citations omitted).

ForestWatch requests a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii). The release of these documents is not for commercial use and is in the public interest. As detailed below, ForestWatch satisfies all of the required elements for a fee waiver.

First, the requested records will illuminate, in a clear and direct way, the operations and activities of the agency as it acts to fulfill important Congressional mandates to protect the environment.

Second, ForestWatch is a non-profit, 501(c)(3) organization that supports and promotes environmentally responsible management of public lands. A particular focus of the outreach and public education efforts of our group concerns the management of public lands, wildlife, and recreation sites. As such, release of requested records will significantly contribute to public understanding and oversight of the agency's operations. Thus, the information provided through this request is vitally important to improving the public's understanding of how these sites are managed.

Third, the requested records are likely to contribute to the general public's understanding of agency operations and activities. *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003). ForestWatch's staff of legal, scientific, and public policy experts will analyze released information and apply it to our ongoing review of the federal land management activities. Records and information will be summarized and published on our web site as well as disseminated to the media and Congress as a component of our active involvement in national forest management. Members of our organization, and the public at large, receive regular newsletters and other correspondence that document public lands and recreation site issues, and their management by government agencies. ForestWatch has more than 30,000 email subscribers who receive monthly updates on issues affecting public lands throughout the Central Coast region. ForestWatch also has more than 5,000 followers on social media platforms such as Facebook and Instagram. In addition, we plan on posting summaries and analyses of these records on our web site at LPFW.org. Nearly all of the work

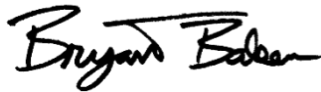
ForestWatch does is highlighted on the organization's website. Additionally, ForestWatch has been featured in hundreds of stories published by the *Los Angeles Times*, *U.S. News*, *HuffPost*, *Santa Barbara Independent*, *Santa Maria Times*, *Ventura County Star*, *San Luis Obispo Tribune*, and dozens of other news outlets. Information received from this FOIA request will be presented to the public through one or more of these means. Hence, information obtained from this FOIA request will contribute to an understanding of government operations and oversight by the public at large. Through ForestWatch's synthesis and dissemination (by means discussed above), disclosure of information contained in and gleaned from the requested records will contribute to the public at large.

One of our organization's primary goals is to foster public oversight of government agencies that manage public lands and wildlife and highlight possible abuses that might otherwise go undisputed and thus unchallenged. To this end, we specialize in the monitoring and evaluation of activities on public lands. Our organization and its team of experts have the necessary expertise to extract and interpret the relevant information from the requested information, and to disseminate this information to the public.

The public does not currently have an ability to readily evaluate the requested records, which, to our knowledge, are not currently in the public domain. "[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 Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987) (internal citation omitted). ForestWatch plans to present this new information to the public in a concise and comprehensive manner. Other individuals and groups rely on our consultation and dissemination of information to the public and will also benefit from our analysis and dissemination of this information.

Thank you for your cooperation and prompt response to this request, and please contact us if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Bryant Baker". The signature is written in a cursive, slightly slanted style.

Bryant Baker, Conservation Director
Los Padres ForestWatch
P.O. Box 831
Santa Barbara, CA 93102
foia@LPFW.org