

January 23, 2017

Honorable Pedro Nava, Chairman
Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814
Via email attachment to: littlehoover@lhc.ca.gov, [REDACTED]
[REDACTED]

Re: Public comment for inclusion in the record of the Little Hoover Commission's Public Hearing on Forest Management, Thursday, January 26, 2017.

Dear Chairman Nava and members of the Commission:

I greatly appreciate that the Little Hoover Commission has decided to research problems with forest management in California and prepare a report recommending changes to law to help address the problems.

However, after reading Chairman Nava's letter of December 5, 2016 to Mr. Nick Goulette, I am concerned that the commission's report on this subject may be too narrow, as it appears the focus may be limited to the 10 counties participating in the Tree Mortality Task Force, of which Monterey County is not a participant.

I am writing to propose that in addition to problems in the southern and central Sierra region, the commission also consider and report on the need for comprehensive amendment of all laws needed to clearly allow and facilitate wildfire fuel reduction management of all forests, woodlands and rangelands in California.

Myriad layers of local, state and federal laws add regulatory costs, delays and other roadblocks that act to discourage, hinder, and stop private and public landowners from maintaining forests, woodlands and rangelands in California. Government should be allowing and facilitating this important work, not leaving laws in place that act to hinder and block it.

The federal government has acknowledged for almost 20 years that the beneficial policy of working to suppress wildfires that has been in place for over 100 years has resulted in vast areas in the western states, including much of California, being unnaturally and hazardously overgrown, presenting increased threat of high-heat-intensity wildfires to lives, property, and resources.

Pages 6 through 9 in Attachment 1 to this comment letter contain quotes from and links to federal documents that have warned of this problem for many years. Those increasingly alarming warnings have apparently been lost on California's legislature.

The wildfire fuel accumulation problem not only threatens lives and property in the conventional sense, but also acts to increase multiple threats to our national security.

The Department of Homeland Security has issued a paper that warns that terrorists are advocating in their magazines and on their websites that wildfires be started to attack the United States, expressly naming California as an ideal target. The paper explains that the nominal cost of starting a fire, low chance of being caught, and resulting tremendous cost in dollars and distress make this means of attack attractive to terrorists.

(<https://info.publicintelligence.net/DHS-TerroristFireWeapon.pdf> or <https://goo.gl/CBQADS> .)

Another national security problem made worse by failure to remove regulatory roadblocks to allow and facilitate management of forests, woodlands, and rangelands in California for wildfire is the concentration of California's population into cities on a tiny fraction of the state's land area, making California an attractive target for use of weapons of mass destruction.

Weapons of mass destruction are highly effective at killing masses of people in densely populated areas and are generally much less effective in areas where people are dispersed at low density.

Already, about 80 percent of Californians live in cities, which encompass only about 5.2 percent of California's land area. Given that about 12 percent of our nation's population lives in California that means about 9.6 percent of the people in our nation live in cities in California, on a small fraction of California's land.

I spoke with a former Naval Postgraduate School national security professor about this problem, who said that to her knowledge the problem is off the radar of the national security community.

Presidents from both political parties have stated that terrorist groups are working to obtain weapons of mass destruction and are expected to use them once they do. For example, from Democratic President Barack Obama,

“Hi, everybody. This week, I'm speaking to you from our Nuclear Security Summit. I welcomed more than 50 leaders from around the world to make sure we're working together to meet one of the greatest threats to global security—terrorists getting their hands on a weapon of mass destruction, like a nuclear weapon.

“Fortunately, because of our efforts so far, no terrorist group has yet succeeded in obtaining a nuclear device or producing a dirty bomb using radioactive materials. But we know that al Qaeda has tried. ISIL has already used chemical weapons in

Syria and Iraq. And if they ever got hold of a nuclear weapon or nuclear material, we have no doubt they'd use it.”

(President Barack Obama, “Weekly Address: Securing the World from Nuclear Terrorism,” April 2, 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/04/02/weekly-address-securing-world-nuclear-terrorism> or <https://goo.gl/w8rR9Z> .)

Another example, from Republican President George W. Bush,

“America's next priority to prevent mass terror is to protect against the proliferation of weapons of mass destruction and the means to deliver them. I wish I could report to the American people that this threat does not exist, that our enemy is content with car bombs and box cutters, but I cannot.

“One former Al Qaida member has testified in court that he was involved in an effort 10 years ago to obtain nuclear materials. And the leader of Al Qaida calls that effort a religious duty. Abandoned Al Qaida houses in Kabul contained diagrams for crude weapons of mass destruction.”

(President George W. Bush: "Remarks at the Citadel in Charleston, South Carolina," December 11, 2001. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. <http://www.presidency.ucsb.edu/ws/?pid=73494> or <https://goo.gl/tQWPOV> .)

The above presidential quotes indicate that terrorists have now been working on obtaining weapons of mass destruction for at least 26 years and are expected to use them when they succeed. Radical religious terrorists have been following their belief system for over 1,000 years. It is not likely they will go away. Rather, it is likely that eventually they will obtain weapons of mass destruction and use them on American soil. To avoid that would require 100 percent success blocking every attempt over time, over decades, possibly over hundreds of years — such perfect success seems unlikely.

The strategic policy of mutually assured destruction that has protected our country from use of weapons of mass destruction by nation-states for decades is not effective to protect us from use by terrorists who believe it is an act of their faith to kill others who do not believe as they do, and who consider it an act of their faith to die while killing non-believers, for which they will be rewarded after death. Their belief system is apocalyptic. This is why presidents Obama and Bush agree they will use weapons of mass destruction once they have them.

California laws should be changed to encourage orderly dispersal of our population over much larger areas at low density.

Among those changes to law should be those that allow and facilitate preparation for wildfires in rural areas by reduction of wildfire fuels to safe more natural levels.

If such dispersal has not taken place before use of weapons of mass destruction on American soil dispersal will occur spontaneously as millions of panicked people flee cities in mass, similar to the mass exodus from Syria, but larger, which would be accompanied by much suffering.

I realize that the commission may consider this national security and weapons of mass destruction discussion to be off topic to the issue of forest management. However, in the real world they are directly connected.

Many environmental activists see concentrating increasing numbers of humans into the existing footprint of existing cities at ever higher density as a way to reduce impacts on the environment. These same cities are ideal target zones for weapons of mass destruction.

Failure to sufficiently address the threat of wildfires in rural areas can motivate people to leave rural areas and move into cities, advancing that activist goal.

I have spoken with a fire chief who related a conversation he had with a local environmental activist discussing a wildfire fuel reduction project. Pointing to homes, the environmental activist told him it would not bother her if the homes burned in a wildfire.

I am aware that the changes to law I propose would require a change of thinking in the legislature and perhaps in the Little Hoover Commission, and that it is human nature to want to avoid the unpleasant issues I raise.

However, if, as I believe, the legitimate role of government is to help protect human lives and property, the changes to law I propose are needed.

I have attached two papers to this comment letter, which provide more detail on changes to law I propose. Please consider them to be incorporated by this reference and include them in the record of my comments.

Attachment 1 is an entry I submitted to my Assemblymember's Ought To Be A Law contest, which proposes the "Comprehensive Wildfire Preparation Facilitation Act," to amend all state and local laws that may act to hinder or block wildfire fuel reduction work, to instead clearly allow and facilitate that work.

Attachment 2 is testimony I submitted to the United States Senate Committee on Energy & Natural Resources for its hearing on "The Federal government's role in wildfire management, the impact of fires on communities, and potential improvements to be made in fire operations,"

which proposes changes to multiple federal laws that can act to hinder or block wildfire fuel reduction work.

Monterey County is rated at the highest priority of need for wildfire fuel reduction work in the United States by the National Cohesive Wildland Fire Management Strategy developed by the Wildland Fire Leadership Council.

(<https://www.forestsandrangelands.gov/strategy/nationalpriorities.shtml#map1> or <https://goo.gl/OSgVov> .)

I realize that the tree die-off in the Sierra region is even larger in scale than the massive die-off of oak and pine trees in Monterey County from Sudden Oak Death and Pine Pitch Canker respectively; however, the problem in Monterey County is extreme as indicated by its high national priority in the National Cohesive Wildland Fire Management Strategy.

Millions of dollars in Fire Prevention Fees have been collected from Monterey County landowners, yet to my knowledge only a very small fraction of the money collected has been returned to fund wildfire fuel reduction projects on the ground in Monterey County.

However, fees like the Fire Prevention Fee are supposed to be used for the benefit of those who pay the fee. Fire Prevention Fees collected from Monterey County landowners should *not* be used to address problems in the Sierra region. Instead, tax dollars should be used for that purpose.

Monterey County has been the location of some of the largest and most costly fires in United States history. Monterey County Fire Prevention Fee payments are needed to prepare for wildfires in Monterey County, to help reduce the cost and damage from wildfires in Monterey County.

The recent Soberanes Fire in Monterey County, which was started by an illegal campfire on land owned by the California Department of Parks and Recreation (DPR) and spread rapidly due in part to lack of fuel reduction work by DPR on its land, cost taxpayers \$236 million to suppress.

My understanding is that DPR had been asked in the past to include wildfire fuel reduction provisions in its general plan for state parks in the area, but responded that fuel reduction work to help protect lives and property in surrounding communities is outside its mission as established by law.

As noted on page 7 of the *The National Cohesive Wildland Fire Management Strategy: Phase III Western Regional Science-Based Risk Analysis Report* (Western Regional Risk Report) actual costs of wildfires far exceed the costs to suppress them, stating,

“There are many costs borne by individuals that extend far beyond the scope of fire suppression. Direct costs reflect the cost of suppression, but the following

costs are generally not included in direct cost estimates: rehabilitation costs, post-fire flooding, and watershed degradation costs. Other costs that go unaccounted for are indirect costs, such as lost tax revenues, business revenues, and property losses. And additional costs including loss of human life, ongoing health problems for the young, old, those with weak respiratory and immune systems, and mental health issues are also not included in estimates. A synthesis of six case studies in the report reveals **a range of total wildfire costs anywhere from 2 to 30 times greater than the reported suppression costs** (WFLC, 2010).”

(<https://www.forestsandrangelands.gov/strategy/documents/reports/phase3/WesternRegionalRiskAnalysisReportNov2012.pdf> or <https://goo.gl/NrW2aY> , bold added.)

Based on the 2 to 30 times suppression cost multiplier, actual cost of the Soberanes Fire was somewhere between \$472 million and \$7 billion.

We lost our home to the Soberanes Fire. I can attest that the added costs over and above suppression costs are substantial.

The fire cost the life of equipment operator Robert Reagan, who left a wife and two young children.

57 homes and 11 outbuildings were destroyed by the fire, which will cost many millions of dollars to replace.

Though the Soberanes Fire was fully contained in September of last year, months later cleanup still continues. Other costs not included in the list above are also substantial, for example the cost of a place to live after your home has burned, which may be ongoing for years before homes can be rebuilt.

As I write this, at 4:15 pm on January 22, a storm front is passing through the Soberanes Fire burn area and dumping a heavy downpour of rain on already saturated ground.

From recent rains I know that even minutes of heavy rain over the burn area will almost instantly cause large quantities of silt, rocks, boulders, and remains of trees to flow down the scorched hillsides into creeks and drainages in this steep topography. This is the heaviest and longest deluge in the area since the fire.

The county road in our area, Palo Colorado Road, was partly washed away after the last rain due to a clogged culvert, as trees that had been felled by the Soberanes Fire but not consumed were washed downstream and piled against the culvert’s intake. Temporary repairs are in place as of several days ago, but huge pileups of trees already in the creeks upstream may be rushing downstream right now. Private roads in the area have had similar problems and may again now.

I am hoping our friends and neighbors are safe.

The Western Regional Risk Report is correct, suppression costs, as dramatic as they are, are only a small portion of the cost of wildfires, and costs continue long after the fire is out, in dollars, in impacts on resources, and on the lives of those who are affected.

I find it mind boggling that California continues to leave laws in place that act to hinder and block the ability of private and public landowners to prepare for wildfires by reducing hazardous accumulations of wildfire fuels to safe more natural levels.

Conclusion

I respectfully request that the Little Hoover Commission include the following in the report to be prepared from this hearing:

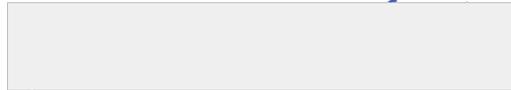
- That the problem of hazardous accumulations of wildfire fuels and tree die-off needs to be addressed in all areas in the state with forests, woodlands, and rangelands that are subject to wildfires, not limited to die-off of trees in the Sierra region.
- That there is an urgent need to comprehensively amend all laws that may discourage, hinder, or block wildfire fuel reduction work, to instead clearly allow and facilitate private and public landowners to reduce hazardous accumulations of wildfire fuels to safe more natural levels, providing specifics based on the proposed changes to law in Attachments 1 and 2.
- That there is an urgent need to allow and facilitate the reduction of hazardous accumulations of wildfire fuels in forests, woodlands, and rangelands on private and public land to avoid aiding terrorists who may choose to start wildfires to attack our nation.
- That there is an urgent need to allow and facilitate the people of California to disperse over a large land area at low density to help prepare for use of weapons of mass destruction on American soil, and discussion that failing to lower wildfire hazards in rural areas by reducing accumulations of wildfire fuels on public and private land acts to discourage dispersal.
- That Fire Prevention Fees should be used for wildfire fuel reduction work in the area the fees were paid from, including that fees paid by people in Monterey County should be used for wildfire fuel reduction work on the ground in wildfire prone areas in Monterey County.

I believe that the changes to law I propose would help protect lives, property and resources, reduce opportunity and incentives for litigation, on balance save state and local government a great deal of money, and avoid much suffering.

Please see Attachment 1 for details of proposed changes to state and local laws, and Attachment 2 for proposed changes to federal laws I believe California should advocate for.

I pray the commission will give serious consideration to the points made in this comment letter and include strong clear language in its report accordingly.

Respectfully submitted,

A large rectangular grey box redacting the signature of Michael Caplin.

Michael Caplin

Three horizontal grey bars redacting contact information, likely a phone number and email address.

Attachment 1

ASSEMBLYMEMBER LUIS A. ALEJO'S

OUGHT TO BE A LAW

LEGISLATION CONTEST



**Have you ever seen a problem in your community
and thought there "Ought to be a Law" that fixes it?
Do you have an idea to improve State Government?**

Send us your ideas!

Your idea has the potential of becoming law for 38 million Californians. Some of the best ideas for state legislation have come from community members that are affected by a specific problem. If you have an idea for a new law that you'd like considered or if you'd like to legitimately see a particular law abolished, then enter Assemblyman Luis Alejo's "Ought to be Law" contest and let your voice be heard.

At least one contest winner is selected and his or her idea is introduced the following spring as a legislative proposal on the floor of the Assembly.

To enter, you must live in California's 30th assembly District, which includes San Benito County, the Salinas Valley, Morgan Hill and the city of Watsonville. Fill out the entry form and answer the questions on the following page.

Submission will be accepted by mail, e-mail or fax. Only one entry per person.

"Ought to be a Law" Contest

Office of Assemblymember Luis A. Alejo
100 W. Alisal Street, Suite 134
Salinas, CA 93901

Phone: 831-759-8676 Fax: 831-759-2961

E-mail: Assemblymember.Alejo@assembly.ca.gov

Website: www.asmdc.org/members/a30/there-ought-to-be-a-law



ASSEMBLYMEMBER LUIS A. ALEJO'S
SHOULD TO BE A LAW
LEGISLATION CONTEST

ENTRY FORM

NAME: MICHAEL CAPLIN

ORGANIZATION: MEMBER OF THE PUBLIC

ADDRESS: [REDACTED]

CITY: [REDACTED] STATE: CA ZIP CODE: [REDACTED]

PHONE: [REDACTED] E-MAIL: [REDACTED]

Please respond to the following items and submit them with your Entry Form:

1. Describe the concern that you feel is not being addressed in the community or in the State of California. Use as much detail as possible.

Much of Monterey County and other areas in California are threatened by wildfires due to unnatural hazardous accumulations of wildfire fuels that are an unintended consequence of the beneficial policy of suppressing wildfires, which has been in place for over 100 years. Many California and local laws hinder or block private individuals and public agencies from reducing hazardous accumulations of wildfire fuels to safe more natural levels. Such laws effectively act to threaten lives, property and resources in the event of wildfire. Please see my letter below for details.

2. How did this issue come to your attention? Please share any newspaper articles, academic studies, or personal experiences that you have had with the issue.

In 2008 the Basin Complex Fire almost burned through our community with hundreds of homes located in a densely overgrown area with many thousands of oak trees killed by sudden oak death. The area where we live has not burned in the recorded history of wildfires (over 100 years). After the fire I sought to learn why the fire had burned over the historic firebreak that had protected our area from fires for decades and learned much I had not known. Please see my letter below for more.

3. What is your proposal for legislation to address this issue/concern? How do you think it would benefit the 30th Assembly District? Please be as specific as possible.

I propose the Comprehensive Wildfire Preparation Facilitation Act, to amend all state and local laws to allow and facilitate private individuals and public agencies to prepare for wildfires by reducing hazardous accumulations of wildfire fuels to safe more natural levels. Please see my letter below for specifics.

Assemblymember Luis Alejo
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0030

Via email attachment to: [REDACTED]@assembly.ca.gov

Re: OUGHT TO BE A LAW legislation contest

2-10-2016

Dear Assemblymember Alejo,

Your office informed me you are not expecting a draft statute but are looking for general answers to your requests. Please see my answers below.

Thank you for this opportunity to possibly correct problems I have seen as needing addressing for years.

This is the second year I have submitted an Ought to be a Law proposal to you for the **Comprehensive Wildfire Preparation Facilitation Act**.

This submittal is similar to last year's, and includes more discussion on why this legislation is critically needed, including multiple threats to our national security due to unnatural and hazardous accumulation of wildfire fuels, caused by over 100 years of the beneficial policy of working to suppress wildfires. This submittal also adds additional changes to law to help address the problem.

Most of the changes to law I propose would cost state and local government nothing.

The remainder, providing Workers' Compensation Insurance and protection from liability to wildfire fuel reduction work managers and volunteers, would cost little compared to the costs currently spent on wildfire suppression due to lack of preparation.

An August 2015 USDA Forest Service report discusses that the Forest Service's budget is being consumed by rising costs of wildfire suppression, reducing its ability to perform other tasks such as preparing for fires with fuel reduction projects. (<http://www.fs.fed.us/sites/default/files/2015-Rising-Cost-Wildfire-Operations.pdf>)

A December 2015 USDA Forest Service Inspector General report recommends transferring more of the cost of wildfire suppression in California to the state, essentially by trading areas that are expensive for the Forest Service to protect for areas less expensive to protect, currently protected by CAL FIRE, effectively changing the current balance of acres agreement between the Forest Service and

CAL FIRE to a balance of costs. Forest Service Region 5 concurs.
(<http://www.usda.gov/oig/webdocs/08601-0002-41.pdf>, pages 5 through 10)

Given the substantial difference in cost per acre for providing suppression protection between grass/scrublands and wildland urban interface (\$61 / acre vs. \$1,695 / acre, respectively, per Table 1 on page 6 of the Inspector General report), the resulting shift of areas of responsibility could result in substantial additional wildfire suppression costs to the state of California.

By making it easier for private individuals and public agencies to reduce hazardous accumulations of wildfire fuels to safer more natural levels, by removing regulatory costs, delays, and roadblocks, the changes to law I propose should act to lower wildfire suppression costs in California, which are substantial, and are likely to rise due to change in Forest Service policy, climate change, and ongoing additional accumulations of wildfire fuels.

My understanding is the changes to law I propose would save CAL FIRE and other agencies about ten percent of the amount they spend on wildfire fuel reduction projects, the percentage of project costs typically spent to comply with the California Environmental Quality Act and other laws.

The changes to law I propose would also lower the cost to private landowners who want to perform wildfire fuel reduction work, who may be discouraged from doing the work by existing regulatory costs, delays and roadblocks.

The changes would also remove a major roadblock to neighbors organizing volunteer fuel reduction work parties to help protect their community, by providing volunteers Workers' Compensation insurance, similar to how volunteer disaster service workers are provided insurance during emergencies through the Office of Emergency Services, and by protecting volunteers and landowners from liability during wildfire fuel reduction work.

The changes to law I propose should result in more wildfire fuel reduction work actually taking place on the ground in the real world, helping individuals and communities prepare for wildfires, which will help protect lives, property, and resources, all at a net lower cost to state and local government.

By lowering the threat from wildfires, the changes to law I propose would also help reduce threats to our national security, as discussed below.

Existing laws that act to hinder or block the ability of people in California to prepare for wildfires to defend life, protect property, or seek and obtain safety, infringe on inalienable fundamental human rights acknowledged by the California Constitution.

Under existing laws, we are not keeping up with the problem of hazardous accumulation of wildfire fuels. The problem is growing worse each year.

Landowners, communities, and agencies must be free to do this needed work, without regulatory hindrance.

Question 1. Describe the concern that you feel is not being addressed in the community or in the State of California. Use as much detail as possible.

Answer 1.

An unintended consequence of the beneficial policy of working to suppress wildfires, which has been in place for over 100 years, is that wildfire fuels that would have burned have not burned, but instead continued to accumulate, to the point that much of Monterey County and the rest of California is in need of wildfire fuel reduction work to reduce hazardous accumulations of wildfire fuels to safer more natural levels.

At this point, wildfire cannot be allowed to burn through overgrown areas without risk of catastrophic losses.

Attachment A is a map prepared for The National Cohesive Wildland Fire Management Strategy, showing that Monterey County and other counties in California are rated at the highest priority of need for broad scale fuels management in the United States. You can find copies of this map, other maps, and links to other National Cohesive Wildland Fire Management Strategy documents on these web pages

<https://www.forestsandrangelands.gov/strategy/nationalpriorities.shtml#map1>;

<https://www.forestsandrangelands.gov/strategy/thestrategy.shtml>;

<http://cohesivefire.nemac.org/national-priorities>

Attachments B and C are CAL FIRE maps showing the high wildfire threat in the state of California and Monterey County, respectively.

Unfortunately, only a tiny fraction of the amount of wildfire fuel reduction work that is needed is being done each year.

As a result, we are not keeping up with the unnatural accumulation of wildfire fuels and the problem is literally growing worse each year.

One reason for the shortage of work are the layers upon layers of local, state and federal laws that hinder or block private landowners and public agencies from doing the work needed to reduce unnatural accumulations of wildfire fuels to safe and more natural levels.

The Comprehensive Wildfire Preparation Facilitation Act of 2016 would amend numerous California laws to uniformly and clearly allow and facilitate Californians, both private individuals and public agencies, in preparing for wildfires by reducing hazardous accumulations of wildfire fuels to safe levels.

Estimates are that with climate change the threat of wildfires will increase over time, aggravating the problem. **Attachment D** is a chart estimating increased wildfire activity with climate change.

Hazardous accumulation of wildfire fuels puts lives, property, and resources at risk of unnatural high-heat-intensity wildfires that are more destructive and more costly and dangerous to put out than fires with lower more natural heat intensity.

This hazardous condition of much of California's land area has not been lost on terrorists.

In 2012 the Department of Homeland Security (DHS) issued a document titled **"Terrorist Interest in Using Fire as a Weapon."** (<https://info.publicintelligence.net/DHS-TerroristFireWeapon.pdf>)

The document includes information on terrorist magazines and websites on such topics as how to construct incendiary devices to start wildfires, a terrorist map that shows priority states where wildfires in the United States would be most destructive, *specifically naming California and Montana as ideal targets*, and statements encouraging the setting of wildfires to attack the United States.

The DHS document explains,

"For terrorists, setting fires has several advantages over other methods of attack, including sustainability (duration of fire and long-term effects); the potential for casualties, economic damage, and wide media coverage; and the accompanying psychological effects of fear and terror."

Laws that interfere with the ability of people in California to reduce hazardous accumulations of wildfire fuels to safe more natural levels puts lives and property at risk.

The California Constitution's first words include in pertinent part, at Article 1, Section 1, Declaration of Rights,

"All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life ..., acquiring, possessing, and protecting property, and pursuing and obtaining safety"

Given the short amount of time it can take for a wildfire to start and spread catastrophically, and the long amount of time it can take to prepare for wildfires by reducing hazardously overgrown vegetation to safe levels, and the extreme threat that wildfires present to lives, property and safety, any law that acts to hinder or block people in California from preparing for wildfires infringes on these fundamental human rights.

Unfortunately, numerous state and local laws in California currently infringe on these basic human rights by interfering with the ability of people to prepare for wildfires by reducing hazardously overgrown vegetation to safe more natural levels, by requiring costly and time consuming approvals and procedures before the work can be performed, or blocking the work entirely.

The problem of unnatural accumulations of wildfire fuels and the resulting threat to lives, property and resources has been acknowledged by the federal government for well over a decade (links to documents below).

Congress has done much attempting to address the problem. For example, by making federal funds available for grants for wildfire fuel reduction projects.

However state and local laws can then hinder or block work from being performed, and, schizophrenically, some federal laws do so as well.

Moreover, there are not enough grant funds to pay for even a small fraction of the work that needs to be done. California's land area is about 100 million acres, about half of which is in private ownership. Annual grant funds provide enough money for only a tiny fraction of 1% of California's land area to be treated.

The recently enacted Fire Prevention Fee does not significantly act to help address the problem. For example, though millions of dollars in Fire Prevention Fees have been collected from Monterey County landowners, only a small fraction of that amount (I believe less than \$70,000) has been returned to Monterey County to fund wildfire fuel reduction work on the ground in the real world.

Apparently, much of that fee has been used to replace funding to pay CAL FIRE personnel, which was lost in earlier budget cuts.

To solve the wildfire fuel accumulation problem individual landowners must be free to do the beneficial work of reducing hazardous accumulations of wildfire fuels to safe and more natural levels without added costs, delays or other discouragement by government.

Government should reward this important work, and at the very least should allow and facilitate it by stepping aside by amending laws and regulations to let the work be done without statutory or regulatory hindrance.

In California, that will take comprehensive legislation to change numerous state and local laws, plans and ordinances.

More details are provided in my answer to question 3.

Question 2. How did this issue come to your attention? Please share any newspaper articles, academic studies, or personal experiences that you have had with the issue.

Answer 2.

This legislation is something I have seen the need for for many years, but did not act upon. However, after the Basin Complex Fire nearly burned through our heavily overgrown community of about 300 homes in 2008, I started looking for answers on why the historic firebreak in the Los Padres National Forest was not used as I had seen it used during the Kirk Complex Fire in 1999. One thing led to another and I participated in drafting of the Monterey County Community Wildfire Protection Plan, and volunteered for the board of the Fire Safe Council For Monterey County.

My experiences have led me to see that though the federal government has long recognized the problem of hazardous accumulations of wildfire fuels caused by more than 100 years of the beneficial policy of working to suppress wildfires as soon as they start, many state and local laws (and federal laws) act to hinder or block the fuel reduction work needed to address the hazardous overgrowth problem.

Here are quotes from and links to documents showing that the federal government, firefighting professionals, and such organizations as the Western Governors' Association have recognized the hazardous overgrowth problem and have been trying, largely unsuccessfully, to solve it for well over a decade:

- **Western National Forests A Cohesive Strategy is Needed to Address Catastrophic Wildfire Threats (1999)** United States General Accounting Office (<http://www.gao.gov/archive/1999/rc99065.pdf>)

"The most extensive and serious problem... is the overaccumulation of vegetation, which has caused an increasing number of large, intense, uncontrollable, and catastrophically destructive wildfires."

- **Managing the Impact of Wildfires on Communities and the Environment (2000)** Report to President Clinton from his Secretaries of Agriculture and Interior, also known as the National Fire Plan (<http://clinton4.nara.gov/CEQ/firereport.pdf>).

"The intensity of this year's fires is the result of [multiple factors including] the long-term effects of more than a century of aggressively suppressing all wildfires, which has led to an unnatural buildup of brush and small trees in our forests and rangelands."

- **Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 2001, and for Other Purposes (2000)** Conference Report, pages 193 2nd par. from bottom through 194 top par. (<http://www.gpo.gov/fdsys/pkg/CRPT-106hrpt914/pdf/CRPT-106hrpt914.pdf>)

"The Secretaries should also work with the Governors on a long-term strategy to deal with the wildland fire and hazardous fuels situation, as well as needs for habitat restoration and rehabilitation in the Nation. The managers expect that a collaborative structure, with the States and local governments as full partners, will be the most efficient and effective way of implementing a long-term program.

"The managers are very concerned that the agencies need to work closely with the affected States, including Governors, county officials, and other citizens. Successful implementation of this program will require close collaboration among citizens and governments at all levels. The managers direct the Secretaries to engage Governors in a collaborative structure to cooperatively develop a coordinated, National ten-year comprehensive strategy with the States as full partners in the planning, decision-making, and implementation of the plan. Key decisions should be made at local levels."

- **A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment, 10-Year Comprehensive Strategy (2001)** (<http://www.forestsandrangelands.gov/resources/plan/documents/7-19-en.pdf>)

"[The 10-Year Comprehensive Strategy] outlines a comprehensive approach to the management of wildland fire, hazardous fuels, and ecosystem restoration and rehabilitation on Federal and adjacent State, tribal, and private forest and range lands...."

- **A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan (2002)** (<http://www.forestsandrangelands.gov/resources/plan/documents/11-23-en.pdf>)

"The endorsers of this Implementation Plan recognize that a problem a century in the making will not be solved overnight. With progress in achieving objectives in the collaborative manner envisioned, the risks to our communities and environment posed by wildland fire will be significantly diminished over time."

- **Healthy Forests Restoration Act of 2003** (16 U.S. Code § 6501 – Purposes) (<http://www.law.cornell.edu/uscode/text/16/6501>)

"The purposes of this chapter are—

(1) to reduce wildfire risk to communities, municipal water supplies, and other at-risk Federal land through a collaborative process of planning, prioritizing, and implementing hazardous fuel reduction projects; ...

(3) to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape"

- **A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Strategy Implementation Plan (2006)** (http://www.forestsandrangelands.gov/resources/plan/documents/10-yearstrategyfinal_dec2006.pdf)

"The primary goals of the 10-Year Comprehensive Strategy are:

- 1. Improve Prevention and Suppression*
- 2. Reduce Hazardous Fuels*
- 3. Restore Fire Adapted Ecosystems*
- 4. Promote Community Assistance"*

- **A Call To Action (2009)** (http://www.forestsandrangelands.gov/strategy/documents/foundational/call_to_action2010.pdf)

"Business as usual is not working!"

"To the U.S. citizen 'The nation's fire service is about to lose its ability to put out unwanted wildfires and help you protect yourself and your properties .'"

- **The National Cohesive Wildland Fire Management Strategy: Phase III Western Regional Science-Based Risk Analysis Report (2012)** (<http://goo.gl/h8hbWv>)

"The Cohesive Strategy takes an 'all lands' view of wildland fire management. Fire knows no political or social boundaries -- not ownership boundaries, not state boundaries."

"There are many costs ... that extend far beyond the scope of fire suppression...: rehabilitation costs, post-fire flooding, and watershed degradation costs... lost tax revenues, business revenues, and property

losses...loss of human life, ongoing health problems for the young, old, those with weak respiratory and immune systems, and mental health issues...."

"Examine legislative related barriers that are impeding implementation of collaboratively developed landscape health related projects and pursue reform of the existing process to increase our effectiveness in active forest and rangeland management. (e.g., Endangered Species Act, Equal Access to Justice Act, National Environmental Policy Act (NEPA))."

- **The National Strategy: The Final Phase of the Development of the National Cohesive Wildland Fire Management Strategy (2014)**
(<https://www.forestsandrangelands.gov/strategy/documents/strategy/CSPhaseIINationalStrategyApr2014.pdf>
<https://www.forestsandrangelands.gov/strategy/thestrategy.shtml>)

"By establishing national priorities and ensuring alignment of programs, policies, regulations, and actions to national direction, meaningful reductions in risk are possible through concerted, collaborative implementation."

These increasingly alarming warnings have been issued over the course of more than fifteen years, over multiple national administrations of both political parties, including national calls for changes to laws and regulations that interfere with wildfire fuel reduction work.

Despite the warnings, California has done little to address the problem by amending its laws to allow and facilitate private individuals and government agencies in their efforts to reduce hazardous accumulations of wildfire fuels to safe levels.

In his **October 30, 2015 Proclamation of a State of Emergency** (Proclamation) (https://www.gov.ca.gov/docs/10.30.15_Tree_Mortality_State_of_Emergency.pdf), Governor Brown acknowledged that wildfires can "...release thousands of tons of greenhouse gas emissions and other harmful air pollutants..."

In his Proclamation, Governor Brown also stated,

"[U]nder the provisions of section 8571 of the California Government Code, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay the mitigation of the effects of the drought."

In his Proclamation, Governor Brown then suspended application of the California Environmental Quality Act (CEQA) to certain of his directives.

However, CEQA is not the only law that prevents, hinders, or delays wildfire fuel reduction projects, and CEQA applies only to government agencies, not private individuals.

In our area with many thousands of dead and dying oak trees affected by Sudden Oak Death, and with vast areas of hazardous accumulations of wildfire fuels due to lack of fire in the area for multiple natural fire return intervals, including areas that have not burned in the recorded history of wildfires (over 100 years), the Governor's Proclamation has had no effect, and private landowners continue to have their hands tied by numerous state, local and federal laws that "prevent, hinder, or delay" them from reducing wildfire fuels to safe more natural levels.

While I very much appreciate the Governor's interest in the wildfire problem, I am told that the Governor's Proclamation was the subject of derision at a fire district board meeting for being poorly written and ineffective.

The Governor's Proclamation focused on the narrower threat from drought- and disease-caused die off of trees. However, the larger problem of decades of accumulation of wildfire fuels will remain after the drought has ended, and efforts to address it are prevented, hindered or delayed by numerous statutes and regulations.

The recently enacted Fire Prevention Fee may sound like a step forward, but it is not. I have heard from CAL FIRE officials that due to cuts to CAL FIRE's budget, the fee is a net loss in revenue, even if it is upheld by courts.

It also appears that much of the revenue from the fee is being spent collecting it. A press release from Senator George Runner (Ret.) (<http://goo.gl/R39IF3>) claims that about \$17 million was spent collecting and administering about \$75 million in revenue from the fee.

I have been told that Monterey County landowners have paid over \$3 million in Fire Prevention Fees, but only about \$70,000 dollars has been returned to Monterey County for wildfire fuel reduction work on the ground. If that is true, less than 3% of the FPF paid by Monterey County landowners has been returned for wildfire fuel reduction projects on the ground in Monterey County.

Cost to hire fuel reduction contractors in Monterey County is about \$1,000 to \$3,000 per acre. If all of the \$70,000 from the FPF returned to Monterey County were spent paying contractors for fuel work on the ground, at \$1,000 per acre it would have treated 70 acres -- a miniscule portion of Monterey County's 2.1 million acres.

Private individuals and government agencies need to be free to do this work without hindrance by laws that act to discourage or block the work from being done.

Private individuals could do much of the work needed, at low cost to themselves and no cost to government, if laws are changed to allow and facilitate the work without regulatory hindrance.

Question 3 What is your proposal for legislation to address this issue/concern? How do you think it would benefit the 30th Assembly District? Please be as specific as possible.

Answer 3

I propose that the **Comprehensive Wildfire Preparation Facilitation Act** be enacted to amend all state and local laws that may act to discourage, hinder, or block wildfire fuel reduction work by private individuals and public agencies, to clearly exempt wildfire fuel reduction work from their application.

I also propose a new law to prevent state and local government employees from assisting federal agencies with enforcing federal laws that may infringe upon the inalienable fundamental human rights of Californians to defend life, protect property, and to seek and obtain safety from wildfires, which rights are acknowledged by Article 1, Section 1 of the California Constitution.

Because lack of insurance and potential for liability is a disincentive for individuals to join their neighbors in volunteering to help solve this problem without pay, I also propose a new law to provide Workers' Compensation insurance to individuals who volunteer to perform wildfire fuel reduction work, similar to the Workers' Compensation coverage provided to disaster service workers who volunteer during emergencies.

- **California Environmental Quality Act (CEQA)**

Amend CEQA to provide a clear statutory exemption for wildfire fuel reduction work that is intended to help protect human lives, property, or resources, and to provide a clear statutory exemption for participation in drafting and for agreeing to community wildfire protection plans.

The legislature has exempted a long list of activities from CEQA, and these two statutory exemptions should be added.

In 2003 in San Diego County, a hunter was lost in the Cleveland National Forest and decided to light a signal fire when it was getting dark. The fire escaped. A wind came up. That was the start of the Southern California Fire Siege of 2003, in which twenty-three lives were lost and 3,710 homes

destroyed in a matter of several days. You can read about the fires and the lives of those who died in this paper <http://nsfire.org/wp-content/uploads/2014/04/Faces-20031.pdf>.

In 2009, San Diego County received a federal grant of seven million dollars to perform wildfire fuel reduction work. The County used CEQA's exemption for emergencies to move the work forward in a timely manner. A small organization that advocates for chaparral, comprised primarily of one individual, filed a CEQA lawsuit to block the fuel reduction work. The court held that the threat of wildfire was not sufficiently immanent to be an emergency, and that CEQA had not been complied with, and the work was halted. You can read the Court's decision at <https://goo.gl/z4UJBT>. I am not sure, but I believe San Diego County has not yet been able to use the grant funds to help protect lives and property. You can read San Diego County Board of Supervisor's minutes from 2012 that review the grant, the lawsuit, and ongoing attempts to comply with CEQA, starting on page 4 of the minutes, here <http://goo.gl/zZVfQU>.

My view is it is outrageous that important work to help protect the lives and property of thousands of people can be halted by one person, with a CEQA lawsuit. I am confident many other Californians would agree.

Even without a lawsuit, CEQA causes delays and adds costs that hamper doing important wildfire fuel reduction work.

Federal grants are typically for an 18 month period, during which the grant funds must be used or returned. A grant funded fuel reduction project I know of was delayed for almost the entire term of the grant waiting for CEQA to be completed. But for an extension of time by the granting entity, the grant work would likely not have been completed by the end of the grant period and unused grant funds would have had to be returned.

CEQA regulations contain an exemption for fuel management activities within thirty feet to one hundred feet of structures at Title 14 California Code of Regulations section 15304(i) (<https://goo.gl/1ZJiRm>) However, exceptions to the exemption make the exemption illusory, as they leave the landowner in the position of hiring a biologist and entailing other costs to show that the exemption applies.

Moreover, without extra authorization, the exemption only applies to the first thirty feet from structures. PRC 4291 (<http://goo.gl/SaooHN>) requires a minimum of 100 feet of defensible space, and the definition of defensible space in the Board of Forestry's General Guidelines for Creating Defensible Space (http://bofdata.fire.ca.gov/PDF/Copyof4291finalguidelines9_29_06.pdf) puts no limit on the distance for defensible space, acknowledging that depending upon topography and type and density of fuel, additional defensible space may be

needed beyond the minimum one hundred feet required by law to ensure it will be adequate to protect lives and property in the event of wildfire.

Additionally, as you will see below, the California Native Plant Protection Act (CNPP) and California Endangered Species Act (CESA) have been interpreted to allow destruction of California listed threatened or endangered plants for management or fire control purposes. However, the CEQA regulation appears to prohibit such a take, making the rules of the exemption more restrictive than the CNPP and CESA statutes in the context of creating defensible space. In cases where a California listed threatened or endangered plant is present, the CEQA exemption in 15304(i) can be interpreted to make it harder to create defensible space, not easier.

First CEQA Statutory Exemption - As discussed in the foregoing, the first exemption needed is a crystal clear broadly stated statutory exemption from CEQA for all wildfire fuel reduction work that is intended to help protect lives, property or resources.

Second CEQA Statutory Exemption - Also needed is a clear statutory exemption from CEQA for state and local government when participating in writing and when agreeing to a community wildfire protection plan (CWPP).

The federal Healthy Forests Restoration Act of 2003 (HFRA) provides an exemption from the National Environmental Policy Act (the federal statute comparable to CEQA) to federal agencies when they participate in developing a CWPP or a recommendation in a CWPP. See 16 USC § 6513(c)(1) (<https://www.law.cornell.edu/uscode/text/16/6513#c>). HFRA also contains other reductions of NEPA for the Forest Service and Bureau of Land Management to encourage wildfire fuel reduction work.

Exemption from CEQA should not be needed, as CWPPs, a creation of federal law (<http://www.law.cornell.edu/uscode/text/16/6511#3>), merely make recommendations. Nevertheless, when Monterey County was considering signing the Monterey County CWPP it was threatened with a CEQA lawsuit if it did so. To avoid the cost of litigation the Board of Supervisors effectively directed that the CWPP be edited to satisfy the group that threatened the CEQA lawsuit, after it had been signed by all fire agencies in Monterey County, including fire chiefs, the US Forest Service, the Bureau of Land Management, and the Department of Defense.

One of the edits was to remove the concept that all laws should be interpreted in the light that best protects lives, property and the environment, in that order of priority.

When writing the CWPP, that statement of priorities was borrowed from the "Emergency California-Nevada Tahoe Basin Fire Commission Report to the

Governors of California and Nevada" (Tahoe Fire Commission Report).

The Tahoe Fire Commission Report was prepared to learn how to avoid the kind of devastation experienced during the Angora Fire of 2007 in the Lake Tahoe area (which destroyed 242 residences and 67 commercial structures, and damaged 35 other homes). Co-chair for the report for California was California's State Fire Marshal at the time, Kate Dargan.

The Tahoe Fire Commission Report repeatedly states that overregulation of vegetation reduction was a contributing factor to the devastating nature of the Angora Fire, and repeatedly recommends that in the future all laws be interpreted to protect lives, property and the environment, in that order of priority, and that regulatory burdens be reduced or eliminated to allow and facilitate performance of wildfire fuel reduction work.

You can download the Tahoe Fire Commission Report here <https://goo.gl/KW4eqp>. Searching it for "in that order" will return numerous iterations of the phrase. Similar if you search it for "regulations" or "facilitate."

Another document that discusses the need to remove regulatory hindrance of wildfire fuel reduction work is the National Cohesive Wildland Fire Management Strategy: Phase III Western Regional Science-Based Risk Analysis Report (2012) (<http://goo.gl/h8hbWv>), which states, "Examine legislative related barriers that are impeding implementation of collaboratively developed landscape health related projects and pursue reform of the existing process to increase our effectiveness in active forest and rangeland management. (e.g., Endangered Species Act, Equal Access to Justice Act, National Environmental Policy Act (NEPA))."

These federal laws in need of reform have California analogs, i.e., California Endangered Species Act, California Private Attorney General statutes, and CEQA. I assume the reference to the Access to Justice Act is that it incentivizes litigation by awarding attorney's fees, similar to California's private attorney general statute (Code of Civil Procedure section 1021.5, (<http://goo.gl/jblCNS>), which is another law I propose amending to reduce the likelihood of lawsuits to block wildfire fuel reduction work that is intended to help protect lives, property, or resources.

- **California Coastal Act**

The Coastal Act's definition for environmentally sensitive habitat (ESHA) is exceedingly broad (actually, absurdly broad), and its restrictions on what can happen in ESHA are exceedingly narrow (actually, absurdly and dangerously narrow in the context of the need for wildfire fuel reduction work). The ESHA definition is at Public Resources Code (PRC) section 30107.5 (<http://goo.gl/PKTDRO>) and the restrictions are at PRC 30240(a)

(<http://goo.gl/8iKBAB>) A court decision that explains the effect of PRC 30240 is *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912. (<https://www.courtlistener.com/opinion/2248297/mcallister-v-california-coastal-com/>)

The current coastal plan for the Big Sur area, the area where I live, the Big Sur Coast Land Use Plan (LUP) (<http://goo.gl/OijhKJ>), was certified by the Coastal Commission in 1986. It includes language intended to avoid the need for a permit to remove certain kinds of vegetation at policy 5.4.2.13 (search the LUP for "major vegetation" to be taken to the policy).

The intent of the policy was to ensure that people would not be hindered from maintaining their brushlands, woodlands and forests in fire safe and fire resilient condition by allowing certain vegetation removal without the need for a permit. I have been told by a retired Coastal Commission staff person who worked on the LUP in the 1980s that the language came from his father, a registered professional forester, who wisely saw the problems with unnatural accumulations of wildfire fuels.

However, at some point Monterey County planning officials decided the language at policy 5.4.2.13 is "meaningless" due to conflicts with the LUP's ESHA policies.

The LUP is currently being updated and I have now attended ninety-four almost weekly meetings of the Big Sur and South Coast Land Use Advisory Committees (LUACs), which are working on updating the LUP. I have been trying to ensure that the updated LUP is clear beyond misinterpretation that work on wildfire fuel reduction projects will not require a permit if the work meets the description in the LUP, which references guidelines being written based upon California Board of Forestry's General Guidelines for Creating Defensible Space standards for areas more than 30 feet from structures as the desired level of fuel reduction (http://bofdata.fire.ca.gov/PDF/Copyof4291finalguidelines9_29_06.pdf).

Part of the discussion at a LUACs meeting was Article 1, Section 1 of the California Constitution, which the LUACs had quoted in their draft fire language to ensure wildfire fuel reduction work would not be blocked by the Coastal Act's ESHA policies.

County planning staff asked for the quote from Article 1, Section 1 of the California Constitution be removed from the LUP, because they thought it would offend Coastal Commission staff.

The LUACs agreed to remove the quote from the California Constitution.

Coastal staff told county planning staff to look at edits made by Coastal staff to the Marin County Land Use Plan update as a model for fire language in the

LUP update. Here is a link to the marked up edited version of the Marin County Land Use Plan on the Coastal Commission's website, <http://documents.coastal.ca.gov/reports/2014/5/Th12a-5-2014-a6.pdf>.

You can search the Marin County plan for the following terms to see some of the edits made by Coastal Commission staff: "while providing for fire safety" (stricken), "minimize risks to life and property in ESHAs" (stricken), "Coastal Permits shall allow the management or removal of major vegetation where necessary to minimize risks to life and property" (stricken), "avoid such activities within ESHA and ESHA buffers on site and on neighboring property, including parkland" (added).

These Marin County edits by Coastal Commission staff are not only contrary to Article 1, Section 1 of the California Constitution, they are contrary to the Legislature's express intent when it enacted the Coastal Act. PRC 30001 states (http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC§ionNum=30001),

The Legislature hereby finds and declares: [¶]...[¶] (c) *That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.* (Italics added.)

Reducing hazardous accumulations of wildfire fuels to safe levels, and creating defensible space, promotes public safety, health, and welfare and helps protect public and private property, while helping to protect the ecological balance of the coastal zone and prevent its destruction and deterioration.

Monterey County planning officials initially told the LUACs that the county will not do battle with the Coastal Commission. They were aware of the edits to the Marin County Land Use Plan and that Marin County tried to fight them, and lost. However, County staff has recently said it is a worthy effort to try to get the Coastal Commission to agree to changes in the LUP to allow wildfire fuel reduction work. Unfortunately, at the same time, County planning staff is attempting to write language that will mollify Coastal staff, which may leave roadblocks to wildfire fuel reduction work in place for areas outside the minimum 100 feet of defensible space around structures required by Public Resources Code section 4291 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PRC§ionNum=4291).

In areas where 100 feet of defensible space is not adequate to protect lives and property due to such factors as steep terrain and heavy vegetation, such restrictions on the ability of people to create sufficient defensible space would act to threaten lives and property in the event of wildfire.

Another example why wildfire fuel reduction work needs to be clearly exempted from the Coastal Act is the maritime chaparral problem.

In 2008, during a coastal permit appeal, the Coastal Commission declared that central maritime chaparral is ESHA. (Coastal Commission staff report for the Steven Foster permit appeal (<http://documents.coastal.ca.gov/reports/2008/1/Th16a-1-2008.pdf>) page 17, b. ESHA Identification, par. 1.)

Central maritime chaparral is a "plant community" or "plant alliance" and its definition is not agreed upon by biologists. Coastal Commission staff effectively admits that in the Foster staff report when it says, "[Dr. Taylor] stated that the syntaxonomy of maritime chaparral has not been formally studied, hence arguments as to the identity of a particular stand of chaparral as either falling within or without such a category is subject to the vacillation of personal opinion." (Foster staff report, page 21, last par.) That left it open for the Coastal Commission's staff biologist to define maritime chaparral very broadly.

Unlike threatened and endangered species, there is no statutory or peer reviewed process for identifying a plant community, and no process for determining if it is rare or otherwise in need of protection. The same is true for all ESHA, except listed threatened and endangered species.

Critical is that other conservation statutes leave room for exceptions for beneficial management, which is not found in PRC 30240.

In an email exchange with the California Department of Fish and Wildlife's maritime chaparral expert, he said that essentially all chaparral in the coastal zone is maritime chaparral, with few exceptions.

That, together with the Coastal Commission's declaration that maritime chaparral is ESHA, I guesstimate that about one third of the land in the Big Sur Coastal Planning Area is maritime chaparral ESHA and dangerously off limits to wildfire fuel reduction work, exposing people working to defend lives, protect property, or seeking or obtaining safety by reducing hazardous accumulations of wildfire fuels to safe levels to stiff penalties for violating the Coastal Act. For some fuel reduction projects the County may have allowed removal of maritime chaparral, or ignored it. However, if such a project were challenged in court, it appears the County does not have the lawful authority to do that.

The Carmel Pine Cone newspaper has written a number of stories on the maritime chaparral controversy, and has editorialized on the subject. The Coastal Commission's assistant director at the time, wrote a response published in several newspapers, which is belied by the Marin County Land Use Plan edits by Coastal Commission staff.

I have attached a copy of a Pine Cone newspaper editorial and story to this letter as **Attachments E and F**. In the story a Coastal Commission staff person admits that maritime chaparral is not defined.

To me the Coastal Commission's position declaring an undefined therefore unidentifiable group of plants as ESHA, which results in application of the most restrictive land use statute in California and possibly in United States law and which could be used to block efforts to protect lives, homes and resources, is like something out of a Kafka novel.

Here is a link to the original Pine Cone story on its website <http://www.pineconearchive.com/080620PCA.pdf> (story starts on page 11A). And a link to the Editorial <http://www.pineconearchive.com/080627PCA.pdf> (editorial is on page 26A).

Maritime chaparral is only one of many ESHA designations. Few rural areas do not meet the Coastal Act's broad definition of ESHA.

The Big Sur and South Coast LUACs (LUACs) provided county planning staff with draft language for the update to the LUP that attempts to avoid conflicts between the need to reduce vegetation to prepare for wildfires and ESHA.

The LUACs' approach was to not declare anything ESHA where it could interfere with wildfire fuel reduction work, but to instead call habitats that are to be protected Habitats of Special Consideration. That way restrictions could be applied without triggering PRC 30240, leaving it possible to allow wildfire fuel reduction work as an exception.

However, Coastal Commission staff rejected that approach, and Monterey County planning staff conceded.

The Coastal Act should be amended to clearly exempt wildfire fuel reduction work from its application, or lives and property can be put at risk by state law, which is contrary to Article 1, Section 1 of the California Constitution, contrary to the Legislature's intent when it enacted the Coastal Act, and contrary to rational thought.

- **California Endangered Species Act**

As touched on above, according to California Attorney General Opinion No. 98-105 (<http://oag.ca.gov/system/files/opinions/pdfs/98-105.pdf>), the California Native Plant Protection Act (NPPA) and California Endangered Species Act (CESA) allow destruction of plants listed as threatened or endangered under the CESA for management or fire control purposes.

A problem is that the allowance of a take lacks clarity to the point that government agencies may fail to recognize the ability to destroy California listed species for fear of litigation for consenting to it.

In the past, the California Department of Fish and Game (now Fish and Wildlife (DFW)), was authorized to enter into memorandums of understanding (MOU) to allow a take of species listed as threatened or endangered under the CESA for such purposes as creating defensible space. Here is a link to an MOU from 1997 (<http://www.sandiegocounty.gov/dplu/docs/MemoofUnder.pdf>), which remains in effect in San Diego County. The Fish and Game Code (F&GC) was amended effective January 1998 to preclude such MOUs from having effect if entered into after April 10, 1997. See F&GC section 2081.1(a) (<http://goo.gl/AT7E2B>).

Wildfires are equal opportunity destroyers. Unnatural high-heat intensity wildfires can harm not only humans and property, but threatened and endangered species as well. I believe most people see that.

Here is a KGO radio news report on a fuel reduction project in the Lake Tahoe area that was stopped by litigation because the area was being considered for designation as critical habitat for an endangered frog, noting that in the event of wildfire the frogs would likely be harmed along with everything else. You can download an audio recording of the report here <https://goo.gl/TFTi9s>

REPORTER 1: A tree thinning project intended to decrease the wildfire danger around Lake Tahoe has been put on hold. The Tahoe Daily Tribune reporting that land near Upper Echo Lake is being considered as a critical habitat for an endangered species of frog. Now a lawsuit's been filed raising concerns about the effects the project might have on the Sierra Nevada Yellow Legged Frog.

REPORTER 2: Well, if there's a wildfire that would hurt the frogs too, right?

REPORTER 1: It kinda would. Yeah.

To the extent CESA hinders or blocks wildfire fuel reduction projects it not only threatens human lives and property but is also counterproductive to protecting species, including listed species, in the event of wildfire.

CESA should be amended to clearly allow a take of California listed species incidental to performance of wildfire fuel reduction work that is intended to help protect lives, property, or resources from wildfires.

In the end, this will better protect all wildlife than discouraging such work, leaving unnatural hazardous accumulations of wildfire fuels in place.

- **California Wilderness Act**

After the Basin Complex Fire in 2008, which crossed over the historic firebreak around the Los Padres National Forest in Monterey County in a location that threatened our home and the homes of hundreds of our neighbors, I investigated why that happened. I learned that in 2001, the Forest Service had started the National Environmental Quality Act (NEPA) scoping process on 10 fuelbreak projects along the location of the historic firebreak around the Los Padres National Forest in Monterey County. I also learned that 8 of the 10 projects were abandoned after the Big Sur Wilderness and Conservation Act of 2002 moved federal wilderness over 8 of the project areas.

As a result, the Forest Service only completed NEPA on 2 of the 10 projects, abandoning the rest.

I also learned that members of the Ventana Wilderness Alliance (VWA) had attended NEPA scoping meetings for the Forest Service's fuelbreak projects, as had Congressman Farr's District Director, and that the VWA had lobbied Congressman Farr and Senator Boxer for the 2002 wilderness legislation. The legislation had no hearing. (<https://goo.gl/8THgB5>)

During work on the Monterey County Community Wildfire Protection Plan (CWPP), it was decided to include a recommendation to Congress in the CWPP that the historic fuelbreak be maintained, including where it is inside wilderness.

A VWA member was participating in the CWPP drafting process from a distance (via an Internet document collaboration website). Soon after the decision was made to include a recommendation in the CWPP that the historic fuelbreak be maintained, I learned that then-Assemblymember Monning had been convinced by VWA to introduce state wilderness legislation to add state wilderness in a location that also crossed over the historic fuelbreak in the same location (via a corner of Andrew Molera State Park that touches the historic firebreak). That would have meant that maintaining the fuelbreak with motorized equipment would have been blocked by both federal and state wilderness, both advocated for by VWA. Assemblymember Monning withdrew his bill when he learned it would act to block maintaining the historic fuelbreak with motorized equipment, which is prohibited in wilderness.

I call the wilderness added by the Big Sur Wilderness and Conservation Act of 2002 "malevolent wilderness." During the Basin Fire one of the 2002 wilderness additions caused the Forest Service to do work only with hand crews where bulldozers had been used in the past, and the Basin Fire crossed over the location of the historic firebreak before any significant work could be done by hand crews, right at the location of the 2002 wilderness addition.

But for heroic action by CAL FIRE, including multiple mile long fire retardant drops by a DC-10 in the location of what had in the past been a backup firebreak (which became the only firebreak), our community of about 300 homes would have been burned over, as there was no other topographically viable location for a firebreak to stop the Basin Fire.

VWA has also been involved in other locations where it successfully advocated for other state wilderness additions. It is unknowable if these other state wilderness additions were also malevolent wilderness, intended to block use of historic firebreaks.

Given that places where bulldozers have worked in the past or may work in the future during wildfires will not likely meet the definition of wilderness in PRC section 5093.33(c) (<http://goo.gl/h4Koo6>), and given that wilderness designation precludes use of motorized equipment until such time as there is fire in the area, which impedes maintaining historic firebreaks or fuelbreaks alongside them to make them effective and safe for firefighters to use during wildfires, historic firebreaks and areas alongside them wide enough for effective fuelbreaks to be maintained should have state wilderness removed from them (e.g., a buffer of non-wilderness 1,000 to 2,000 feet on each side of the area of the historic or potential firebreak).

The proposed statute would provide that all ridgelines that may be suitable for firebreaks, and areas alongside them that may be suitable for fuelbreaks, are removed from wilderness, until such time as it is determined the ridgelines are not needed for firebreaks or fuelbreaks.

- **California General Plan Law**

Amend General Plan law, sections 65100 – 65107 of the Government Code (<http://goo.gl/4xhpgE>), to require that city and county and city-and-county general plans and ordinances shall provide that no permit will be required for wildfire fuel reduction work intended to protect lives, property, or resources, that does not reduce vegetation density to lower than as described in the General Guidelines for Creating Defensible Space, with the exception of use of prescribed fire, which shall continue to be governed by sections 4461 – 4471 of the Public Resources Code.

- **California Prescribed Fire Law**

Amend sections 4461 – 4471 of the Public Resources Code (<http://goo.gl/QdR32Q>) to allow use of burn piles up to twenty-five feet in diameter, and larger where approved by the fire authority having jurisdiction, to dispose of material generated by wildfire fuel reduction work. Provide that no fee shall be charged for any permit that may be required for pile burning, and

that should a permit be required, ensure it may be easily and quickly obtained, including by filling out a form on the Internet as well as by use of paper forms. Where burning piles would be an undue threat to the health of others, such as adjacent to a hospital, provide allowances for appropriately limiting them.

Large burn piles tend to burn with less smoke than small piles. Some jurisdictions require that burn piles (other than agricultural burn piles) must be no larger than four feet in diameter, which can make piling and burning impractical. In many areas piling and burning is the only practical way to economically dispose of large quantities of material generated from fuel reduction work. Piling and burning should be encouraged during burn season, not discouraged.

- **California Air Quality Law**

To the extent needed to avoid state or local air quality laws or regulations from discouraging or blocking landowners from piling and burning material resulting from wildfire fuel reduction projects intended to help protect lives, property, or resources from wildfires, amend California law to exclude the law's application to such wildfire fuel reduction projects. Include an exception for locations where smoke would be likely to be unsafe for nearby developments, for example, adjacent to hospitals.

- **California Water Quality Law**

One of the lessons learned recorded in the Tahoe Fire Commission Report (<https://goo.gl/sV16oo>) is that overregulation of fuel reduction work near streams ultimately resulted in riparian areas acting like fuses during the Angora Fire, carrying the fire from one area to another and increasing crown fires. Another lesson learned is that because fuel levels in riparian areas were higher, the result post fire was more silt coming off the land in these areas. For example, from page 58,

"SEZs [Stream Environment Zones] in the Lake Tahoe Basin pose both extreme fire risks and extraordinary environmental challenges. In times of fire, such as both the November 2002 Pioneer Fire and the Angora Fire, the fires quickly changed from surface fires to crown fires because untreated SEZs allowed fire to quickly move through overstocked and insect diseased forested areas. Commentators have referred to the SEZs in these areas as operating like "candle wicks" during times of fire, advancing the severity of crown fires. SEZs are also pathways through which sediment travels into the Lake, thereby directly affecting Lake clarity."

State and federal laws make it very difficult to do fuel reduction work near streams. **Attachment G** is a photo of a stream in Monterey County with

wildfire fuels that were left in place even though fuel reduction work was done in the area. The reason the fuel was left is the cost and delays it would have entailed to work in the riparian area.

As a result, in the event of wildfire, the stream and riparian area is in greater danger of siltation, loss of the Redwood trees in the area due to piles of kindling under them in the form of trees killed by Sudden Oak Death, and other degradation.

Regulations that discourage wildfire fuel reduction work in riparian areas not only ultimately increases the threat of wildfires to lives and property, but to the riparian areas as well.

Here is a link to a California Association of Resource Conservation Districts paper explaining current requirements to work in riparian areas, <http://goo.gl/cqG39W>.

All California laws, state and local, that could increase costs, cause delays, or otherwise discourage wildfire fuel reduction work in riparian areas should be amended to not apply to such work.

- **California Private Attorney General Statute**

Amend the Private Attorney General Statute, Code of Civil Procedure section 1021.5, (<http://goo.gl/jblCNS>) to preclude its application to wildfire fuel reduction work intended to help protect human life, property, or resources.

This is comparable to the recommendation in The National Cohesive Wildland Fire Management Strategy to reform the federal Equal Access to Justice Act to avoid litigation blocking wildfire fuel reduction projects. (<http://goo.gl/h8hbWv>, page 6 first bullet).

- **California Conservation Easement Statutes** (Civil Code sections 815 through 816, <http://goo.gl/bWyyw87>.) Amend these statutes to require that all conservation easements shall include an exception/proviso that allows wildfire fuel reduction work to reduce and/or maintain vegetation at the levels of density provided in the General Guidelines For Creating Defensible Space, without limitation on the distance for areas beyond 30 feet from structures (that is, for distances over 30 feet from structures, or where there is no structure, the vegetation density in the Guidelines for areas beyond 30 feet from structures applies).

Be clear that no structure is needed for this exception to conservation easements to be required by this statute.

Authorize amendments to existing conservation easements for this purpose, including those in perpetuity (assuming that is possible with state law).

Cross reference to a new statute that provides that landowners with conservation easements who do not maintain their land alongside roads in conformance with the vegetation density levels in the General Guidelines For Creating Defensible Space, which road has potential to be needed by others to evacuate in the event of wildfire, or that may be needed for emergency access in event of wildfire, and who do not allow others to perform such fuel reduction work at no cost to the landowner if they do not perform the work themselves, may be held liable by others for injury or loss of life, and for damage to or loss of property, caused by the lack of maintenance (for not less than 100 feet from the edge of the road).

Provide that if the holder of the conservation easement does not agree to the fuel work along roads, then they shall be liable, not the owner of the property.

This is needed to prevent conservation easements from becoming a threat to lives, property or resources, including to others who own surrounding land or have an easement for use of a road over the property with the conservation easement.

The Chief of the North County Fire Protection District has said that while attempting to enforce PRC 4291 he has been told by landowners that a conservation easement prohibits them from doing the work.

These changes to law do not require anyone to do any work, and do not extend liability beyond existing law, unless the landowner does not do the work (or the conservation easement holder refuses to allow the work) and also refuses access to someone else who was willing to do the work at no cost to the landowner. Though the statute does not require the holder of a conservation easement to agree to it being amended for this purpose, it provides an incentive in the form of potential liability if the work is not done and the conservation easement precludes allowing someone else to do the work.

- **Amend the Z'berg-Nejedly Forest Practice Act of 1973, as amended, to not apply to fuel reduction projects for compliance with PRC 4291, or to a greater distance than required by PRC 4291 if topography, vegetation or other conditions indicate a greater distance to ensure protection to structures, or to community fuelbreak projects, or to roadside fire safety fuel reduction projects, or to projects to reduce accumulations of wildfire fuels to more natural levels, or to fuelwood or biofuels that are the byproduct of such projects.**

California law should allow wildfire fuel reduction work to be commercialized to help pay for the work to be performed, without onerous rules and regulations

that discourage the work. For example, allow the selling of wildfire fuel reduction work byproducts as fuelwood/firewood or biofuel, to help pay for this needed work to actually be done in the real world, without triggering requirements of the Forest Practice Rules.

During work on the Monterey County CWPP, there was a presentation by Joe Stutler from Deschutes County Oregon. Until his retirement in 2012 Mr. Stutler ran a very successful fuel reduction program called Project Wildfire (<http://www.projectwildfire.org/>).

Cost for Project Wildfire fuel reduction projects were typically about \$100 to \$200 per acre, a fraction of the cost of such work in Monterey County. That was accomplished in part by offering landowners free pickup and chipping of cuttings, then sale of the chipped material to biofuel plants to help recoup costs.

The point is, some way of recouping costs without added expenses will help the process of reducing wildfire fuels to more natural levels move forward.

I have been told that Oregon does not have a statute comparable to CEQA, which may also help account for Project Wildfire's lower costs and success.

- **Amend Statutes that apply to management of land owned by state agencies and local and regional government to allow defensible space to help protect structures on land of adjacent private landowners.**

Amend such statutes to provide that state, local and regional government landowners will either perform defensible space fuel reduction work to help protect structures on adjacent private land, or, will allow the private landowner to do the work at no cost to the government agency and without charge to the private landowner.

- **Amend the California Emergency Services Act to provide Workers' Compensation insurance coverage to project managers and volunteers doing wildfire fuel reduction work.**

Provide Workers' Compensation insurance coverage and protection from liability to project managers on wildfire fuel reduction projects, and for volunteer workers doing wildfire fuel reduction work, similar to how Workers' Compensation coverage is provided to volunteers working to clean up oil spills by Government Code § 8574.3 (<https://goo.gl/rHTnKJ>), and how Workers' Compensation coverage is provided to "disaster service workers" through the Office of Emergency Services by GC § 8580 (<https://goo.gl/rqBhIZ>) and how coverage is provided to workers helping implement an emergency plan by GC § 8609 (<https://goo.gl/iDQbqg>).

This should apply to any group of people who decide to work together to perform wildfire fuel reduction work. Registration for the coverage should be no cost, fast, and simple; for example Internet based, and/or through the fire authority having jurisdiction.

I have witnessed large groups of volunteers self organize to perform wildfire fuel reduction work along evacuation routes. Nobody was hurt, however, it would be easier to organize groups of volunteers, and easier to obtain landowner permission for work by volunteers on their land (for example along roads that pass through multiple ownerships), and entail far less risk for volunteers and landowners in the event someone is injured, if Workers' Compensation insurance coverage were provided for workers, and if workers and landowners had protection from liability.

Also needed is insurance for project managers for grant funded fuel reduction projects. The fire safe council on which I volunteer has tried to find a source of insurance for project managers that oversee grant-funded wildfire fuel reduction projects, and has been told that the insurance industry does not offer such a product.

It is wrong that project managers who are working to help solve this nationally recognized problem that threatens lives, property and resources, have to do so at their own personal risk without insurance or protection from liability.

- **Amend all state laws that have potential to discourage or hinder construction or placement of wildfire shelters, including but not limited to the California Coastal Act and building codes, to allow and facilitate construction of wildfire shelters without regulatory cost or other hindrance.**

Though fire agencies, including CAL FIRE, typically recommend that people evacuate when wildfire approaches, all agencies acknowledge that conditions may be such that evacuation is simply not possible. Permits and costs to build and place wildfire shelters should be eliminated, as to the extent they discourage or block someone from installing a shelter of last resort, they put lives at risk, and infringe upon the right of Californians to defend life and seek and obtain safety in the event of wildfires. A reasonable size limit to fit within the exemption should avoid abuse of the shelters being built for other purposes (e.g., allowing a minimum 8' x 8' x 8' interior, which when sealed should shelter a family of four for 12 hours without supplemental air supply, according to Australian bushfire shelter standards).

- **New statute providing that no employee, officer or agent of the State of California, or of any subdivision thereof, shall assist any federal employee, officer, or agent of the federal government in the application or enforcement of any federal law, regulation or treaty that would have the potential of hindering or blocking any wildfire fuel reduction work intended to help protect human lives, property, or resources.**

This is needed because it is not possible for the California Legislature to amend federal laws, and because just as there are many state and local laws that currently act to hinder or block work intended to protect life, property, or resources, many existing federal laws do so as well.

Without such a statute California's employees and agents may be put in a position of assisting federal agents in violating the inalienable rights of the people of California to defend life, protect property, and seek and obtain safety, by hindering or blocking Californians from preparing for wildfires.

Given that California is a leader among states, such a statute may result in comprehensive changes to federal law similar to the changes proposed to California law here.

To the extent that any federal law may act to place the life, property or safety of any Californian in jeopardy of wildfires, the federal government should be left to apply and enforce such laws itself without the assistance of the state of California or local government.

- **Provide a private cause of action to any person for any violation of The Comprehensive Wildfire Preparation Facilitation Act that hindered or blocked them from performing wildfire fuel reduction work that resulted in injury, loss of life, or damage to or destruction of property during a wildfire.**

The intent is to motivate government agencies to allow this important work and to not infringe on the rights of Californians to protect life, defend property, and to seek and obtain safety. Such actions as government agencies interpreting laws in ways that act to block this important work should not be tolerated without potential for consequences.

- **Provide that this Act shall be interpreted liberally to help protect lives and property.**

The very reason state and local government exist is to protect the lives and property of the people of California.

To ensure that the protection of life and property is the highest priority, any ambiguity should be interpreted in favor of protecting lives and property.

These changes to law would greatly benefit the 30th Assembly District, and many other areas in California, by helping protect lives, property and resources in the event of wildfire

The 30th Assembly District (District) includes over 57% of Monterey County, which is rated at the highest priority of need for wildfire fuel reduction work in the United States on the Vegetation and Fuels map prepared as part of the National Wildland Fire Management Strategy. (First map at http://cohesivefire.nemac.org/sites/default/files/appendix_priorities_0.pdf)

The 30th District includes all of San Benito County, which is rated at moderate priority of need for wildfire fuel reduction work on the Vegetation and Fuels map.

All of the counties included in the 30th District are rated at the highest priority in the United States on the National Wildland Fire Management Strategy map for Homes, Communities and Values, which the map describes in part as, "Counties characterized by higher-than-average annual area burned, structures lost, and homes exposed within the [Wildland Urban Interface] were assigned the highest priority for community action." (Second map at http://cohesivefire.nemac.org/sites/default/files/appendix_priorities_0.pdf)

By removing statutory and regulatory hindrances and roadblocks to wildfire fuel reduction work the changes to law I propose would make it easier therefore more likely that private individuals and public agencies would prepare for wildfires by reducing hazardous accumulations of wildfire fuels to safe and more natural levels, helping protect lives, property and resources in the 30th Assembly District.

Many other counties in California would also be benefited by these changes to law, as other California counties are also rated at high priority for wildfire fuel reduction work and high priority for Homes, Communities and Values. (First and second maps at http://cohesivefire.nemac.org/sites/default/files/appendix_priorities_0.pdf)

Facilitating ability to prepare for wildfires would also help reduce multiple threats by terrorists, who are working to attack the United States, and California in particular, using wildfire as a weapon (discussed above), and who are working to obtain weapons of mass destruction, which are highly effective on densely populated urban areas.

I am aware of the difficulties such changes to law are likely to face in Sacramento. I have met environmental activists who believe that people should not live in rural areas and should instead live in existing footprints of cities at ever higher density.

However, in a world with weapons of mass destruction (WMDs), and with terrorists who have told us they are seeking WMDs to use them to kill Americans, moving more people into cities at high density is pure folly.

(<http://www.state.gov/documents/organization/65477.pdf>)

Currently, about 12% of Americans live in California. Currently, about 80% of Californians live in cities, which comprise only about 5.2% of California's land area. That means that currently, about 10% of the population of the United States lives on about 5% of California's land area, at relatively high population densities that make excellent target zones for weapons of mass destruction.

In Monterey County, about 75% of the population lives in cities, which comprise less than 1% of the county's 2.1 million acre land area.

Mutually assured destruction, the strategic defense against WMDs that worked against such nation-state threats as the former Soviet Union, is not effective against terrorist groups that do not have a nation state to retaliate against, and who consider it an expression of their faith to die while killing others who do not believe as they do.

The belief system of terrorists who seek to kill Americans has been in place for some thousand years and is not going away. It is readily foreseeable they will eventually obtain WMDs and it is readily foreseeable they will use them.

California has the choice of working to redistribute our populations at lower more rural density over larger land areas in an orderly and organized manner, or, waiting until it is too late, until WMDs are being used on American soil, and having people redistribute themselves, fleeing cities in panic with much suffering, similar to what is happening as people flee Syria.

There is a chance you might find support for changes to law to allow and facilitate wildfire fuel reduction work from some conservation groups, such as the Nature Conservancy. Here is a link to a video that offers some encouragement along those lines, as it appears the Nature Conservancy participated in the program documented in the video. (<https://goo.gl/ATpsPe>).

Fire agencies avoid politics to the extent that is possible. Frankly, I do not expect them to publicly support the changes to law I propose.

I hope you will introduce the changes to law I propose and advocate for them in the legislature. They are sorely needed.

If your run for county supervisor is successful and you join in working to address the wildfire threat in Monterey County, I expect you will come to appreciate how much easier that task will be if the **Comprehensive Wildfire Preparation Facilitation Act** is enacted.

Respectfully Submitted,



Michael Caplin



CC: Governor Jerry Brown
Senator Bill Monning
Senator Anthony Cannella
Assemblymember Mark Stone
Office of Emergency Services Director Mark S. Ghilarducci
CAL FIRE Director Ken Pimlott
California Board of Forestry and Fire Protection Chair Keith Gilles
Monterey County Supervisor Dave Potter

Adapted from: <http://cohesivefire.nemac.org/national-priorities>

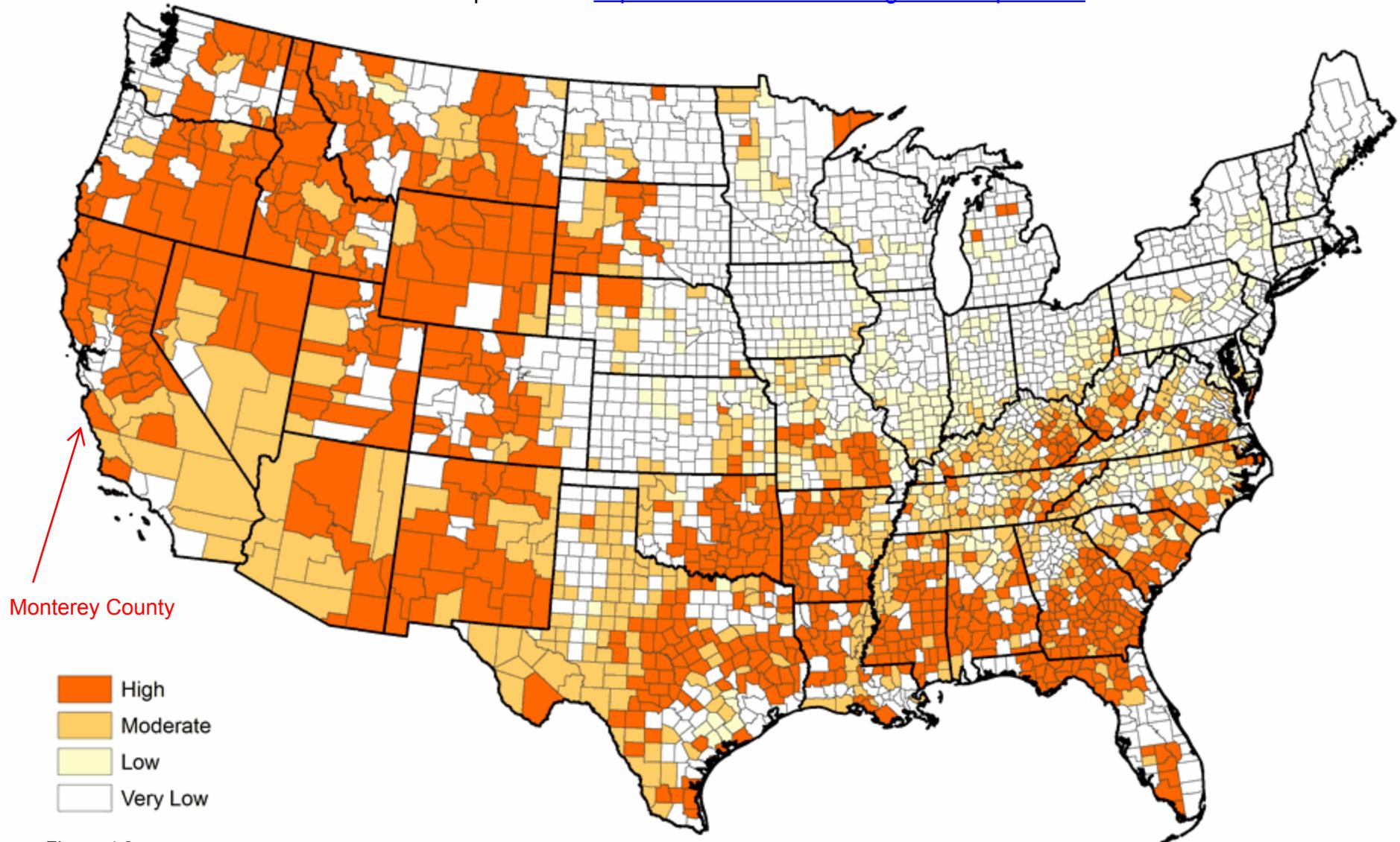


Figure 4.3

National prioritization of areas for broad-scale fuels management (as distinct from hazard reduction in proximity to structures) suggests a primary emphasis in the West and Southeast (figure 4.3). These included counties with the highest level of wildfire, fire-adapted native vegetation, and communities concentrated within a broader wildland landscape. Each location would use the mix of options most suitable for local conditions, as described in Options 1-4.



STATE OF CALIFORNIA

Attachment **B**

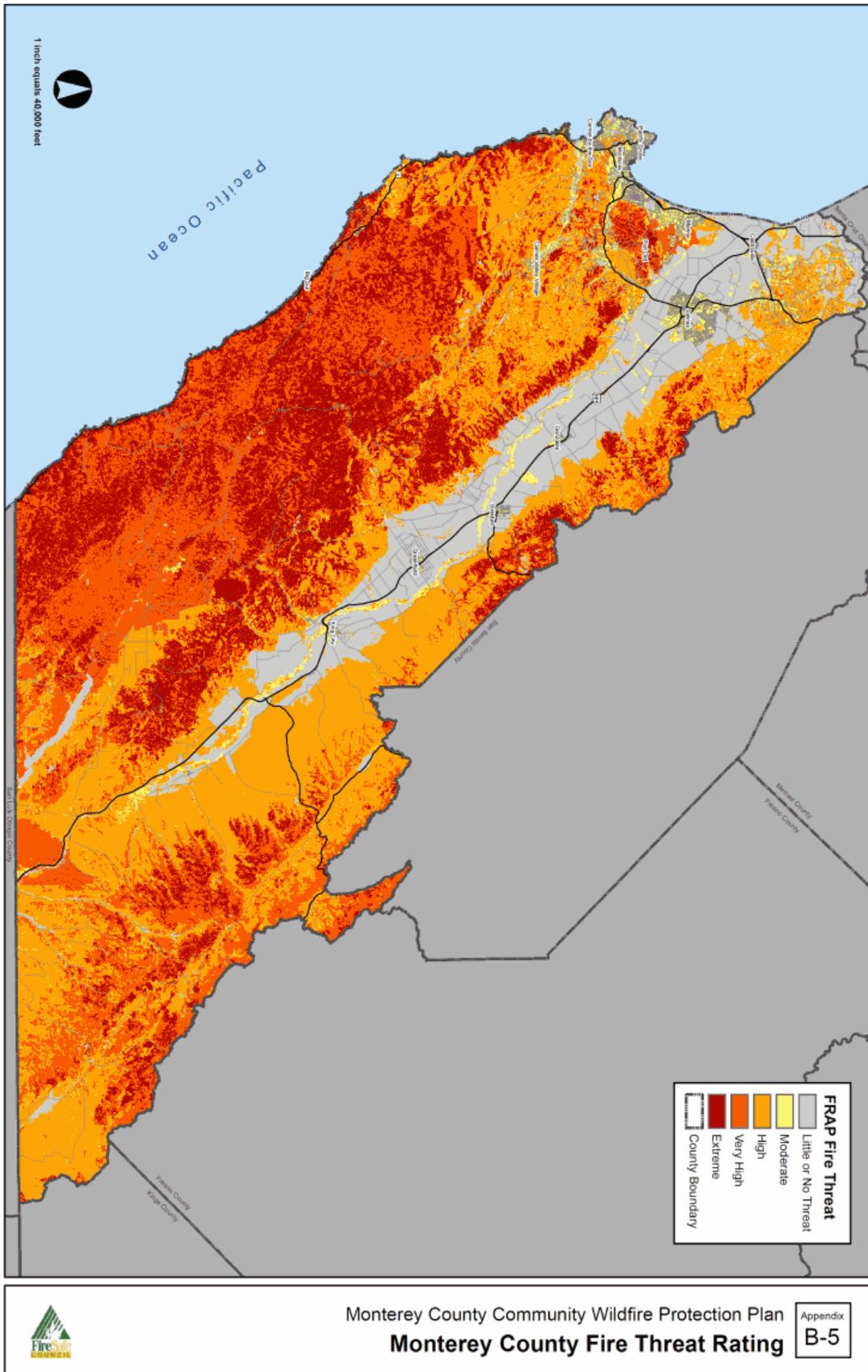
FIRE THREAT



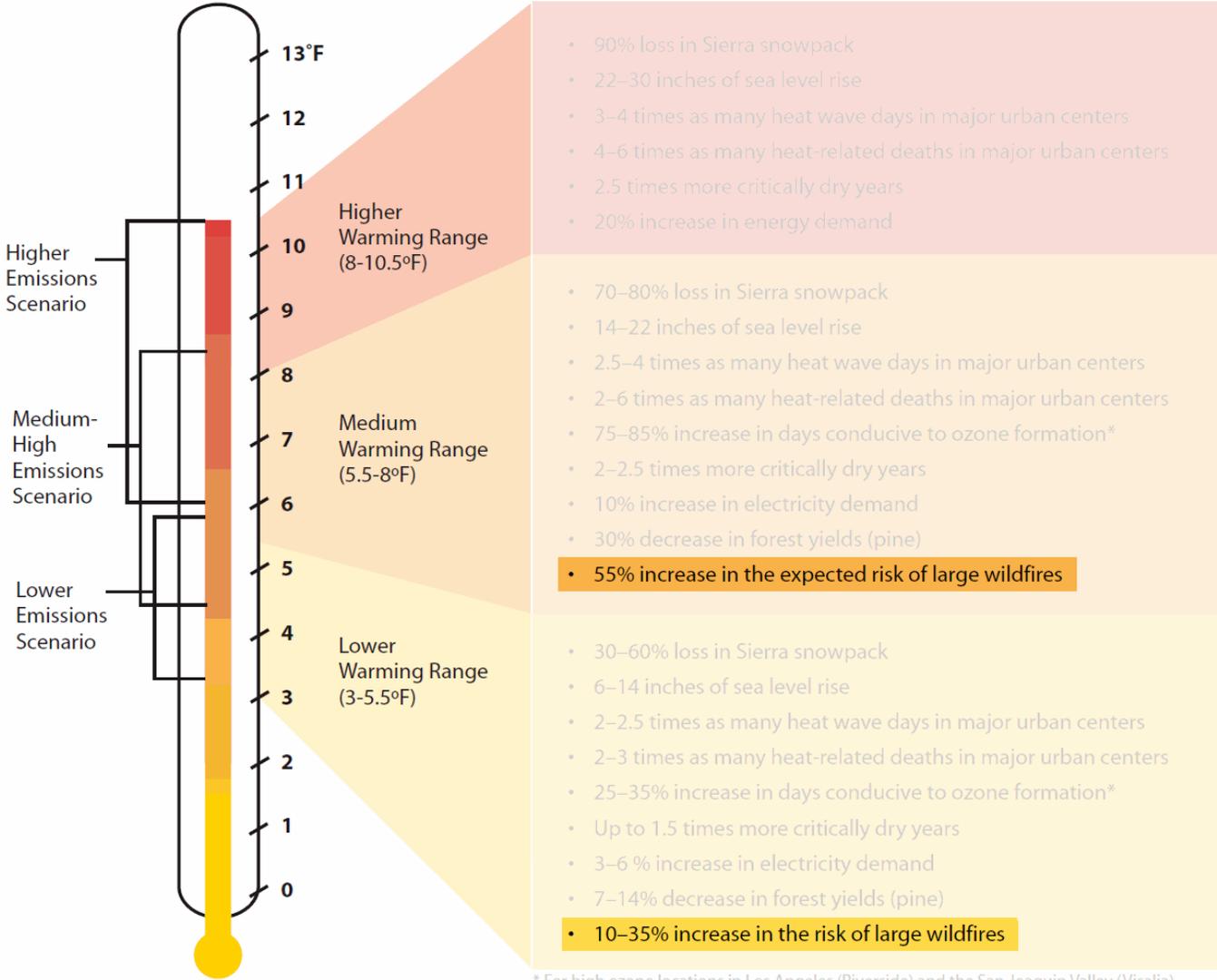
[Legend enlarged and note deleted.]



Projection: Albers
Scale: 1:1,000,000
at 34° x 44°
October 20, 2006



Summary of Projected Global Warming Impact, 2070–2099 (as compared with 1961–1990)



* For high ozone locations in Los Angeles (Riverside) and the San Joaquin Valley (Visalia)

Editorial

A powerful lesson

LAST FRIDAY, residents of the 70-mile stretch of coastline known around the world as Big Sur faced off with bureaucrats from Santa Cruz and San Francisco for the right to clear brush around their homes.

Just two days later, some of those homes burned down.

On one side of the battle are the zealots on the staff of the California Coastal Commission, who constantly dream up new ways to convert private property to parkland without the bother of paying for it.

Where Big Sur is concerned, they've twisted themselves — and the law — into knots, coming up with truly bizarre proposals such as protecting the view of the land from boats at sea, and trying to prohibit building on private property that can be seen from hiking trails.

Their latest take-no-prisoners proposal is to declare “maritime chaparral” to be Environmentally Sensitive Habitat, which would put it off limits to most development. In the Coastal Act, ESHA is supposed to be an area in which “plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”

Of course, maritime chaparral exists on hundreds of thousands of acres of Big Sur hillside. And, far from being easily disturbed or degraded by human activities, the mix of plants that constitute it are practically impossible to get rid of.

The real virtue of maritime chaparral in Big Sur is its sheer vastness. Take in almost any view driving down Highway 1, and maritime chaparral is what you're looking at. It is those views which the coastal commission's staff are trying to protect. However, “view” is not in the ESHA definition.

Nevertheless, in a permit decision two years ago, the commission followed its staff's advice and declared maritime chaparral to be ESHA — not only putting a formidable obstacle in front of anyone else who wants to build in that area, but getting in the way of the owners of existing houses who want a fire break around their homes.

In seeking to reassure them last week, one coastal planner actually alarmed Big Sur residents, telling a reporter her agency doesn't “have a problem if homeowners clear dead brush.” Translation: The coastal commission is going to try to stop property owners from clearing live brush. Yet, the live brush at issue is “loaded with volatile oils” and can be a deadly fire hazard, according to a local fire chief.

The debate over these issues started to get pretty hot in a public meeting last Friday in Big Sur, though it was cut off before residents had a chance to express their fears about the possibility of a rapidly spreading fire.

The next day, lightning struck.

Within 36 hours, more than 10,000 acres of land above the Henry Miller Library, the Ventana Inn and Deetjen's Big Sur Inn had burned, along with 14 homes, providing a powerful lesson in how foolhardy it can be to underestimate the danger of wildfires. It should also be noted that the inferno destroyed in an hour or two more maritime chaparral than all the residents of Big Sur could clear if they worked for 100 years.

Of course, it won't take long for the hardy chaparral to reestablish itself in the burn zone. Unfortunately, if the coastal commission persists in protecting maritime chaparral from being cleared, it also won't be long before a lot more homes go up in smoke.

New chaparral designation stirs up Big Sur property owners

June 20, 2008 The Carmel Pine Cone 11A

By CHRIS COUNTS

WHILE MOST Big Sur property owners have little idea what constitutes “maritime chaparral,” at least they’re not alone.

The topic of what maritime chaparral is — and how it could affect local builders or anyone seeking to clear brush for safe fire clearance — will be raised Friday, June 20, at the Big Sur Multi-Agency Advisory Council meeting.

California Coastal Commission planner Katie Morange, whose agency has determined that maritime chaparral qualifies as an environmentally sensitive habitat (ESHA), said the precise definition of the plant community “is still emerging.”

“It’s a new thing for us, and we’re looking at it on a case by case basis,” Morange said. “The definition is still being refined.”

The issue of maritime chaparral as ESHA was raised when coastal commissioners appealed a decision by the Monterey County Planning Department in 2006 allowing Stephen Foster to construct a new home on the former Rocky Creek ranch, which sits atop a ridge between Palo Colorado and Rocky creeks. The coastal commission eventually let Foster build, but declared some parts of his lot to be maritime chaparral ESHA.

“He got to build, but the coastal commission got the precedent they were after,” said Mark Blum, a Monterey attorney who represented Foster.

Perhaps even more disconcerting to Big Sur residents is the notion that the thick, dry brush surrounding their homes is an obvious fire threat, but they may not be allowed to remove it.

“We don’t have a problem if homeowners clear dead brush,” said Morange. But live brush might be protected.

Big Sur Fire Chief Frank Pinney said live vegetation also represents a significant fire threat.

“We treat live and dead vegetation equally as fuel,” Pinney said. “Live chaparral is loaded with volatile oils. It’s designed to burn.”

And Pinney said state law requires that homeowners “living in a wildland interface” are required by state law to maintain 100 feet of clearance between their homes and a fire threat.

Some residents are worried that all maritime chaparral will eventually be deemed ESHA. Morange, though, insisted the targeted plant community has a much smaller range than many people assume and requires the presence of certain plants, particularly local variations of manzanita and ceanothus. Big Sur residents have also accused the coastal commission of creating the designation specifically to limit new construction in coastal areas. One local even suggested the agency is relying on the advice of paid consultants when it should be listening to independent scientists and researchers. Morange disputed the claim. “The people we have talked with are not paid consultants, but experts in their fields,” she countered. According to Morange, the coastal commission has sought advice on the issue from the Elkhorn Slough Coastal Training Program, which is managed by the National Estuarine Research Reserve System that falls under the jurisdiction of the National Oceanic and Atmospheric Administration. Representatives of Congressman Sam Farr and 5th District Supervisor Dave Potter are scheduled to attend the meeting. The Big Sur Lodge conference center, inside Pfeiffer Big Sur State Park, will host the meeting, which starts at 9 a.m.

See **ESHA** page 13A



Riparian area left untouched during wildfire fuel reduction project due to over regulation

Attachment 2

May 19, 2015

Chair, Honorable Lisa Murkowski
Ranking Member, Honorable Maria Cantwell
Senate Committee on Energy & Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Transmitted via email attachment to [REDACTED] energy.senate.gov

Re: Testimony to be included in the record of the hearing on "*The Federal government's role in wildfire management, the impact of fires on communities, and potential improvements to be made in fire operations*" May 5, 2015.

Dear Chair Murkowski, Ranking Member Cantwell, and members of the committee:

Thank you for this opportunity to provide testimony for the record.

After watching the video of the hearing I am encouraged by some of what I heard, but am also concerned.

I was encouraged to hear that there seems to be bipartisan if not unanimous recognition on the Committee that there is a serious problem of unnatural and hazardous accumulations of wildfire fuels due to over 100 years of working to suppress wildfires, and that this presents a severe threat to lives, property, and resources.

I was also encouraged to hear that there seems to be similar recognition that under current laws and policies the problem is not being adequately addressed, and as a result the problem is literally growing worse each year.

I was further encouraged to hear acknowledgement of the problems of analysis paralysis and fear of litigation on the part of federal land management agencies.

However, I was concerned when I heard the very limited changes to law being proposed to address the problems, and by the lack of broad expression of support for even those nominal changes.

The critical step that needs to be taken to avoid the threat of litigation and resulting paralysis is to change all applicable laws so they cannot be used to support litigation to block this important work, not just one law, or a few. Amending all applicable laws to facilitate and incentivize the work is what it needed.

It is so clear that step is needed that the recommendation has been included in the "National Comprehensive Wildland Fire Management Strategy: Phase III, Western Regional Science-Based Risk Analysis Report," which states at page 6 (emphasis added),

Testimony of Michael Caplin on *The Federal government's role in wildfire management, the impact of fires on communities, and potential improvements to be made in fire operations*" May 5, 2015

Examine legislative related barriers that are impeding implementation of collaboratively developed landscape health related projects and pursue reform of the existing process to increase our effectiveness in active forest and rangeland management. (e.g., Endangered Species Act, Equal Access to Justice Act, National Environmental Policy Act (NEPA)).

Though more obtuse, "The National Strategy: The Final Phase of the Development of the National Cohesive Wildland Fire Management Strategy", effectively restates the same concept in its conclusion at page 73, saying,

By establishing national priorities and ensuring alignment of programs, policies, regulations, and actions to national direction, meaningful reductions in risk are possible through concerted, collaborative implementation.

There are many federal laws that can act to hinder or block the important work of reducing hazardous accumulations of hazardous wildfire fuels to safer more natural levels, and many state and local laws as well.

It is critical for the Committee to understand that federal laws can hinder or block not only the ability for federal agencies to perform this much needed work, but also state and local governments and private individuals.

I was also concerned to not hear substantial acknowledgement that the problem is so big, over so much land area, that the federal government cannot afford to address the problem, and that it will require new ways of thinking about how federal lands should be maintained.

Senator Franken's comments on the need to find ways to monetize/commercialize the cleanup by selling biomass for power production were on point to that issue, but would likely not be workable for remote areas not near biofuel power plants, where transportation costs could make it unfeasible. Perhaps small portable bio generator plants could be used, so transportation is in the form of electrons through power lines.

I was further concerned that I did not hear critical aspects of the problem raised at all. For example I heard no mention of the multiple threats to our national security as a result of our country's failure to adequately maintain areas to be prepared for wildfires.

Comprehensive changes, to all federal laws that can act to hinder or block this work, are needed to allow and facilitate addressing the problem of hazardous accumulations of wildfire fuels, on federal, state and private lands, and comprehensive changes to state and local laws are needed as well.

Wildfires fueled by unnatural accumulations of wildfire fuels do not recognize political boundaries or land ownerships. They are equal opportunity destroyers. They threaten equally

Testimony of Michael Caplin on *The Federal government's role in wildfire management, the impact of fires on communities, and potential improvements to be made in fire operations*" May 5, 2015

the lives and homes of members of all political parties, people of all races and income levels, and species and habitat that are protected along with those that are not protected.

You can see the faces and read about the lives of some of those who have been killed by wildfire in a document about the 2003 Southern California Fire Siege, which started when a lost hunter started a signal fire in the Cleveland National Forest, which then spread outside the forest to private land. When it was over 23 lives had been lost and 3,710 homes destroyed.
<http://nsjfire.org/wp-content/uploads/2014/04/Faces-20031.pdf>

In this testimony I propose *The Comprehensive Wildfire Preparation Facilitation Act of 2015*, to amend all federal laws that act to hinder or block preparing for wildfires to clearly exempt from their application wildfire fuel reduction work by all levels of government, and by individuals, both before wildfire starts and during wildfires, and to remove land that is topographically suitable for firebreaks or fuelbreaks from their application.

I propose changes to specific laws, and expect there are additional laws I am not aware of that also need changing.

How is it that I came to the point of writing this testimony and its proposals?

I have invested much time on the subject of this hearing since 2008, when the Basin Fire, which was started by lightning inside the Monterey Ranger District of the Los Padres National Forest, threatened our lives and home and the lives and homes of hundreds of our neighbors in our heavily overgrown rural community that has not experienced wildfire in some locations for over 50 years, in some locations for almost 100 years, and in other locations not in the recorded history of fires.

After the Basin Fire I investigated why it was that the Basin Fire was allowed to burn over the historic firebreak inside the national forest, which had been used to protect our community for decades from past wildfires that had started in the national forest.

I learned that multiple wilderness expansions to the Ventana Wilderness in 1978, 1984, 1992, and 2002 had moved wilderness up to and over the location of the historic "peripheral fuelbreak" on the perimeter of the Monterey Ranger District, which had purposely been left out of wilderness when the Ventana Wilderness was first created in 1969.

I learned that the 2002 wilderness additions were intentionally designed to block fuelbreak projects the Forest Service proposed in 2001 — including a project that would have helped protect our community from the Basin Fire. I discuss this issue in detail below, with documentation.

I learned about community wildfire protection plans, and their remarkable role giving small communities a voice to make recommendations on how federal lands should be managed to help protect them from wildfires.

Testimony of Michael Caplin on *The Federal government's role in wildfire management, the impact of fires on communities, and potential improvements to be made in fire operations*" May 5, 2015

I learned about the benefits and weaknesses of the Healthy Forests Restoration Act (a weakness being that its benefits are negated by wilderness, i.e., 16 USC § 6512(d)).

I became involved in the process of drafting the Monterey County Community Wildfire Protection Plan (CWPP), and volunteer as a director on the board of a non-profit fire safe council, working to help solve the problem of hazardous accumulations of wildfire fuels in our county, which is in the highest category of risk for wildfires and need for treatments in the nation (see Exhibit 1).

I have watched as the Forest Service has slowly worked to implement fuelbreak recommendations in the CWPP, but has been delayed for years by the National Environmental Policy Act (NEPA) process, by wilderness law, and by concern over litigation, and as the Forest Service has minimized the recommended fuelbreaks to the point they are essentially illusory in an attempt to mollify wilderness advocates.

This testimony is not from the perspective of an academic, or a government agency, but rather from an individual who lives in a community that is primed to burn catastrophically, who has been trying to help solve the hazardous overgrowth problem on the ground in the real world, and who has seen the effect that poorly written and bad laws have had in hindering and blocking the ability of individuals and agencies to prepare for wildfires.

Below I present details on specific examples from my experience. I do that to illustrate by example what I expect are widespread problems throughout our nation, certainly in the western states, and because this is a case where the devil is in the details, and there is much devilry.

I intentionally use blunt candid language, because I believe part of the reason we continue to have this largely unaddressed problem of hazardous accumulations of wildfire fuels, which has been recognized at the federal level for at least 15 years, is happy talk and lack of candor.

EXAMPLES OF HOW BAD FEDERAL LAWS, AND BUREAUCRACIES, THREATEN LIVES, PROPERTY AND RESOURCES IN THE EVENT OF WILDFIRES, AND WHAT CAN BE DONE TO FIX THE PROBLEMS

1. How the Wilderness Act of 1964, and other wilderness acts, including The Big Sur Wilderness and Conservation Act of 2002, threaten lives, property and resources in the event of wildfire.

- a. In 2008, the Basin Fire started in the Ventana Wilderness and was allowed to burn over the historic firebreak inside the perimeter of the Los Padres National Forest, threatening our community of hundreds of homes.**

In June of 2008, the Basin Fire, one of the largest fires in California history, was started by lightning inside the Monterey Ranger District of the Los Padres National Forest.

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As the fire burned toward our rural community with hundreds of homes located in densely overgrown woodlands and brushlands, including hundreds-of-thousands of dead Tanoak trees killed by sudden oak death, I wondered why I did not see bulldozers working on the historic firebreak in the Los Padres National Forest as they had worked during the 1977 Marble Cone Fire and the 1999 Kirk Complex Fire, which had also been started by lightning inside the national forest and burned toward our community.

During a Basin Fire informational meeting I asked a Forest Service representative why that work was not taking place. He was evasive and did not answer the question. I asked again. He was evasive again.

Several days later the Basin Fire burned over the historic firebreak location, which remained unmaintained and overgrown in the section that had been used to help protect our community from past fires for decades.

The Basin Fire was now headed for our community. If it continued at its current pace it would likely have started burning homes in one or two days.

b. The Basin Fire was stopped from burning through our community after it burned onto private land in state jurisdiction.

Fortunately, there was one last topographically viable location to construct a firebreak, primarily on private land in state jurisdiction on Mescal Ridge, which in the past had been the location for a secondary/backup firebreak, but during the Basin Fire became the only topographically effective location for a firebreak between our community and the Basin Fire.

A massive air tanker under contract with the California Department of Forestry and Fire Protection (CAL FIRE), a modified DC-10 airliner, made multiple mile-long drops of fire retardant along a hastily bulldozed firebreak on Mescal Ridge, and fire crews backfired off the line, blocking the fire and saving our community of hundreds of homes from almost certain destruction and potentially from loss of life (there is only one narrow, dead-end, winding public road as an evacuation route, one lane wide in over a dozen places and only two lanes wide at best).

c. Why the Basin Fire was allowed to burn over the portion of the historic firebreak in the Los Padres National Forest that had been used for decades to stop wildfires that started in the national forest from burning through our community.

After the Basin Fire I sought to learn why the historic firebreak inside the national forest was not opened during the Basin Fire in the area where it had been used to protect our community in the past. I learned the following, which was not known to me before the fire.

i. 1968 USDA Report to President Johnson, provides background on fuelbreaks being intentionally left out of the Ventana Wilderness when it was created, due to severe wildfire hazard in the area.

In 1969, the U.S. Department of Agriculture established the 98,000 acre Ventana Wilderness in the Monterey Ranger District of the Los Padres National Forest, while intentionally leaving out ridges around its perimeter so fuelbreaks could be constructed with mechanized equipment due to hazardous wildfire conditions in the area.

In 1968, when the U.S. Department of Agriculture (USDA) proposed creation of the Ventana Wilderness, it prepared a report for President Johnson (USDA Report) that he forwarded to Congress.

I have included several highlighted pages from the 140 page USDA Report as Exhibit 2, which includes a hyperlink to download the entire document.

The USDA Report emphasized the wildfire hazard in the area and the need to *exclude* ridgelines around the proposed Ventana Wilderness area so peripheral fuelbreaks could be constructed and maintained with mechanized equipment, saying for example,

The proposed Wilderness contains dense and highly flammable brush in the lower elevation ranges. In addition, summer and fall temperatures are high, while humidity is low. Adequate fire protection would therefore be essential. [...] The boundary of this proposed Wilderness is very important and has been intentionally established wherever possible to allow the construction of peripheral fuelbreaks, and fire control access.

(See Exhibit 2, pg. 2.)

After discussing the need to be able to maintain fuelbreaks being the reason some areas would be left out of the proposed wilderness, the USDA Report concludes, "Therefore, all of the land having Wilderness qualities within logical Wilderness boundaries has been included in this proposal." (Exhibit 2, pg. 2, underline added.)

When established, the Ventana Wilderness encompassed about 98,000 acres.

The USDA Report also states,

The prime objective on the easterly boundary of this Wilderness proposal is to establish and maintain adequate continuous peripheral fuelbreaks on key ridges to protect the area from sweeping conflagrations. The boundary as proposed is on such a key ridge 20.5 miles in length. To include Areas F and G in this proposal would cancel this objective.

(See Exhibit 2, pgs. 4-5.)

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I have included as Exhibit 3, page 1 a Google Earth screenshot showing the boundaries of the Ventana Wilderness when it was originally created.

ii. In 1978, Congress expanded the Ventana Wilderness over the location of the eastern peripheral fuelbreak.

In 1978, with the Endangered American Wilderness Act of 1978 (Wilderness Act of 1978), Congress expanded the Ventana Wilderness to the east, far over the location of the 20.5-mile-long ridgetop fuelbreak that had intentionally been left outside its eastern boundary, adding about 61,000 acres to the wilderness and canceling the USDA's objective of maintaining the eastern fuelbreak on the 20.5 mile-long ridge.

Given the statement in the USDA Report that "...all of the land having Wilderness qualities within logical Wilderness boundaries..." had been included in the original Ventana Wilderness area, this wilderness expansion was either illogical, or included land that did not have wilderness qualities, or both.

iii. In 1984 and 1992 Congress further expanded the Ventana Wilderness.

Other Congressional Ventana Wilderness expansions in 1984 and 1992, by The California Wilderness Act of 1984 (Wilderness Act of 1984) and the Los Padres Condor Range and River Protection Act (Wilderness Act of 1992) respectively, added more acres to the Ventana Wilderness.

With these additions the Ventana Wilderness was expanded to about 199,750 acres from its original 98,000 acres, creating yet more illogical or inappropriate wilderness. Exhibit 3, page 2 shows the Ventana Wilderness expansions from 1972 through 1992 in Google Earth.

In at least some locations, these wilderness expansions continued to leave some of the original fuelbreak locations out of wilderness.

iv. The 1972, 1984, and 1992 wilderness acts each include language to address the need to prepare for wildfires before they start, however, due to lack of clarity the language is not effective.

The Wilderness Act of 1972, Wilderness Act of 1984, and Wilderness Act of 1992 each include language intended to allow fuel reduction work in wilderness to prepare for wildfires before they start, which is also expressed in Congressional reports on these wilderness acts.

However, the language is not clear enough to avoid the threat of litigation should the Forest Service attempt to perform wildfire fuel reduction work in wilderness before a fire has started, and my understanding is the Forest Service has never performed such work in the Monterey Ranger District of the Los Padres National Forest. Moreover, the language does not clearly allow use of mechanized equipment to do the work.

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For example, the Wilderness Act of 1972 states,

In order to guarantee the continued viability of the Ventana watershed and to insure the continued health and safety of the communities serviced by such watershed, the management plan for the Ventana area to be prepared following designation as wilderness shall authorize the Forest Service to take whatever appropriate actions are necessary for fire prevention and watershed protection including, but not limited to, acceptable fire presuppression and fire suppression measures and techniques. Any special provisions contained in the management plan for the Ventana Wilderness area shall be incorporated in the planning for the Los Padres National Forest.

(92 Statutes 41; Public Law 95-237, section 2(d), 1978; emphasis added.)

Use of the undefined terms "appropriate" and "acceptable" introduce uncertainty about what is allowed, leaving the Forest Service concerned about litigation should it attempt to perform presuppression wildfire fuel reduction work in wilderness, and should it try to perform the work with mechanized equipment.

Similar lack of clarity is included in each of the cited wilderness acts and in House and Senate reports on them.

As recognized by the USDA Report, rather than include these areas within wilderness with unclear exceptions to wilderness prohibitions, instead, Congress should have acknowledged that it is not appropriate to include in wilderness: 1) areas that are topographically suitable for firebreaks or fuelbreaks; b) areas where mechanized equipment may be needed to address the problem of hazardous accumulations of wildfire fuels, and; c) areas for roads that may be used to access firebreaks and fuelbreaks, or may be used for evacuation, or may be used for ingress by emergency equipment during wildfires.

v. In 2001, the Forest Service started the National Environmental Policy Act process on 10 fuelbreak projects along the location of the historic fuelbreak, all of which were outside wilderness at that time.

In 2001, in response to the National Fire Plan and direction from Congress to address the problem of hazardous accumulations of wildfire fuels, the Forest Service proposed 10 fuelbreak projects along the location of the historic firebreak around the periphery of the Monterey Ranger District of the Los Padres National Forest.

Collectively, the Forest Service called the 10 fuelbreak projects the Monterey Defensible Fuel Profile Zone (MDFPZ). In 2001, all of the MDFPZ project areas were outside wilderness.

Attached to this testimony as Exhibit 4 is the Forest Service's 2001 National Environmental Policy Act (NEPA) scoping letter for the MDFPZ projects (2001 NEPA letter), which describes most of the MDFPZ fuelbreak projects as being up to 2,000 feet wide.

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One of the MDFPZ fuelbreak projects, called the Skinner project in the 2001 NEPA letter, would have helped protect our community of hundreds of homes from fires that start in the Monterey Ranger District of the Los Padres National Forest, which is where most major wildfires in Monterey County have started.

The Forest Service held MDFPZ NEPA scoping meetings, at least one of which was attended by the district director for Monterey County's Congressman, Sam Farr, and by members of a wilderness advocacy group, the Ventana Wilderness Alliance (VWA).

vi. In 2002, the Ventana Wilderness Alliance successfully lobbied Congress to move wilderness over 8 of the 10 MDFPZ project areas with the Big Sur Wilderness and Conservation Act of 2002.

Before the MDFPZ NEPA process was completed, VWA lobbied Congressman Farr and Senator Barbara Boxer to extend wilderness over 8 of the 10 MDFPZ project areas, including the Skinner project.

In 2002, the Big Sur Wilderness and Conservation Act of 2002 was enacted (2002 Wilderness Act). The bill, H.R. 4750, was passed out of the House without a hearing, in one minute in the middle of the night using unanimous consent, and was similarly passed out of the Senate five days later, and signed by the President about a month later. The bill's legislative history is attached as Exhibit 5. Exhibit 3, page 3 shows the 2002 Ventana Wilderness in Google Earth.

vii. The Forest Service abandoned 8 of the 10 Monterey Defensible Fuel Profile Zone projects after wilderness was extended over the project areas, and in at least one location wilderness was extended over the historic firebreak as well.

The wilderness additions in the 2002 Wilderness Act extended wilderness over the project areas of 8 of the 10 MDFPZ projects. As a result of the 2002 Wilderness Act, the Forest Service abandoned the 8 projects.

Attached as Exhibit 6 is an excerpt from the Forest Service's NEPA decision memo on the MDFPZ projects, which states, "After design of this project the *Big Sur Wilderness and Conservation Act* was passed in May of 2002 (H.R. 4750)" also stating that there was no wilderness added in the 2 remaining MDFPZ project areas.

The 2002 Wilderness Act successfully blocked 8 of 10 fuelbreak projects that would have helped protect lives and property in communities near the Los Padres National Forest, and moved wilderness up to the location of historic firebreaks and evacuation routes that were intentionally left out of the Ventana Wilderness when it was created.

One of the abandoned MDFPZ projects was the Skinner project, where the 2002 Wilderness Act extended wilderness not only over the project area but over the location of the historic firebreak as well.

The 2001 NEPA scoping letter describes the Skinner project as being 700 acres, which over the five-mile distance from the top of Skinner Ridge to Post Summit would mean the fuelbreak would have had an average width of almost 1,200 feet.

The 2002 wilderness addition that blocked the Skinner project is called the Little Sur wilderness addition in the 2002 Wilderness Act.

I call the 2002 Wilderness Act wilderness additions "malevolent wilderness."

They were not merely illogical or inappropriate wilderness additions, but were intended to block life-protecting fuelbreak projects, and succeeded in doing so.

Who would do that?

To my mind the people who advocated for the 2002 Wilderness Act, knowing its purpose, are sociopaths who acted with callous and contemptuous disregard for the safety of people in communities around the Monterey Ranger District of the Los Padres National Forest.

I find it mind-boggling that any member of Congress would help them, and that Congress would let such outrageous legislation stand once informed about its nature.

viii. During the Basin Fire in 2008, hand crews started work in the 2002 Little Sur Wilderness Addition on a short section of the historic firebreak, where bulldozers had worked during past fires, and bulldozers turned away from the historic firebreak — the Basin Fire soon crossed over the largely untouched portion of historic firebreak (which was about 5-miles long), headed for our community.

In 2008, during the Basin Fire, hand crews started work on a short section of historic firebreak right in the Little Sur wilderness addition, in the same location where bulldozers had worked during past fires.

Before the hand crews had made much progress, the Basin Fire crossed over the historic firebreak right at the 2002 Little Sur wilderness addition, and the rest of the Skinner Ridge portion of the historic firebreak, about 5-miles long, which had not been worked on, was rendered meaningless and burned over (including areas where in the past bulldozers had worked to stop previous fires).

Attached as Exhibit 7 are several Basin Fire progress maps that show the Basin Fire crossing over the historic firebreak location through the Little Sur wilderness addition.

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On the Exhibit 7 maps, a bulldozer line is shown avoiding the Little Sur wilderness addition, turning aside and instead going to a topographically inferior location, which the Basin Fire soon burned over. North of that location, a bulldozer line is also shown avoiding the segment of the historic firebreak that had been worked on with bulldozers during past fires. As a result, a section of the historic firebreak about 5-miles long was not opened during the Basin Fire and the fire was allowed to burn over it, heading for our community.

Exhibit 12 compares the burn area of the Marble Cone Fire in 1977 with the burn area of the Basin Fire in 2008, and shows the unused portion of the historic firebreak.

d. Wilderness designation threatens lives and property by acting to block wildfire fuel reduction projects before wildfires and by delaying use of mechanized equipment, especially heavy equipment, during wildfires.

As discussed in 1.b. above, but for quick action by CAL FIRE on state jurisdiction land, our community would likely have been burned out in 2008 by the Basin Fire due to the 2002 Little Sur wilderness addition combined with Wilderness Act of 1964 prohibitions on use of mechanized equipment and Forest Service policy on approval for use of heavy equipment in wilderness during wildfires.

Even during wildfires, use of heavy equipment is prohibited in wilderness without authorization through the chain of command (Forest Service Manual (FSM) sections 2326.04c and 2326.1.1). Though heavy equipment was in the area, authorization to use heavy equipment in wilderness was apparently either not requested or was not authorized in time for use of the 5-mile-long Skinner Ridge to Post Summit segment of the historic firebreak, which runs through the 2002 Little Sur wilderness addition.

It appears that the Forest Service now waits until fires are closer to the location of historic firebreaks, than in the past, before it authorizes use of mechanized equipment in wilderness.

In addition to the 2002 Little Sur Wilderness Addition, other 2002 Wilderness Act malevolent wilderness additions also caused delays on use of heavy equipment on the historic peripheral firebreak in other areas.

Last week I had the opportunity to ask one of the bulldozer operators who worked on Basin Fire firebreaks if he experienced delays getting authorization to work in wilderness. His answer was, "Yes." I asked him how long the delay was, his answer was, "Three days." I have been told similar by other bulldozer operators who worked on Basin Fire firebreaks.

e. Wilderness continues to threaten lives, property and resources in Monterey County by blocking implementation of recommendations in the Monterey County Community Wildfire Protection Plan.

After the Basin Fire, the Monterey County Community Wildfire Protection Plan was written (CWPP). The CWPP may be downloaded from www.firesafemonterey.org/mccwpp.html.

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As a result of Forest Service delays during the Basin Fire authorizing opening of historic firebreaks in wilderness with heavy equipment, the CWPP includes the recommendation that within three years after execution of the CWPP the historic peripheral fuelbreak in the Monterey Ranger District of the Los Padres National Forest be maintained to be an effective fuelbreak, capable of stopping the spread of fire under adverse conditions, as described in the CWPP. This recommendation applies both inside and outside wilderness. (CWPP section 9.1, pages 72-75.)

The three-year timeframe for completion of the fuelbreak was proposed by the U.S. Forest Service during writing of the CWPP, changed from one-year in an early CWPP draft at the request of the Forest Service.

The pre-fire fuelbreak preparation is recommended in the CWPP to avoid the need to rely on the Forest Service to act to authorize opening of firebreaks during wildfires, and is consistent with language in wilderness acts that added wilderness in the Monterey Ranger District, and with Congressional intent expressed in House and Senate committee reports on those wilderness additions (the CWPP reviews these authorities at its pages 21-24).

The CWPP was signed by essentially all fire agencies in Monterey County, including the U.S. Forest Service, the Bureau of Land Management, and military fire departments.

The Forest Service has since expressed concern that the language in wilderness acts adding wilderness to the Ventana Wilderness, which was intended to allow pre-wildfire/pre-suppression fuel reduction work in wilderness, is not clear enough to avoid litigation if it creates and maintains the fuelbreak in wilderness.

Moreover, the Forest Service alleges that the Wilderness Act of 1964 requires it to perform a wilderness "minimum impact analysis," which it says precludes work in wilderness where comparable work can be done outside wilderness, regardless of the language in subsequent wilderness acts and Congressional reports intended to allow such work in wilderness before fires start.

In an attempt to gain agreement from wilderness advocates to work on the fuelbreak in wilderness with motorized equipment, the Forest Service initiated a process it calls FireScope Monterey. One of the three team leaders of FireScope Monterey is one of the same VWA wilderness advocates who supported the 2002 Wilderness Act's malevolent wilderness additions.

FireScope Monterey meetings were "facilitated" by the Nature Conservancy. Ground rules included that the past could not be discussed, including no mention of events during the Basin Fire resulting from wilderness being moved over MDFPZ fuelbreak project areas and over the historic firebreak.

Out of FireScope Monterey came a Forest Service proposal for a fuelbreak project along portions of the historic firebreak, which the Forest Service calls the Strategic Community Fuelbreak Improvement Project (2012 Fuelbreak Project).

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It has now been over four years since execution of the CWPP in December of 2010, and no work on the ground has been completed on the 2012 Fuelbreak Project.

Forest Service officials say the 2012 Fuelbreak Project NEPA process is still well over a year from completion and that NEPA is being painstakingly complied with in anticipation of litigation over use of mechanized equipment, e.g., chainsaws, to construct the fuelbreak in wilderness.

f. The Forest Service's 2012 Fuelbreak Project appears to be designed to minimize the fuelbreak to mollify wilderness advocates and deflect CWPP recommendations rather than to implement CWPP recommendations for fuelbreaks capable of stopping the spread of fire.

Exhibit 8 to this testimony is the Forest Service's NEPA scoping letter and map for its 2012 Fuelbreak Project (2012 NEPA letter).

In some of the same locations where the 2001 MDFPZ projects proposed up to 2,000 foot wide fuelbreaks, the 2012 Fuelbreak Project proposes fuelbreaks up to 150 feet wide, and in several locations up to a maximum of 300 feet wide.

In the Skinner Ridge area the 2012 Fuelbreak Project proposes a fuelbreak a maximum of 150 feet wide, with no minimum width, where the 2001 Fuelbreak Project planned a width of almost 1,200 feet.

The narrow width of the proposed 2012 Fuelbreak Project necessitates that the Forest Service take action during a wildfire to stop the spread of fire, which defeats the purpose of the fuelbreak recommendations in the CWPP, which describes fuelbreaks as being maintained to be effective to stop the spread of fire, without requiring further action by the Forest Service during a fire. The Forest Service demonstrated during the Basin Fire it is capable of not taking timely action during a fire.

To explain the narrow width of the proposed 2012 Fuelbreak Project, a Forest Service representative recently told me there is a study that says that a fuelbreak cannot stop the spread of fire, and that the need for Forest Service action during a fire, such as backfiring off a fuelbreak, is not avoidable, implying any additional width would be a waste of effort.

However, during the collaborative meetings while drafting the CWPP, there was much discussion on that subject, including with Forest Service participation, and a CAL FIRE forester with decades of experience informed those working on the CWPP that a properly designed and maintained fuelbreak can stop the spread of fire without further action, and that he had personally seen that work.

Based upon the CAL FIRE forester's experience that a fuelbreak can be designed and maintained to stop the spread of fire without further action, draft CWPP language was changed from recommending that the *firebreak* be maintained at all times, to recommending that the

fuelbreak be maintained at all times. This change was made at the request of a VWA representative who objected to maintaining a firebreak. The CWPP discusses the difference between a firebreak and a fuelbreak in Notes 1 and 2 on page 74.

In addition to the narrow width, the Forest Service's proposed 2012 Fuelbreak Project entirely omits a 7-mile portion of the historic firebreak location on the northern end of the Monterey Ranger District, which in the past was the location of the firebreak used to protect Carmel Valley and other at-risk communities from wildfires that start in the Monterey Ranger District of the Los Padres National Forest (see project map at Exhibit 8, page 6). The omitted portion was the location of the peripheral firebreak used to stop the 1977 Marble Cone Fire and the 2008 Basin Fire, and was opened during the 1999 Kirk Fire though the Kirk was stopped before it reached it.

A Forest Service official has explained that the 7-mile omission is due to the Forest Service's wilderness "minimum impact analysis," which he said requires that work not be done in wilderness if there is a location outside wilderness where comparable work can be done.

The Forest Service points to a firebreak to the north of the historic peripheral fuelbreak, outside the Monterey Ranger District, on private land in state jurisdiction, which was constructed as a backup firebreak by CAL FIRE to help protect Carmel Valley and other at-risk communities during the Basin Fire, saying that because the state backup firebreak is comparable to the firebreak in the Los Padres National Forest, the minimum impact analysis forbids working on a fuelbreak along the historic firebreak inside the national forest's Ventana Wilderness.

However, maintaining a single fuelbreak outside the national forest is not comparable to maintaining two fuelbreaks, one inside the national forest and another fuelbreak miles to the north outside the national forest. Relying on a single fuelbreak outside the national forest would move the fuelbreak between 2 to 5 miles closer to at-risk communities, and would leave communities with only a single fuelbreak, in state jurisdiction, between them and wildfires that start inside the national forest, where Monterey County's largest wildfires have started.

Exhibit 9 shows the 2012 Fuelbreak Project map in Google Earth, with the omitted portion of the fuelbreak marked, and with Basin Fire firebreaks shown, including the firebreak to the north that the Forest Service says justifies not including the northern portion of the historic fuelbreak in the 2012 Fuelbreak Project.

g. The Monterey County Community Wildfire Protection Plan recommends that Congress enact legislation to enable and require the Forest Service to install, maintain and defend the fuelbreaks recommended in the CWPP.

The CWPP recommends that if the fuelbreaks recommended to the Secretary of Agriculture in the CWPP have not been "installed, maintained and defended within three years" from the date the CWPP is signed, then Congress is asked to enact legislation to enable and require the Forest Service to install, maintain and defend the fuelbreaks to be effective as described in the

CWPP at recommendation sections 9.1.1. and 9.1.2. (Recommendation to Congress at CWPP section 9.3, pages 81-82.)

The CWPP was signed by all required signatories on December 14, 2010.

We are well over 3 years, now almost 4 ½ years after the CWPP was signed, and the Forest Service says it could be well over a year before the NEPA process is completed, and it expects litigation over working in wilderness, which would cause further delays.

It would be outstanding if the Committee on Energy & Natural Resources could help with legislation to end the delays installing the fuelbreaks and ensure that all fuelbreak segments are completed and maintained without potential for litigation.

Each fire season without the fuelbreaks in place is like a game of wildfire Russian Roulette for communities around the national forest in Monterey County.

h. All federal lands suitable for fuelbreaks, firebreaks, access roads to them, and roads for ingress and egress during wildfires should be removed from wilderness with generous setbacks of wilderness.

All federally owned land should be removed from wilderness if it is topographically suitable for firebreaks and fuelbreaks, along with all areas needed for roads to readily access firebreaks and fuelbreaks, and all areas alongside roads that could be used for ingress and egress during wildfires, all with generous setbacks of wilderness.

As essentially stated by the USDA Report, it is illogical to do otherwise. Moreover, it is not possible to ferret out all of the places in the nation where wilderness was malevolently moved over firebreaks and fuelbreaks.

If it is not possible, or somehow not desirable, for federal land that is topographically suitable for firebreaks and fuelbreaks to have effective firebreaks and fuelbreaks constructed and maintained on it, then the federal land should be sold or granted into private ownership to make such construction and maintenance possible.

For Congress to leave laws and regulations in place that hinder or block construction and use of effective fuelbreaks and firebreaks on federal, state or private land, is the same as Congress threatening surrounding communities in the event of wildfire, especially in the western states where wildfires are increasingly prevalent.

As discussed below, lack of effective firebreaks and fuelbreaks on federal land also acts to aid and abet terrorists who may chose to exploit the multiple threats to our national security that such conditions promote.

The day may come when we are prepared to the point we can let wildfires burn through communities, but that day has not yet come and will not come without comprehensive changes to

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federal, state and local laws to allow and facilitate reduction of hazardous accumulations of wildfires to safer more natural levels.

2. How failure to effectively prepare for wildfires on federal lands acts to increase multiple threats to our national security should terrorists choose to exploit them.

a. First terrorist threat increased by failure to effectively prepare federal lands for wildfires.

May 31, 2012 the Department of Homeland Security (DHS) issued a document titled "Terrorist Interest in Using Fire as a Weapon."

The document includes information on terrorist magazines and websites on such topics as how to construct incendiary devices to start wildfires, a terrorist map that shows priority states where wildfires in the United States would be most destructive, naming California and Montana as ideal targets, and statements encouraging the setting of wildfires to attack the United States.

The DHS document explains that using wildfire as a weapon is attractive to terrorists due to the low cost to start a wildfire, the low probability the terrorist will be caught, the high cost and damage to property and resources that can be caused, and the threat to lives and psychological effects wildfire can inflict, saying for example,

For terrorists, setting fires has several advantages over other methods of attack, including sustainability (duration of fire and long-term effects); the potential for casualties, economic damage, and wide media coverage; and the accompanying psychological effects of fear and terror.

When the Forest Service or other federal agency fails to maintain effective fuelbreaks and firebreaks on federal lands that are topographically suited for such use, given that it is readily foreseeable that terrorists may use wildfire as described in the DHS document, the Forest Service is literally aiding and abetting any terrorist who may act to use wildfire as a weapon against our nation.

When Congress acts to hinder or block federal agencies such as the Forest Service from preparing for or defending against wildfires, by such actions as moving wilderness near or over land suitable for fuelbreaks and firebreaks, or by leaving wilderness in place in such areas, or by enacting or retaining other laws that hinder or block federal land managers from constructing and maintaining fuelbreaks or using firebreaks, given that it is readily foreseeable that terrorists may use wildfire as described in the DHS document, Congress is literally aiding and abetting any terrorist who may act to use wildfire as a weapon against our nation.

This is especially so in western states, where the federal government owns vast amount of land and where wildfires are prevalent. See Exhibit 10, which is a map that shows federal land ownership in the United States, and Exhibit 1, which shows the priorities for need of vegetation management in the United States, by county.

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In Monterey County, California, both the Forest Service and Congress have so acted, leaving people in communities around the Los Padres National Forest in jeopardy should terrorists decide to use wildfire to attack, as advocated in their magazines and on their websites.

b. Second terrorist threat increased by failure to effectively prepare federal lands for wildfires.

There is a belief among some environmentalists that the solution to impacts humans have on our planet is to concentrate people into the footprint of existing cities at ever higher density. Search the Internet for the term "smart growth" and you will receive well over one millions hits. Until recently, the Sierra Club had a "Healthy Growth Calculator" web page that apparently tried to convince people that living at higher density is desirable. (<http://tinyurl.com/lox4fc2>)

Though some government employees may be able to live on land owned by the federal government, other people typically cannot. One way to move people into cities is to convert private land outside cities into government ownership. There are organizations working on that, some of which have turned it into a profitable business.

I discuss in detail the issue of government acquisition of private land, including acquisitions by federal agencies, in my testimony on the Committee's hearing on "*Reauthorization Of and Potential Reforms To the Land and Water Conservation Fund*," April 22, 2015

To the extent that wildfires in rural areas motivate people to choose to live in cities at higher density, rather than live in rural areas at lower density, wildfires contribute to further concentrating our populations into smaller land area at higher densities.

California's population of about 38.8 million people makes up about 12% of the 318.9 million population of our nation.

After submittal, I learned that more accurate is that about 80% of Californians live in cities, which comprise about 5.2% of California's land area (2010 data).

California consists of about 100 million acres of land. ~~Currently, about 95% of Californians live in cities, which comprise about 6% of California's land area.~~ This is largely because there is relatively little land available outside cities for Californians to own and live on.

Almost half of California is owned by various government agencies, most by federal agencies, and therefore cannot be owned or lived on by most Californians.

It is difficult to find hard numbers for land ownership in California by industry, but years ago I found what numbers I could and learned that after subtracting land owned by government, public utilities, lumber companies, railroads, and farmland, it appears that only about 10% of California's land area, outside of cities, is available for Californians to own and live on.

Unfortunately, we live in a world with religious extremists who believe it is an act of their faith to kill those who are not members of their faith. Our world also includes weapons of mass destruction. These extremists have been following their belief system for over 1,000 years.

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They are not going away. They have made their intent crystal clear. 1,000 years ago the world did not have weapons with the capacity for destruction we have today. The day will likely come, possibly sooner, hopefully later, when they will obtain weapons of mass destruction.

Mutually assured destruction, the defense tactic used for decades with the former Soviet Union, is not applicable to religious extremists. We don't know where to find them, and even if we could find them, they view it as an act of their faith to be killed while advancing their cause, which is to kill those who do not follow their faith. When they obtain weapons of mass destruction they will likely use them.

Weapons of mass destruction are highly effective at killing people who are packed at high density into relatively small areas.

Without the defense of mutually assured destruction, short of intercepting 100% of weapons of mass destruction before they enter our country, the best national defense tactic to defeat weapons of mass destruction is to disperse our populations over large areas at relatively low density. High density cities with large populations are equivalent to prime target zones for weapons of mass destruction.

The federal government should be selling or granting land into private ownership in California and other western states, where it owns vast areas, making it available for people to disperse onto. It will take much time to disperse our populations and set up infrastructure to support an economic system that works efficiently with dispersed populations, such as high speed Internet in low density areas. It is not prudent to wait until it is too late.

Failure to maintain federal lands with effective fuelbreaks, firebreaks, evacuation and emergency access routes that are safe to use during wildfire, and fuel levels that approximate the levels they would be had fires been burning at their natural return interval, is counterproductive to our nation's defense against weapons of mass destruction in the hands of religious extremists, and ultimately will aid them should the time come when they attack our nation with weapons of mass destruction, which is readily foreseeable over time.

I believe there are people, radical environmentalists, who would not be bothered if the number of humans was reduced dramatically by such cataclysmic events as use of weapons of mass destruction on densely populated areas. My take is that those people could easily be the vanguard of the next great evil on our planet. They should not be helped, certainly not by our government.

3. How the Clean Water Act and Rivers and Harbors Act may act to threaten lives, property and resources in the event of wildfires.

I am not certain that the Clean Water Act and Rivers and Harbors Act apply to wildfire fuel reduction projects in or near creeks or rivers, but have included them in this testimony in case they do. Here is why.

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In 2014, California's Governor Jerry Brown issued declarations of drought emergency in which he directed state agencies to help mitigate against conditions that could result from drought. As a result, the California Public Utilities Commission adopted a resolution directing regulated electric power utilities in California to make grants to reduce hazardous accumulations of wildfire fuels.

In August of 2014 I received a notice from Pacific Gas & Electric Company (PG&E) announcing it was asking for grant applications for wildfire fuel reduction projects.

A condition of the PG&E grants was that the projects had to be completed by October 31, 2014, which was expected to be the end of California's wildfire season that year.

I applied for a PG&E grant to do work along a road in our community that would serve as an evacuation route during a wildfire, to help make it safer to use in the event of wildfire and improve the road as a fuelbreak. On September 19, 2014 PG&E sent notice that the grant would be awarded. There was little time left to complete the project.

A potential problem was that in some locations the road is close to a creek that is piled with dead and down Tanoak trees killed by sudden oak death. Looking on the Internet for information on regulations for working near and in streams, I found a paper written by the California Association of Resource Conservation Districts, found here <http://www.carcd.org/docs/publications/guidetowatershedpermitting.pdf>.

The paper states, "If you are planning work in surface waters such as rivers, streams, lakes, wetlands, any impoundments of these waters, or the territorial seas, a [U.S. Army Corps of Engineers] permit may be required."

There was no time to involve the Army Corps of Engineers, and it was likely that the California Department of Fish and Wildlife would also need to be involved if work was done near the creek, so the decision was made to simply avoid the creek and not work where the creek would be affected.

I have attached as Exhibit 11, a photograph showing a sample of the condition the creek was left in, with dead tree fall that could have been removed as part of the grant project. The large standing tree trunks in the photo are Redwoods, for which the dead and down trees in the creek would effectively be kindling in the event of wildfire.

Another example of the problem of overregulation of fuel reduction work in and near streams is described in a report prepared for the Governors of California and Nevada after the 2007 Angora Fire in the Lake Tahoe area, the "Emergency California-Nevada Tahoe Basin Fire Commission Report" (Tahoe Commission Report).

The purpose of the Tahoe Commission Report was to learn why the Angora Fire had been so destructive, burning thousands of acres and destroying 254 homes, so action could be taken to reduce losses to wildfires in the future.

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The Tahoe Basin Fire Commission was co-chaired by then California State Fire Marshal Kate Dargan. The Tahoe Commission Report can be downloaded at <https://goo.gl/U3WIHz>.

The Tahoe Commission Report describes problems caused by over-regulation of fuel reduction projects, especially in "stream environment zones," areas near streams, saying for example,

SEZs [Stream Environment Zones] in the Lake Tahoe Basin pose both extreme fire risks and extraordinary environmental challenges. In times of fire, such as both the November 2002 Pioneer Fire and the Angora Fire, the fires quickly changed from surface fires to crown fires because untreated SEZs allowed fire to quickly move through overstocked and insect diseased forested areas. Commentators have referred to the SEZs in these areas as operating like "candle wicks" during times of fire, advancing the severity of crown fires.

(Tahoe Commission Report, page 58.)

The Tahoe Commission Report includes numerous photographs of untreated areas in stream environment zones. For example at pages 30, 56, 57, 77, 123, 147, and 158.

The Tahoe Commission Report is not clear about specifically which laws caused which problems, but indicates that layers of federal, state, and regional laws hindered fuel reduction work, including the Clean Water Act, saying in one of its findings,

The existing system to permit fuel reduction projects in the Lake Tahoe Basin is often confusing, sometimes redundant, and overly complex. [¶]...[¶] Fuel reduction projects that are proposed or funded by public agencies, or that require federal, state, local, or local discretionary approval, are subject to numerous federal, state, and/or regional environmental laws and regulations.... These include the National Environmental Policy Act, California Environmental Quality Act, Clean Water Act, Clean Air Act, Endangered Species Act, and the Forest Practices Act. In addition to federal and state laws, the Tahoe Regional Planning Agency (TRPA) has a comprehensive Code of Ordinances that affects all agencies, organizations, and individuals in the Basin.

(Tahoe Commission Report, page 32.)

Some of the listed laws are federal, some state, and some regional. Where we are, in California's coastal zone, California's Local Coastal Program replaces the TRPA ordinances, causing additional problems.

Even if the Clean Water Act does not apply to wildfire fuel reduction projects in or near streams, Congress should amend the Clean Water Act to clearly say that it does not apply to fuel reduction work, so people will know they need not leave hazardous accumulations of wildfire fuels in streams to avoid potential penalties.

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4. How the Migratory Bird Treaty Act acts to threaten lives, property and resources in the event of wildfires.

A paper on the U.S. Fish & Wildlife Service's website, written to advise people in San Diego County, California, how to comply with various laws while trying to reduce hazardous accumulations of wildfire fuels, summarizes the Migratory Bird Treaty Act (MBTA) and how to comply with it as follows,

Migratory Bird Treaty Act

- Was enacted to put an end to the commercial trade of birds and their feathers.
- Prohibits killing, possessing, or trading migratory birds.
- Applies to whole birds, parts of birds, bird nests and eggs.
- Applies to many common bird species and private, state and federal lands.
- Does not provide protection of habitat of migratory birds, but does prohibit the destruction of active bird nests in active use without a permit from U.S. Fish and Wildlife Service.
- It is easiest to avoid active nests by working during the non-breeding season.
- This means avoiding vegetation removal between March 1 and August 31.
- If you want to work during the nesting season, you should hire a biologist to survey for nesting birds and mark sites to be avoided during vegetation removal.
- Leave a buffer of vegetation around each nest to avoid nest abandonment.

(www.fws.gov/cno/docs/fire/SanDiegoHandout.pdf, page 7, underline added.)

The paper notes that there are over 800 species on the list of birds protected by the MBTA. Some are rare, but many game birds are protected as they nest so there will be an abundance to be shot at later by hunters.

The MBTA was inspired by the slaughter of millions if not billions of passenger pigeons in the late 1800s and early 1900s, which included attacks on their nesting sites.

(<http://www.audubon.org/magazine/may-june-2014/why-passenger-pigeon-went-extinct>)

As noted in the San Diego County paper, the easiest way to comply with the MBTA is by not performing wildfire fuel reduction projects between March 1 and August 31.

That reduces the time during the year to perform wildfire fuel reduction projects by half, from 12 months to 6 months.

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Because loss of summer months to the MBTA may be in addition to loss of winter months due to concern about ground disturbance and erosion caused by winter rains, the time of the year during which wildfire fuel reduction work can be performed may be reduced substantially.

The alternative is the cost of hiring a biologist to survey and mark the area, which would be on top of other costs related to the work.

To the extent the MBTA contributes to hindering or blocking wildfire fuel reduction projects by limiting the time of year they can be performed or by adding to costs, leading to loss of nesting sites to high heat intensity wildfires fueled by unaddressed unnatural accumulations of wildfire fuels, applying the MBTA to wildfire fuel reduction projects is counter productive to the purposes of the MBTA.

The MBTA was enacted in 1918, not long after the U.S. Forest Service was formed in 1905. The problem we have today, caused by over 100 years of the policy of working to suppress all wildfires starting after the big burn in 1910, did not exist at the time of enactment.

Congress should amend the MBTA to clearly exempt wildfire fuel reduction projects from its application.

5. How the Endangered Species Act acts to threaten lives, property and resources in the event of wildfires.

In general terms, the Endangered Species Act (ESA) prohibits any person from taking any listed threatened or endangered species unless they first obtain an incidental take authorization from the appropriate federal agency. The ESA, federal ESA enforcement agencies, and courts interpret the meaning of "take" exceedingly broadly, to include even an unknowing take.

Strict application of the ESA as interpreted by agencies and courts would be paralytic to all fuel reduction projects in any area where a protected species may be located, if, the project is considered to be harmful to a protected species, unless a costly and time consuming consultation process is undertaken to obtain authorization for an incidental take.

The question is, in the context of wildfire fuel reduction work, which may well be beneficial to the welfare of a species in the big picture by reducing wildfire fuels in an area to the point it helps protect the species from harm by unnatural high heat intensity wildfire, but might be detrimental to a particular member of the species due to an incidental take while performing the work, does the work cause "harm" to the species, or is it beneficial to the species?

I am not an expert on the ESA and do not know if courts have addressed this issue. The closest opinion I find is *Babbitt v. Sweet Home Chapter, Communities for Great Ore.* (1995) 515 US 687 (*Babbitt*), which finds that the word "harm," included in the definition of a "take," which is prohibited without authorization, includes habitat modification that indirectly causes harm.

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However, *Babbitt* does not consider the case when habitat modification ultimately benefits the species though it may harm some individuals of the species in the short term.

I believe most people understand that the greater good is protection of the species by performing the work, and that to the extent that the ESA hinders or blocks fuel reduction projects to the point less work is performed due to added costs, delays or prohibitions, then the result will be contrary to the intent of the ESA of advancing the welfare of listed species.

An example is the following news report that was on a San Francisco radio station, KGO (8-11-2014, 8:19 am).

REPORTER 1: A tree thinning project intended to decrease the wildfire danger around Lake Tahoe has been put on hold. The Tahoe Daily Tribune reporting that land near Upper Echo Lake is being considered as a critical habitat for an endangered species of frog. Now a lawsuit's been filed raising concerns about the effects the project might have on the Sierra Nevada Yellow Legged Frog.

REPORTER 2: Well, if there's a wildfire that would hurt the frogs too, right?

REPORTER 1: It kinda would. Yeah.

Moreover, at least one court has held that when there is a question of both harm to threatened species and harm to humans, the ESA does not place preventing harm to the species over preventing harm to humans, saying,

This case involves both harm to threatened species and to humans and their environment. Congress has not nor does *TVA v. Hill* elevate species protection over the health and safety of humans.

(*Consolidated Delta Smelt Cases* (2010) 717 F.Supp.2d 1021, 1068-69.)

The Tahoe Commission Report repeatedly discusses that over-regulation of wildfire fuel reduction work contributed to the destructive effects of the Angora Fire, and repeatedly recommends that the priority needs to be protection of life, property, and the environment, in that order, saying for example,

With respect to all matters within the Tahoe Basin, the Commission determined that protection of life, property, and the environment be served in that order of priority.

(Tahoe Commission Report, page 10.)

Revisions of policies shall be focused on facilitating implementation of these [wildfire fuel reduction] projects, with the priority given to protection of life, property, and the environment, in that order.

(Tahoe Commission Report, page 79.)

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The Governors of California and Nevada should adopt the priorities of life, property, and the environment, in that order, with respect to fire safety, fire prevention, and related matters within the Lake Tahoe Basin.

(Tahoe Commission Report, page 104.)

The Commission recommends that all permitting agencies within the Tahoe Basin, all entities providing funding for fuel treatment projects within the Basin, and all land managers within the Tahoe Basin should assign, as their respective first priority for action, fuel treatment projects most likely to protect life, property, and the environment in that order. To the extent this may require regulatory procedures to be expedited, they should be to the maximum extent possible.

(Tahoe Commission Report, page 110.)

Congress should amend the ESA and all other laws that may hinder or block performance of wildfire fuel reduction work to be crystal clear that in the context of wildfire fuel reduction work the priority is protection of human life, protection of property and protection of the environment, in that order, and that long term welfare to protected species has priority over short term harm to protected species, and that no permit or consultation shall be required for performance of fuel reduction work so long as any take is not intentional, and that an intentional take is allowed if it is necessary to protect human life or property, or for the long term benefit of the species.

Without such comprehensive changes to law, hindrances and roadblocks will continue to slow the progress of this important work, and we will continue to fall behind as the problem grows worse, to the detriment of humans and other species alike, including protected species.

It is wrong that people who want to do the right thing by helping prepare for wildfires by reducing hazardous accumulations of wildfire fuels to safer more natural levels have to go through a costly and time consuming incidental take process or have to look over their shoulder and worry that they will be fined should a regulatory agency say that they modified a habitat and that resulted in harm to a listed species.

6. How the Equal Access to Justice Act acts to threaten lives, property and resources in the event of wildfires.

The Equal Access to Justice Act (EAJA) is one of the laws expressly recommended to be changed to facilitate preparation for wildfires by the "National Comprehensive Wildland Fire Management Strategy: Phase III, Western Regional Science-Based Risk Analysis Report." (See pages 1 and 2 in this testimony.)

Generally, the EAJA incentivizes lawsuits based upon the various laws that act to hinder or block wildfire fuel reduction work by providing for an award of attorney's fees and recoverable expenses to a party who prevails in litigation. (28 U.S.C. § 2412(d)(1)(A).)

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An article in the Journal of Forestry shows the increasing amount of EAJA awards over time in lawsuits against the Forest Service, and also discusses that the original intent of the EAJA was to,

- (1) make the federal justice system more accessible to parties defending themselves against what Congress perceived as unreasonable government action,
- (2) provide an incentive for citizens to contest excessive government regulation,
- (3) supply additional compensation for citizens who were injured by government actions, and
- (4) deter overreaching regulation by federal agencies....

(Journal of Forestry, September 2011, pages 352-358, <https://goo.gl/dihh5a>)

To the extent that the paper is correct on the intent of Congress, and to the extent that the EAJA is used by activists to help pay the cost of litigation to force federal agencies to increase regulations, the EAJA has been turned into a tool that is opposite to the intent of Congress when it enacted the EAJA.

To the extent that the EAJA is used by activists to help pay the cost of litigation to hinder or block performance of wildfire fuel reduction projects by federal agencies, or to hinder or block authorizations or approvals by federal agencies that allow others to perform fuel reduction projects, then the EAJA has been turned into a life threatening law.

Congress should amend the EAJA to not apply to any wildfire fuel reduction projects by federal agencies, or to any approvals by federal agencies related to wildfire fuel reduction projects.

Conclusion

The deadline for submittal of this testimony approaches. Much more could and should be written but cannot be written here.

I expect many more laws, not touched on in this testimony, also act to hinder or block wildfire fuel reduction work, and should also be amended if we are to have any hope of solving the growing problem of continuing accumulation of wildfire fuels.

I ask the Committee to keep in mind in the event you work on changes to federal law, that federal laws that are not directly applicable to individuals may be picked up by state and local government and applied to individuals through state and local laws, which could hinder or block this important work. Clear statements in statutes that the intent of Congress is that federal laws are not to be applied in ways that may act to hinder or block wildfire fuel reduction work will help to avoid roadblocks to wildfire fuel reduction work by state and local laws.

For years, Congress has made grant funds available to help pay for the cost of environmental compliance and performance of wildfire fuel reduction work.

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However, there is not enough grant money to fund even a small fraction of the work that is needed on private land. It is time for government, federal, state and local, to step aside and allow landowners to care for their land without regulatory costs, delays or other government induced hindrances or roadblocks.

Many state and local laws will also need to be changed. The federal government has long recognized this problem, and Congress should lead the way by demonstrating how laws can be comprehensively amended to allow and facilitate this important work.

I also ask the committee to consider, in the context of this testimony, my May 6, 2015 testimony on the Committee's hearing on *Reauthorization Of and Potential Reforms To the Land and Water Conservation Fund*, April 22, 2015, especially its discussion of the appearance of a conflict of interest between federal land management agencies in their role as fire fighting organizations, and their role acquiring private land.

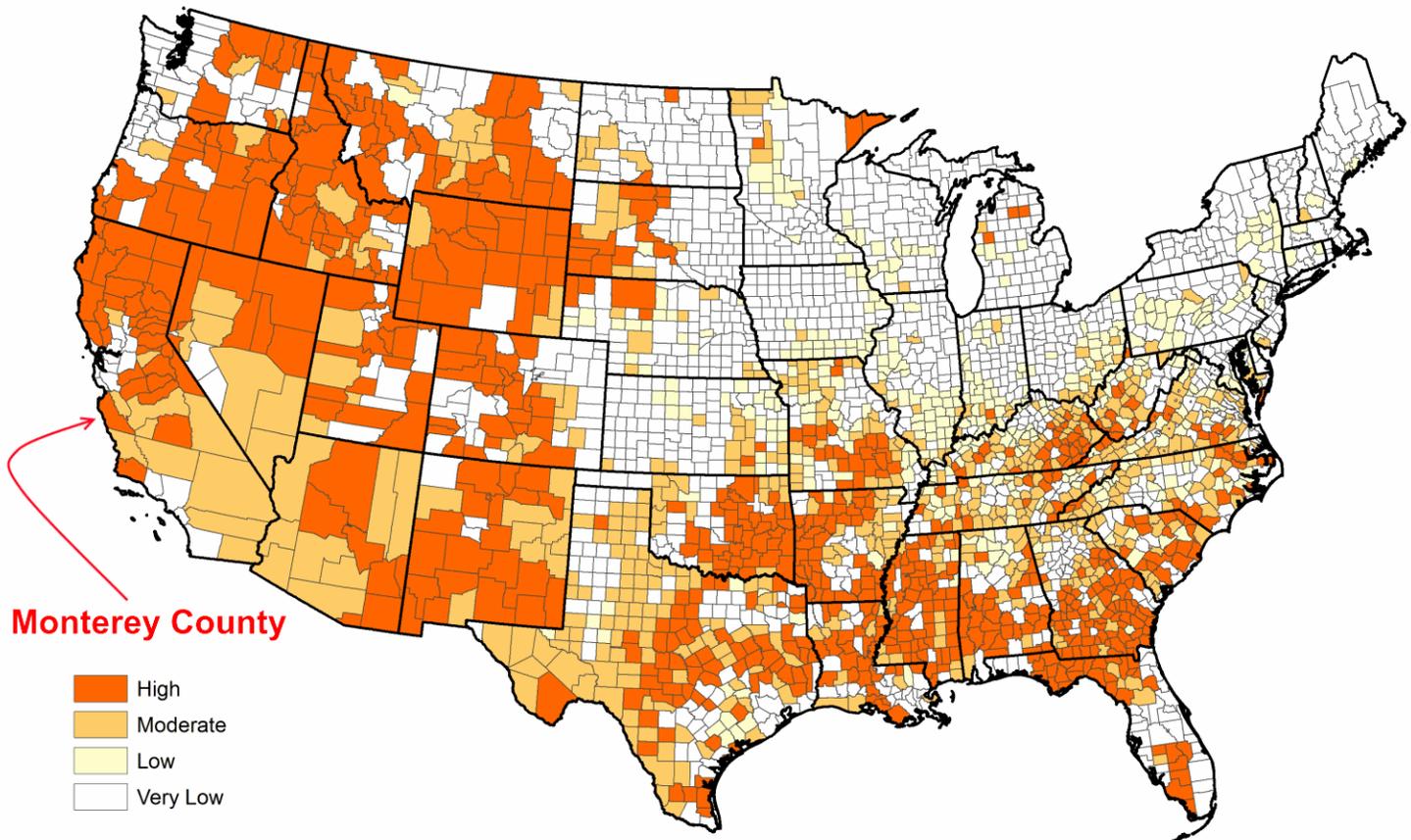
I pray the Committee, and ultimately Congress, will agree on the need for *The Comprehensive Wildfire Preparation Facilitation Act of 2015*, and will write it to unambiguously allow and facilitate this much needed work.

Respectfully Submitted,



Michael Caplin





www.forestsandrangelands.gov/strategy/documents/reports/phase3/WesternRegionalRiskAnalysisReportNov2012.pdf

After submittal correction: <http://www.forestsandrangelands.gov/strategy/nationalpriorities.shtml>

Vegetation and Fuels

National prioritization of areas for broad-scale fuels management (as distinct from hazard reduction in proximity to structures) suggests a primary emphasis in the West and Southeast. These included counties with the highest level of wildfire, fire-adapted native vegetation, and communities concentrated within a broader wildland landscape. Each location would utilize the mix of options most suitable for local conditions, as described in Options 1-4.

EXHIBIT 2, PG. 1

[Excerpt. Highlight added.]

[Full document can be downloaded at <https://goo.gl/7MI0N6>]

PROPOSING NEW WILDERNESS AREAS

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

LETTERS AND REPORTS FROM THE SECRETARY OF AGRICULTURE AND THE SECRETARY OF THE INTERIOR PROPOSING NEW WILDERNESS AREAS, AND SUPPORTING THE RECOMMENDATIONS THEREIN

THE VENTANA WILDERNESS IN CALIFORNIA

FILE COPY
Legislative Digest Section
Room 7016 Ext. 4633
PL 88-577



APRIL 1, 1968.—Referred to the Committee on Interior and Insular Affairs and ordered to be printed with illustrations

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1968

92-151 O

MANAGEMENT CONSIDERATIONS

STRUCTURES AND ACTIVITIES

To provide for recreational use there are many widely dispersed campsites within the area. Developments consist of closed fireboxes or stoves, a slight departure from naturalness but a necessary fire precaution, and rustic-type sanitation facilities. There are no garbage pits. Users would be required to carry out unburnable refuse.

Trails for foot and horse traffic would be maintained to disperse use within the area and to protect it from erosion. Helicopter landing spots to augment fire control have been hand cleared and others would be developed as needed to permit the landing of men and equipment for fire suppression. The Ventana Lookout, serviced only by pack stock, would be continued for fire detection.

Wooden directional and information signs have been installed for the administration and protection of the area and its users.

FIRE

The proposed Wilderness contains dense and highly flammable brush in the lower elevation ranges. In addition, summer and fall temperatures are high, while humidity is low. Adequate fire protection would therefore be essential.

During the critical fire season the area is open to use only by permit. This precaution reduces man-caused fires to some extent, but does not stop all man-caused fires, aeroplane crashes or the occurrence of lightning fires. Fire-fighting forces

must have access by trails and quick access by helicopter on well distributed, small, hand constructed helispots.

Historically, few fires have occurred here, but once started they are difficult and costly to control. Major fires that escaped from the initial attack have generally been confined to less than 10,000 acres, but have required 2 to 3 weeks to control.

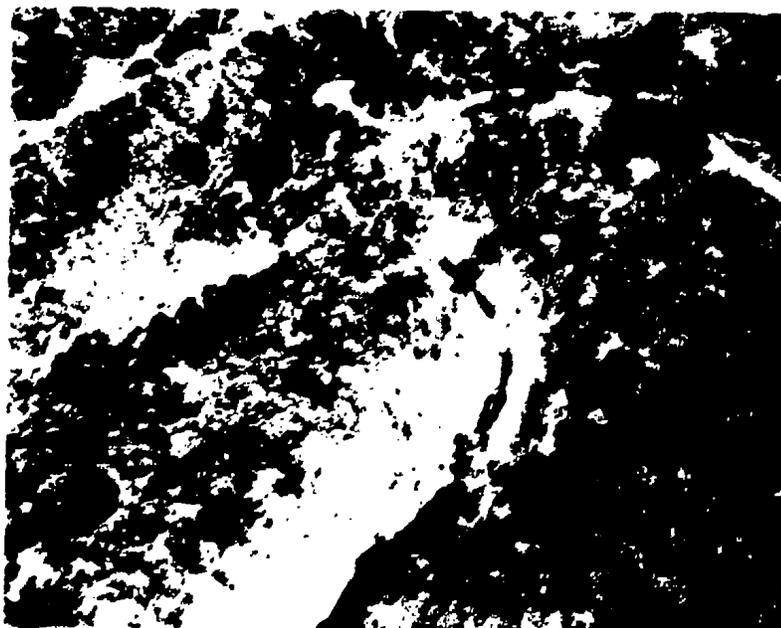
The threat to the Wilderness from large conflagrations sweeping into the area would remain a challenge. The boundary of this proposed Wilderness is very important and has been intentionally established wherever possible to allow the construction of peripheral fuelbreaks, and fire control access.

Approximately 70 percent of the boundary of this area would be located 250 feet below the crest of the ridge to permit the machine construction of effective fuelbreaks. For portions of approximately 12 miles of Wilderness boundary around the north end of this unit, provision is made for additional protection by means of a hand constructed fuelbreak inside the Wilderness if necessary.

In the event of fire the Forest Service would use whatever fire-fighting methods the situation requires, including use of machinery in building fuelbreaks and temporary roads.

The Forest Service would also take whatever steps are prudent to promptly revegetate burned areas to prevent damage, including, if necessary, use of machinery to do the work.

ARROYO SECO GORGE. Indians Road
in background is outside boundary.



INSECTS AND DISEASE

A current insect threat is affecting Santa Lucia fir, as previously explained. Further study should be given this problem so that this species of fir can sustain itself.

There are no other known serious insect or disease problems in this proposed Wilderness. If such develop, the Forest Service would follow control, eradication or prevention practices that are consistent with general policies for insect and disease matters in managing National Forest Wildernesses.

NON-FEDERAL LANDS INSIDE BOUNDARY

The Ventana proposal contains 9 parcels of non-Federal land totaling 2510 acres. These ownerships range from 37 acres to 640 acres in size.

This private land is not occupied. The Forest Service will continue a plan of acquisition by exchange or purchase with each opportunity, until all private ownership is acquired. The two exclusions on the northerly boundary are considered unacquirable private parcels being developed as vacation ranches.

POOLS ON THE ARROYO SECO RIVER are attractive to the fishermen.



103604

Michael Caplin testimony on
The Federal government's role in wildfire
management, the impact of fires on communities, and
potential improvements to be made in fire operations"
May 5, 2015.

CONCLUSIONS

AREAS SUITABLE FOR WILDERNESS DESIGNATION

About 55,000 acres within this proposed Wilderness have been managed as the Ventana Primitive Area since 1931. The Forest Service studies, comments submitted by other agencies of government, and the numerous comments made at the public hearing on June 7, 1967, and immediately following the hearing, show there is no reason to discontinue Wilderness-type management of this area. Rather, these studies and comments show that the Wilderness should include additional, contiguous areas having topography, vegetative cover, and remoteness which makes them suitable **if adequate fire control facilities can still be provided.**

After studying the area in light of the viewpoints submitted during and after the hearing, the Forest Service has concluded that areas labeled A through E, the original proposal shown on the map page 13 should be included in the proposal.

Addition A. These 3,491 acres are Wilderness-type land encompassing both banks of the Carmel River. This addition **with due consideration to necessary fire control provisions will improve the Wilderness boundary, now a river and section line, to that of a natural ridge separating Bruce Creek and Miller Fork. This ridge is especially suitable for a machine constructed fuelbreak that is essential to control possible fires.**

Addition B. Instead of using a section line it is recommended the boundary be extended easterly to include the entire Pine Valley basin. This 357 acre addition would establish the boundary on a prominent ridge, and **would permit the continuance of the planned peripheral fuelbreak on this strategically located ridge.**

Addition C. To the south of the Ventana Primitive Area is an extensive roadless area which includes the headwaters of the Big Sur and Arroyo Seco Rivers and Tassajara, Lost Valley and Logwood Creeks. Nestled midst the surrounding rugged country are Strawberry Valley, Indian Valley, and Lost Valley known for their Wilderness qualities. The northeasterly boundary of this 35,107 acre addition is a prominent ridge just east of Tassajara Creek. **This ridge would be used to continue the necessary peripheral fuelbreak planned to begin in area A.** The remainder of the easterly boundary includes the Arroyo Seco River and its spectacular gorge. The boundary is displaced 100 feet to the east of the thread of the channel of the river.

Addition C is bounded on the southwest by the Coast Range separating the Pacific Slope from the numerous drainages within the proposed Wilderness. **This topographic boundary parallels but excludes a road and a planned peripheral fuelbreak.** Logwood Creek is included in the northwest corner of Area C for the recommended boundary is displaced 100 feet southwest of the thread of the channel of the stream.

Addition D. These 241 acres would add similar and suitable land with Wilderness character. **The boundary would be along a prominent ridge paralleling the peripheral fuelbreak.**

Addition E. The prominent Skinner Ridge would make a topographic boundary compared to the section lines of the Primitive Area boundary. This 1,125 acre addition will include headwaters of Turner Creek and Skinner Creek, a desirable addition with Wilderness qualities. **A fuelbreak is planned along this ridge.**

AREAS NOT RECOMMENDED FOR WILDERNESS

Three small areas within the Primitive Area as shown on the map on page 13 are recommended for declassification. Units I and II totalling 420 acres, are proposed for deletion because they are in private ownership, considered unacquireable and the anticipated use would be nonconforming in nature. Unit III, 30 acres, is proposed for deletion to provide for a topographic boundary rather than arbitrary legal subdivisions.

A preponderance of those commenting both orally and in writing advocated the inclusion in the Wilderness the area labeled F and G on the map on page 13. The Forest Service concluded it is desirable that these areas not be included in the Wilderness. Area F contains parcels of private land and adjoins other parcels of private land. The owners of these lands are not interested in disposal. This ownership pattern invites fire, access, and management problems plus use non-conforming to Wilderness. The north and east boundaries of Area F are predominantly section lines crossing canyons and ridges. **Such a boundary does not lend itself to the construction of an adequate peripheral fuelbreak.** Area G contains the Willow Creek drainage. It drains to the east from a key, well defined, prominent ridge which forms a portion of the proposed boundary of Addition C.

The prime objective on the easterly boundary of

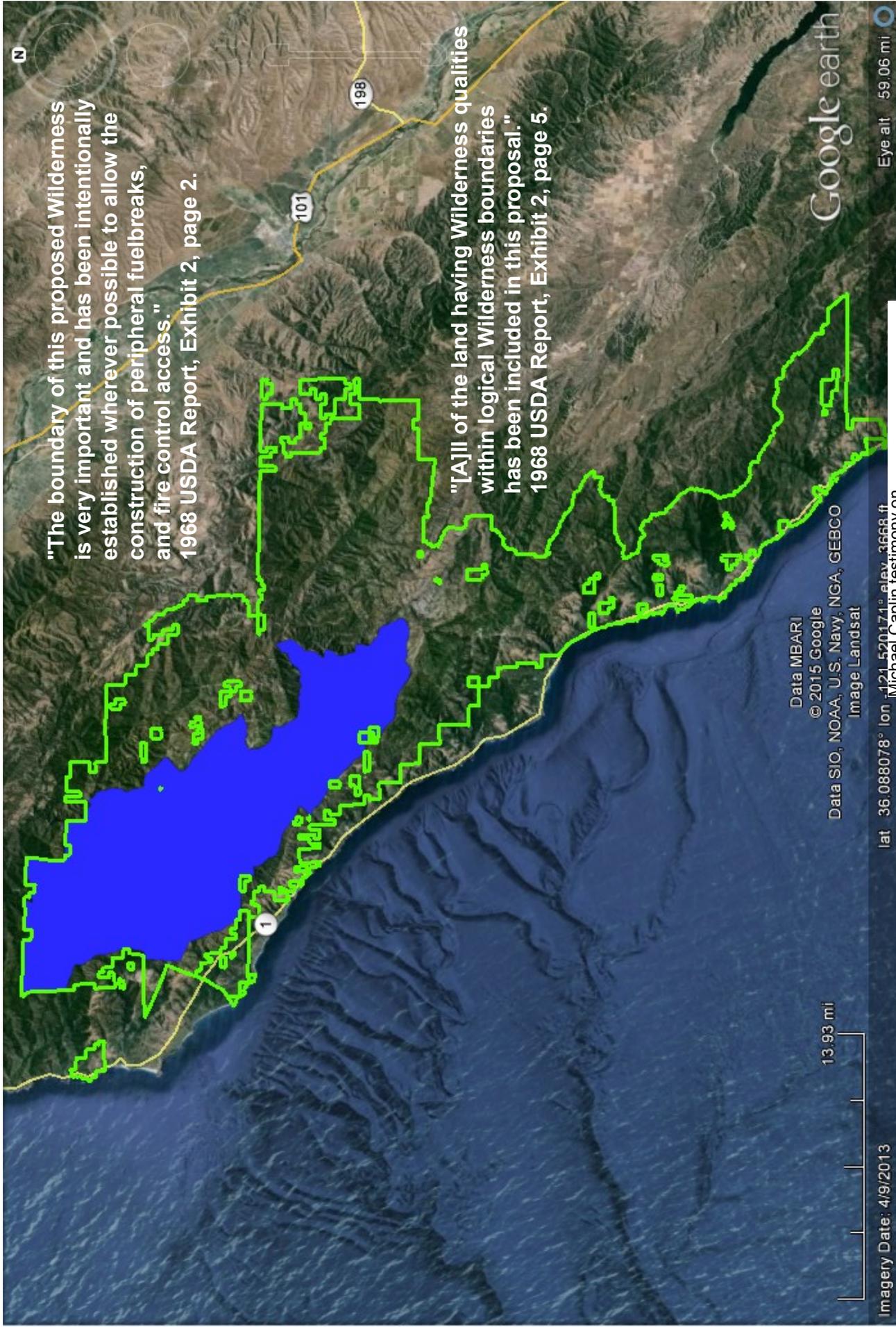
this Wilderness proposal is to establish and maintain adequate continuous peripheral fuelbreaks on key ridges to protect the area from sweeping conflagrations. The boundary as proposed is on such a key ridge 20.5 miles in length. To include Areas F and G in this proposal would cancel this objective.

In general, the boundary on the north is the Forest boundary while that on the east is topographic and controlled by private land, roads and nonconforming Wilderness use. The proposed area is bound on the south by an access fire road, an

east-west road, connecting the Coast Ridge Road and Indians Road. The southerly portion of the western boundary is the Coast Ridge containing a forest road which route may become the approximate location of a scenic highway if, or when, constructed. The route should be kept open and available for study and determination at a later date. The northerly portion of the western boundary is topographic and controlled by a State Park, private lands, and uses and roads not conforming to Wilderness. Therefore, all of the land having Wilderness qualities within logical Wilderness boundaries has been included in this proposal.

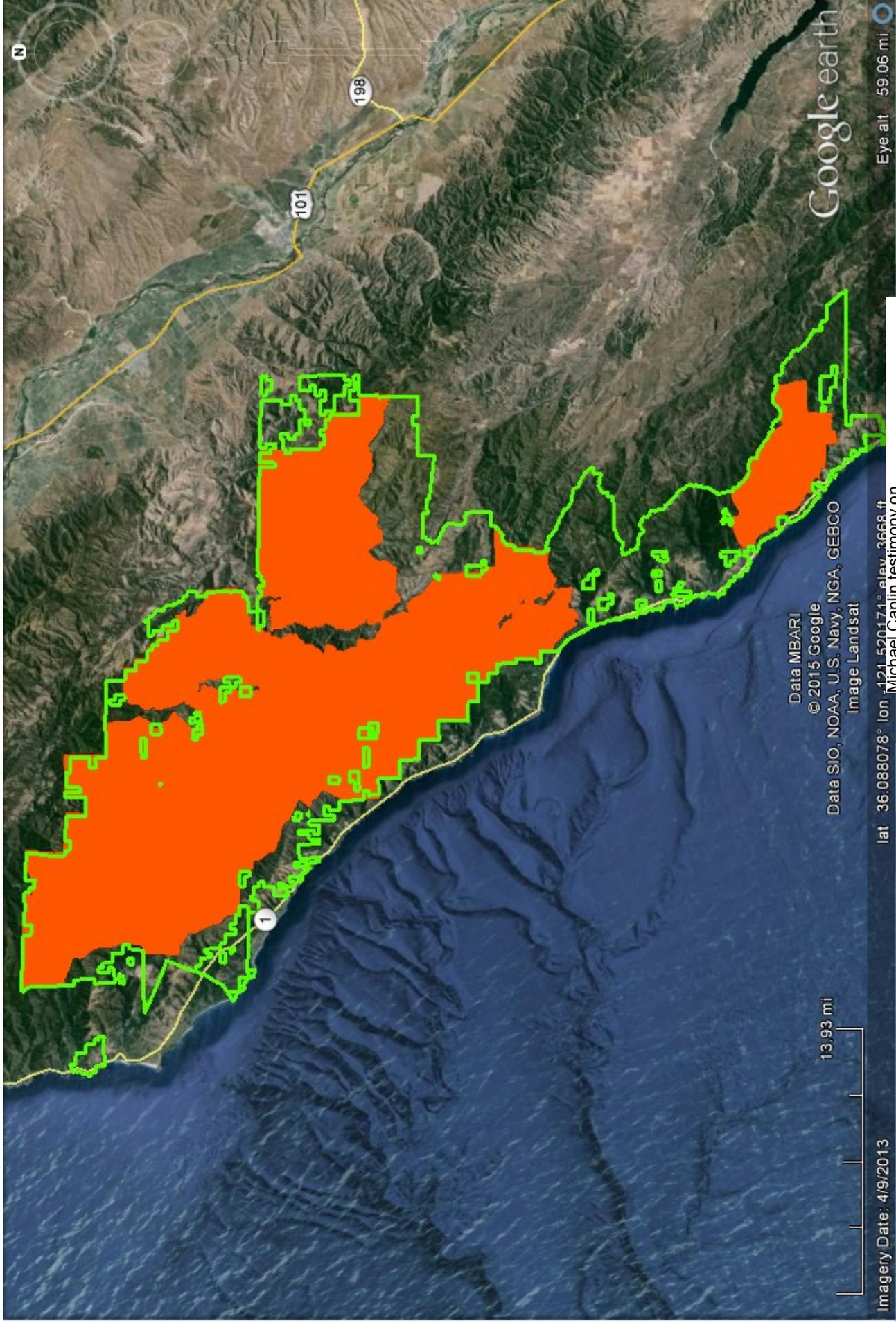
3600

Blue = Ventana Wilderness when first designated in 1969. 98,000 acres.

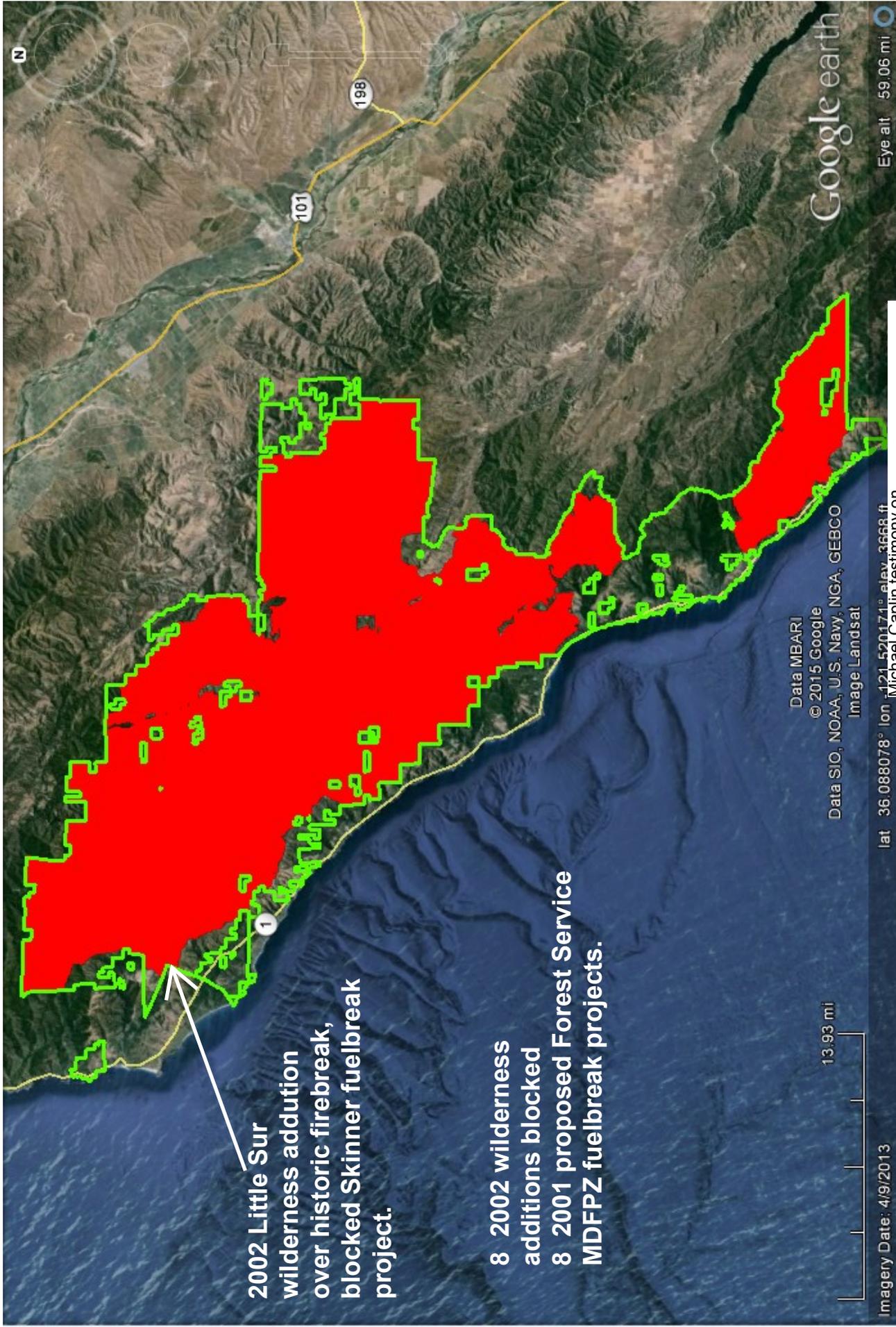


The Federal government's role in wildfire management, the impact of fires on communities, and potential improvements to be made in fire operations"
May 5, 2015.

Red = Ventana Wilderness after 1978, 1984 and 1992 additions. 199,750 acres.



Red = Ventana Wilderness after 2002 additions. 236,860 acres.



2002 Little Sur wilderness addition over historic firebreak, blocked Skinner fuelbreak project.

8 2002 wilderness additions blocked 8 2001 proposed Forest Service MDFPZ fuelbreak projects.

The Federal government's role in wildfire management, the impact of fires on communities, and potential improvements to be made in fire operations" May 5, 2015.



**United States
Department of
Agriculture**

**Forest
Service**

**Los Padres
National
Forest**

**Monterey Ranger District
406 S. Mildred
King City, CA 93930
(831) 385-5434**

File Code: 1950

Date: August 13, 2001

Dear Interested Party:

The Monterey Ranger District of the Los Padres National Forest is proposing to implement a defensible fuel profile zone (DFPZ) project (**Monterey DFPZ Project**) on National Forest system lands. Forest Service personnel are preparing to conduct an analysis of the proposed project area within the boundary of the Monterey Ranger District on selected lands outside the Ventana and Silver Peak Wilderness areas. Please see the enclosed map for a general location of the proposed project.

The purpose of this letter is to invite you to participate in the analysis process by providing your comments and any concerns you may have about this proposed project. To encourage your informed participation in this planning process, this letter includes a description of the proposed action and the purpose and need for action.

PROPOSED ACTION

Trained specialists with the Forest Service are planning to apply fuels reduction treatments to establish defensible fuel profile zones (DFPZs) within ten identified units that cover a total of approximately 18,760 acres. Primary focuses for this project are travel corridors (roads and trails), campgrounds, National Forest System Lands adjacent to private property, administrative sites, and existing firelines. Treatments used to establish DFPZs include:

- Pruning, clearing and chipping hazardous fuels;
- Burning of fuels using broadcast and spot burning methods;
- Establishment of shaded areas by planting native tree species; and
- Managing for native grasses.

Implementation would begin in the fall of 2001 and continue over the next ten years. Individual areas would be prioritized for burning to achieve desired results. Burning would be applied when moisture and air quality conditions meet prescription criteria. Prescription criteria are most likely to be met after fall season rains when moisture levels would limit fire severity and still be low enough to achieve desired levels of fuel consumption.

In general, fuel profiles would be changed to:

- Break-up horizontal and vertical continuity;
- Reduce fire prone live fuels by managing for: younger vegetation, native grasses, and trees;
- Reduce quantity of dead fuels; and
- Use Forest Service facilities (campgrounds and administrative sites) to create models of defensible space.



Caring for the Land and Serving People

Michael Caplin testimony on
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Defensible Space

DFPZs would be created on either side of roads, and around administrative and special use facilities to serve as safety zones, pre-attack zones, and escape routes during fire situations. A variable width buffer not to exceed 1,000 feet on each side of the road would be created by removing dead fuels, pruning live brush and trees, planting native trees, and managing for native grasses where appropriate. Treatments would vary depending on position on slope, soils conditions for plant establishment and growth, and aspect.

Fuels around campgrounds would be managed so they could serve as safety zones in the event of fire. A 1,000-foot buffer would be created by removing dead fuels, pruning live brush and trees, and managing for native grasses where appropriate. Measures would be taken to ensure that unlawful access to open areas is controlled around campgrounds.

Native grasses would be managed by burning and seeding where appropriate. This would be implemented in small (15 to 20 acre) areas over time in coordination with a qualified botanist. Natural seeding would be encouraged whenever possible. Where prescribed fire and/or reestablishment of native grasses are proposed, maintenance burning would be implemented about every seven years.

Shaded DFPZs would be established by planting native tree species. Species mix for tree planting would be based on types of trees found presently or historically in the vicinity. Species to be considered would be: ponderosa pine, incense-cedar, sugar pine, Santa Lucia fir, and madrone. Any seeding or planting that occurs would be done using locally collected seed.

The Forest Service would work with State and County Fire Departments in a cooperative effort to create safety zones around private homes and facilities.

Treatment Units

The following table describes proposed actions by treatment unit.

UNIT	ACRES	PROPOSED ACTION
Arroyo	1,630	Establish variable width DFPZs up to 1,000 feet on each side of road. Apply prescribed fire at regular intervals and reestablish native grasses around the Horse Bridge/Santa Lucia Creek area. Establish variable width DFPZs along trails outside of wilderness.
Carmel	165	Prescribed fire would be applied to provide buffering between the wilderness and private property.
Cone	2,605	Establish variable width DFPZs up to 1,000 feet on each side of road. Plant trees to develop shaded DFPZs as part of roadside corridor where appropriate.
Manuel	400	Manage dozer lines and safety zones to favor native grasses. Fuels profiles would be managed so line could be used without repeated dozer entry. At specific locations where conditions are favorable, reestablish native grasses and/or plant trees to create a shaded DFPZ over ¼ mile segments.
Park	2,630	Create and maintain 1,000-foot DFPZs around campgrounds. Use prescribed fire to discourage the spread of noxious weeds.
Piney	1,710	Burn on a regular basis in the winter after the road has been closed.

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UNIT	ACRES	PROPOSED ACTION
Reliz	5,160	Continue on-going coordination with property owners to apply prescribed fire across ownership boundaries.
Ridge	1,975	Manage segments of existing dozer line for native grasses and shaded DFPZ. Establish a variable width DFPZ up to 1,000 feet on each side of road.
Skinner	700	Manage existing dozer line and safety zones as a long-term strategic facility. This would be achieved by treating small patches over time. Treatments include discouraging growth of non-native grasses through periodic burning, brush cutting, and reintroduction of native grasses.
Tassajara	1,785	Create variable width DFPZs up to 1,000 feet wide each side of road outside the wilderness area using a mix of the following methods: <ul style="list-style-type: none"> • Up to 100 acre prescribed fire projects, thinning, and brush piling; • Create a variable width road corridor with reduced amounts of large fuel by offering fuelwood sales for areas within 300 feet of the road; and • Manage for native grasses through periodic burning and seeding small areas where appropriate.

PURPOSE AND NEED FOR ACTION

The purpose of this project is to meet the following objectives:

- Protect highly valuable real estate within and adjacent to the National Forest boundary;
- Protect watershed values in the Carmel and Arroyo Seco watersheds;
- Reduce risk to private property;
- Reduce potential for damage to resources by reducing potential for high intensity fires;
- Implement small, strategically located projects that can provide anchor points, pre-attack zones, and areas of reduced intensity during unplanned fire events;
- Create corridors and safety zones around public use facilities such as roads, campgrounds, and special use permit sites;
- Provide evacuation routes to forest users and residents in the event of wildfire;
- Lower risk of fire ignition, reduce intensity once ignition occurs, and break-up continuity to inhibit and slow spread of wildfires;
- Limit the intensity of unplanned fires at strategic locations;
- Protect historic structures;
- Reduce risk of establishment and spread of noxious weeds; and
- Reduce risk of large fires by managing for younger vegetation and broken continuity.

COMMENTS

The proposed action will be fully analyzed prior to any decision on final project design. For this project to result in the best possible outcome for people and the environment please send us any issues, concerns, suggestions or information you may have relating to this proposal. Opinions and values will be noted, but the intent of the process is not to serve as a public opinion poll.

Purpose of This Letter:
To identify the range of issues and determine their significance.

An issue is:
A point of discussion, dispute or debate about the environmental effects.

Issues are Used:
To focus the analysis and determine if any alternatives to the proposed action need to be developed.

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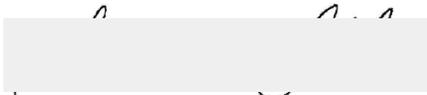
The Los Padres National Forest has hired Forest Service Environmental Assessment specialists located in Happy Camp, California to work closely with the local specialists, guiding the analysis and preparing the decision document. If you would like additional information please contact one of the following people:

Names	Address	Phone	Fax	email
Annie Buma	c/o Happy Camp Ranger District	530-493-1725	530-493-1775	abuma@fs.fed.us
Judy Hahn	P.O. Box 377	530-493-1721		jhahn@fs.fed.us
Fran Smith	Happy Camp, CA 96039	530-493-1788		fjsmith@fs.fed.us

Please send any issues or written comments to one of the individuals listed above at the indicated address by August 24, 2001. Comments are a matter of public record and as such may be provided to interested parties upon request.

Thank you for your participation in this process.

Sincerely,



JOHN S. BRADFORD
Acting District Ranger

encl.

Bill Summary & Status
107th Congress (2001 - 2002)
H.R.4750
All Congressional Actions

[NEW SEARCH](#) | [HOME](#) | [HELP](#) |

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H.R.4750

Latest Title: Big Sur Wilderness and Conservation Act of 2002

Sponsor: [Rep Farr, Sam](#) [CA-17] (introduced 5/16/2002) [Cosponsors](#) (10)

Latest Major Action: Became Public Law No: 107-370 [GPO: [Text](#), [PDF](#)]

ALL ACTIONS:**5/16/2002:**

Referred to the House Committee on Resources.

5/20/2002:

Referred to the Subcommittee on National Parks, Recreation and Public Lands.

5/20/2002:

Referred to the Subcommittee on Forests and Forest Health.

11/15/2002 2:04am:

Mr. Hansen asked unanimous consent to discharge from committee and consider.

11/15/2002 2:04am:

Considered by unanimous consent. (consideration: CR 11/14/2002 [H8923-8924](#))

11/15/2002 2:04am:

Committee on Resources discharged.

11/15/2002 2:04am:

On passage Passed without objection. (text: CR 11/14/2002 [H8923-8924](#))

11/15/2002 2:04am:

Motion to reconsider laid on the table Agreed to without objection.

11/15/2002:

Received in the Senate, read twice.

11/20/2002:

Passed Senate without amendment by Unanimous Consent. (consideration: CR 11/19/2002 [S11652-11655](#))

11/20/2002:

Message on Senate action sent to the House.

11/20/2002:

Cleared for White House.

12/10/2002:

Presented to President.

12/19/2002:

Signed by President.

12/19/2002:

Michael Caplin testimony on
 The Federal government's role in wildfire
 management, the impact of fires on communities, and
 potential improvements to be made in fire operations"
 May 5, 2015.

Became Public Law No: 107-370.

EXHIBIT 5, PG. 2

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Michael Caplin testimony on
The Federal government's role in wildfire
management, the impact of fires on communities, and
potential improvements to be made in fire operations"
May 5, 2015.

[Excerpt. Highlight added.]



**United States
Department
of
Agriculture**

**Forest
Service**

**Pacific
Southwest
Region**

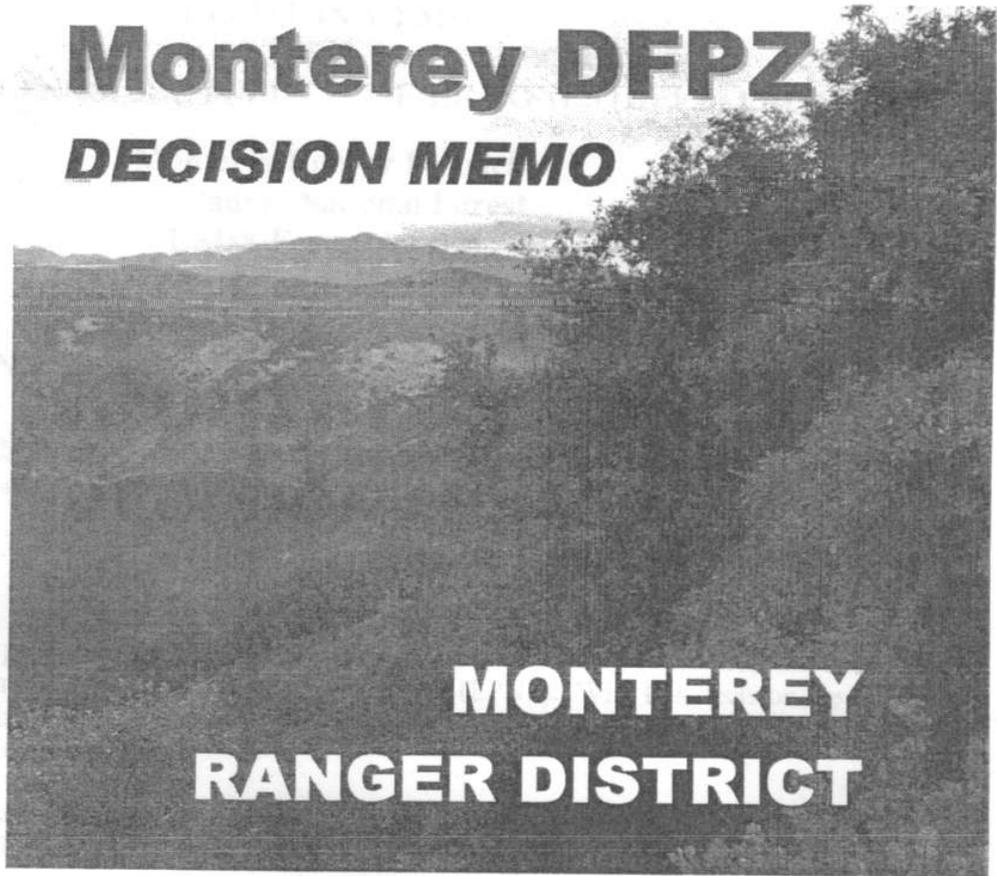
**Monterey
County**

**October
2004**



Monterey DFPZ

DECISION MEMO



MONTEREY RANGER DISTRICT

LOS PADRES NATIONAL FOREST

More specific information on treatments by unit can be found in **Appendix A**. A breakdown of treatment acres by unit and proportion of unit to be treated are shown in **Table 2**. After design of this project the *Big Sur Wilderness and Conservation Act* was passed in May of 2002 (H.R. 4750). This act added lands to the wilderness preservation system on the Monterey Ranger District Los Padres National Forest. There was no wilderness addition acres included in the Piney or Reliz Units of the Monterey DFPZ. Table 2 displays the acres of each unit, the acres treated by treatment type, % of unit treated, and amount of dozer line needed to accomplish the broadcast burning.

Table 2 Treatments by Unit

DFPZ Unit	Total Acres	Wilderness Addition Acres	Broadcast Burn Acres	Pile Burn Acres	Total Treatment Acres	% of Unit Treated	Annual Treatment (ac/yr)	Dozer Lines
Piney	1,710	0	1,400	100	1,500	88	500 (over 3 entries)	Crush 1.5 mi.
Reliz	5,160	0	3,300	300	3,600	70	400	<1 mile
TOTAL	6,870	0	4,700	400	5,100	75	400 to 500	<2.5 miles

Broadcast burning will be applied to a total of 4,700 acres and pile burn treatments will be applied to 400 acres. Total treatment acres are 5,100 and will be accomplished over the next ten years.

To move these units toward desired conditions over 70% of the Chamise, Chaparral, and sagebrush vegetative types are to be treated by broadcast burning. The desired condition for chaparral stands is to have a mosaic of age classes. Not all vegetation will be burned even where treatment is applied. The broadcast burn prescription and ignition techniques used will create a mosaic of burn intensities ranging from unburned areas to complete removal of the vegetation. In most cases broadcast burning will be controlled using natural features, roads, firelines, and existing dozer lines. If these control features are not present, firelines constructed with hand tools will also be used. Broadcast burn units could be as large as 400 to 500 acres in size depending on the location of the control lines.

There is less than three miles of dozer use planned for control lines in the two units. The dozer work is located outside of sensitive view areas, riparian areas, and wilderness. In the Piney Unit approximately 1.5 miles of vegetation will be crushed by dozer to create a fuel break which will act as control lines. In the Reliz Unit less than 1 mile of existing dozer line will be opened for control lines. Maps of the dozer work for control lines are displayed in Appendix F.

The pile burning treatments will be variable in size and shape and applied along roads and existing fire lines. Variable width DFPZs are mapped to maximum widths (1,000 feet on each side of roads and 600 feet on existing firelines) to allow flexibility for treatments of small areas (no larger than 20 acres) and to allow for use of existing holding features. Total acres treated will not exceed those displayed in **Table 2**. Treatments will be applied to reduce fuel continuity while maintaining natural vegetation patterns and age classes.

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Basin Fire Perimeter as of 6/27/08 - 10:00 Hrs

- Basin Complex / Gallery Perimeter
- Unused Historic Skinner Ridge Firebreak
- 2002 Little Sur Wilderness Additions

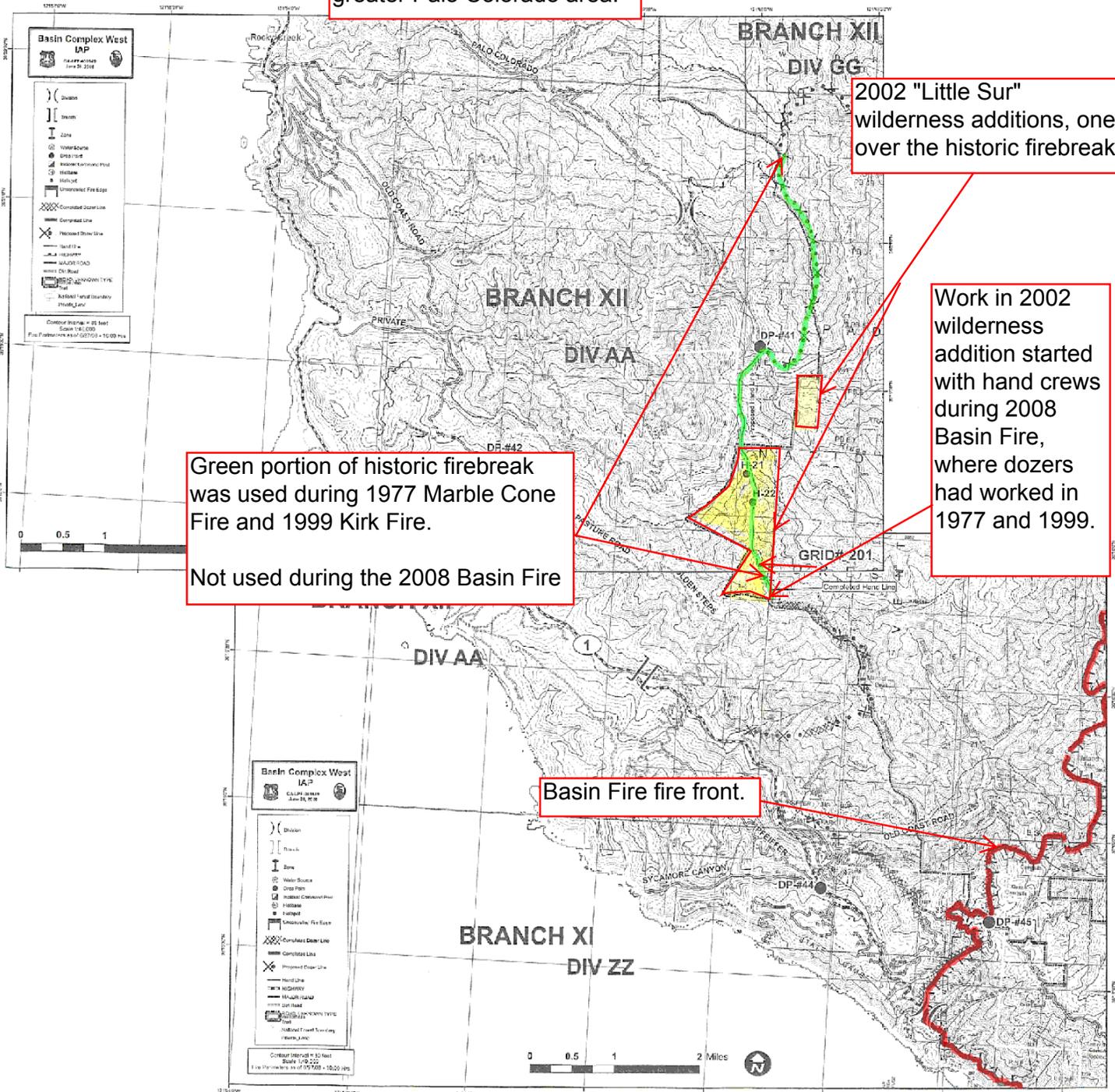
Hundreds of homes in the greater Palo Colorado area.

2002 "Little Sur" wilderness additions, one over the historic firebreak.

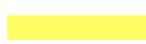
Work in 2002 wilderness addition started with hand crews during 2008 Basin Fire, where dozers had worked in 1977 and 1999.

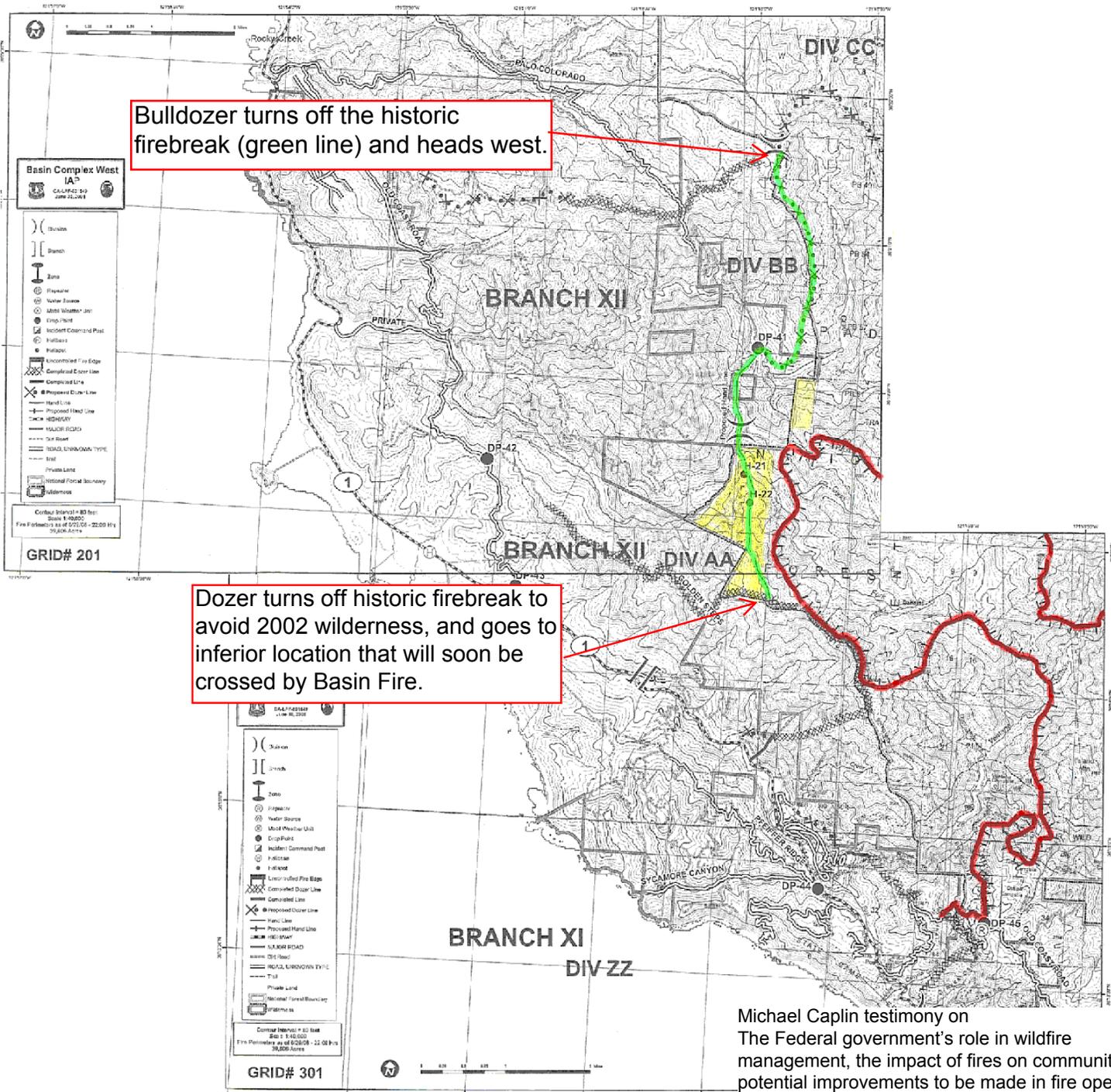
Green portion of historic firebreak was used during 1977 Marble Cone Fire and 1999 Kirk Fire. Not used during the 2008 Basin Fire

Basin Fire fire front.



Basin Fire Perimeter as of 6/29/08 - 22:00 Hrs

-  Basin Complex / Gallery Perimeter
-  Unused Historic Skinner Ridge Firebreak
-  2002 Little Sur Wilderness Additions



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United States
Department of
Agriculture

Forest
Service

Los Padres
National Forest

Monterey Ranger District
406 South Mildred
King City, CA 93930
(831) 385-5434
TDD: (805) 968-6790

File Code: 1950-3

Date: November 20, 2012

Dear Interested Party:

The Los Padres National Forest, Monterey Ranger District, requests your comments on our proposed action for a **Strategic Community Fuelbreak Improvement Project**.

This proposed action is the first formal stage of the National Environmental Policy Act (NEPA) process for this project. It is our intent to publish a Draft Environmental Impact Statement (DEIS) in November 2013 for public review. The DEIS will offer another opportunity for comments before we publish our Final EIS.

This project will focus on pre-suppression fire management within the wildland/urban interface threat zone on the peripheral of the northern Monterey Ranger District. The purpose of this project is to enhance protection for at-risk communities from wildfire. This project will set the stage for future management of fire and ecological restoration in both wilderness and non-wilderness.

The need for this project is to prepare historically used strategic firelines in a condition that will:

- increase wildland fire suppression efficiency when in proximity to communities and related infrastructure
- reduce wildfire risk to life and property
- reduce suppression costs
- reduce adverse fire suppression impacts on the landscape

Proposed Action

The proposed action is to re-establish and maintain 24.1 miles of historically used fuelbreaks – all of which originated as firelines - within the wildland urban interface threat zones on National Forest System lands; approximately 7.5 miles within wilderness and 16.6 miles outside of wilderness. The project would be accomplished over a period of 10 years, as funding and resources become available. Fuelbreak treatments would be as follows:

Non-Wilderness

Fuelbreaks would be constructed and maintained every 3-5 years with a combination of hand thinning with chainsaws, hand and machine piling, pile burning and mastication.

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Wilderness

In accordance with the Wilderness Act, enabling legislation, and Forest Service Policy, fuelbreaks would be constructed manually using chainsaws, hand piling and pile burning and then maintained every 3-5 years with traditional tools through a combination of hand thinning, hand piling and pile burning. A monitoring and adaptive management program will be developed to evaluate the rate of vegetative regrowth on the treated fuelbreaks to determine if available workforce is sufficient to maintain fuelbreak integrity with traditional tools or whether additional administrative actions, such as use of chainsaws, will be needed to assist in maintenance.

Strategic Community Fuelbreak locations and dimensions¹ are as follows:
(please refer to attached Project Vicinity Map)

(1a) Palo Colorado Vicinity - Non-Wilderness

Establish a maximum 150 foot wide fuelbreak on the historic fireline adjacent to the Skinner Ridge Trail (FDT 1E04) between Bottchers Gap and Skinner Ridge, a distance of 1.3 miles.

Establish a maximum 150 foot wide fuelbreak on the historic fireline along Skinner Ridge between the wilderness boundary in Section 18 (near Turner Creek) and Pico Blanco Boy Scout Camp, a distance of 2.8 miles.

Establish a fuelbreak that overlaps the existing Mescal Ridge Road, covering 25 feet north of the road edge to 75 feet south of the adjacent ridge center. Fuelbreak would be a maximum of approximately 300 feet wide by 0.6 miles long.

(1b) Palo Colorado Vicinity - Wilderness

Establish a maximum 150 foot wide fuelbreak on the historic fireline between the wilderness boundary in Section 18 (just south of the Turner Creek trailhead) and Devils Peak, a distance of one mile.

(2a) Palo Colorado to Big Sur Vicinity – Non-Wilderness

Establish a maximum 150 foot wide fuelbreak on the historic fireline between the National Forest boundary at Post Summit, across Cabezo Prieto ridge, and where the Mt. Manuel Trail (FDT 2E06) crosses the wilderness boundary in Section 20, a distance of 2.8 miles.

(2b) Palo Colorado to Big Sur Vicinity – Wilderness

Establish a maximum 150 foot wide fuelbreak on the historic fireline between Post Summit and the Little Sur River, a distance of 1.8 miles.

¹ Fuelbreak widths are maximum values. The actual widths may be limited by factors such as width of the ridge and/or proximity to the wilderness boundary.

Establish a maximum 150 foot wide fuelbreak on the historic fireline from where the Mt. Manuel Trail (FDT 2E06) crosses the wilderness boundary in Section 20 to the Big Sur Wild River boundary, a distance of 0.8 miles.

(3) Big Sur Vicinity - Non-Wilderness

Establish a fuelbreak along the historic fireline adjacent to and/or encompassing the North Coast Ridge Road (FDR 20S05) between the Terrace Creek Trailhead (FDT 3E220) and Anderson Peak on National Forest System lands, a distance of 6.8 miles. The maximum width between the Terrace Creek Trailhead and Cold Springs will be 150 feet; maximum width between Cold Springs and the Tanbark Trail will be 300 feet; maximum width between the Tanbark Trail and Anderson Peak will be 150 feet.

Establish a 150 foot wide fuelbreak on Partington Ridge adjacent to and/or encompassing the Deangula Trail (FDT 2E07) between the North Coast Ridge Road (FDR 20S05) and the National Forest boundary, a distance of 0.8 miles.

Establish a fuelbreak encompassing the Tan Bark Trail between the North Coast Ridge Road (FDR 20S05) and the Forest Boundary, a distance of 0.8 miles. Commencing at the North Coast Ridge Road and traveling west towards the National Forest boundary, the first approximate 600 feet in length will be a maximum of 300 feet wide. The remaining length to the Forest boundary will be a maximum of 150 feet wide.

(4a) Cachagua and Jamesburg Vicinity - Non-Wilderness

Establish an anchor point through the use of prescribed fire and/or hand thinning with chainsaws, hand and machine piling, pile burning, and mastication around the Chews Ridge Lookout Tower and the Monterey Institute for Research and Astronomy Observing Station. Acreage is approximately 64 acres.

Establish a 150 foot wide fuelbreak on the historic fireline along Chews Ridge between the Chews Ridge Lookout Tower and north 0.7 miles to the wilderness boundary.

(4b) Cachagua and Jamesburg Vicinity - Wilderness

Establish a 150 foot wide fuelbreak on the historic fireline along Hennicksons/Chews Ridge on National Forest System lands between the National Forest boundary above Los Padres Dam and wilderness boundary near Tassajara Road, a distance of 3.9 miles.

Collaboration

To exchange information and work together towards agreement on conservation goals, the Monterey Ranger District initiated Firescape Monterey an informal collaborative group comprised of community and stakeholder partners who promote an all-lands approach to both protection of life and property affected by wildfire and healthy resilient ecosystems through collaborative stewardship. With facilitation and guidance by the Fire Learning Network, and a

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focus on ecological restoration, participants in Firescape Monterey have identified five key important landscape values: Fire Adapted Human Communities, Natural and Wilderness Qualities, Biodiversity, Cultural Resources, and Watersheds. While Firescape Monterey continues to work towards collaborative and financially supported efforts among all land managers to accelerate the pace of landscape restoration, the Los Padres National Forest will focus our work sequentially in meeting goals developed collaboratively. This project is a key element of an overall district-wide planning process to expand and develop partnerships to increase organizational capacity to meet landscape restoration goals.

The Los Padres National Forest requests your comments on this proposed action. A 45-day comment period will commence on the publication date of a “notice of intent to prepare an environmental impact statement, Strategic Community Fuelbreak Improvement Project” in the Federal Register. Date of publication is expected between November 29 and December 4, 2012. If you do not have access to the Federal Register, please contact me and I will provide the date of publication as soon as it is published.

Two public meetings are scheduled to provide the public with an opportunity to engage with the Forest Service in discussions regarding the proposed action and process of the environmental impact statement.

December 4, 2012, 5:30pm – 7:30pm at the U. S. Forest Service Monterey District office:
406 South Mildred Ave., King City, CA 93930

December 6, 2012, 5:30pm – 7:30pm at the U. S. Forest Service Big Sur Station: 47555
Highway 1, Big Sur, CA 93920.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency’s preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer’s support, concerns and contentions.

Include the following information with your comments: your name, mailing address, email (optional), and telephone number; the project name: Strategic Community Fuelbreak Improvement Project; and site-specific comments about the proposed action, along with supporting information you believe will help identify issues, develop alternatives, or predict environmental effects of this proposal. The most useful comments provide new information or describe unwanted environmental effects potentially caused by the proposed action. If you reference scientific literature in your comments, you must provide a copy of the entire reference you have cited and include rationale as to how you feel it is pertinent to the Strategic Community Fuelbreak Improvement Project. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action.

Address: Send written comments to Los Padres National Forest, Monterey Ranger District, 406 South Mildred Ave., King City, CA. 93930, attention: Jeff Kwasny. Comments may also be sent via facsimile to 831-385-0628, or via e-mail to: comments-pacificsouthwest-los-padres-monterey@fs.fed.us.

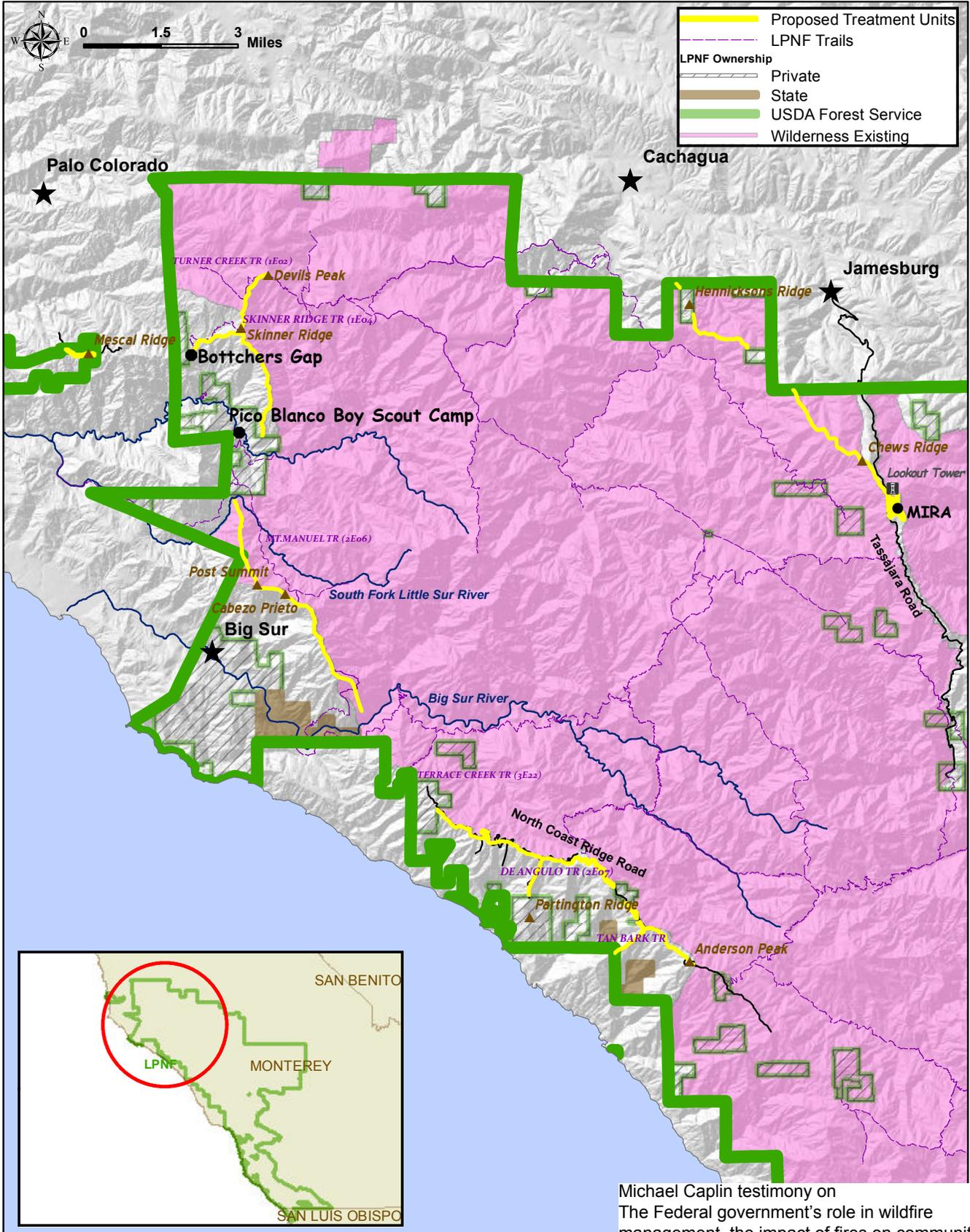
Additional information regarding this proposed action can be obtained from Jeff Kwasny, Project Team Leader, at Big Sur Station #1, 47555 Highway 1, Big Sur, CA 93920, (831)-667-1126, OR Timothy Short, District Ranger, at 406 South Mildred Ave., King City, CA 93930, (831)-385-5434.

Sincerely,

/s/ Timothy J. Short
TIMOTHY J. SHORT
District Ranger

Enclosed: Project Vicinity Map

Strategic Community Fuelbreak Improvement Project - Vicinity Map
 Monterey Ranger District - Los Padres National Forest



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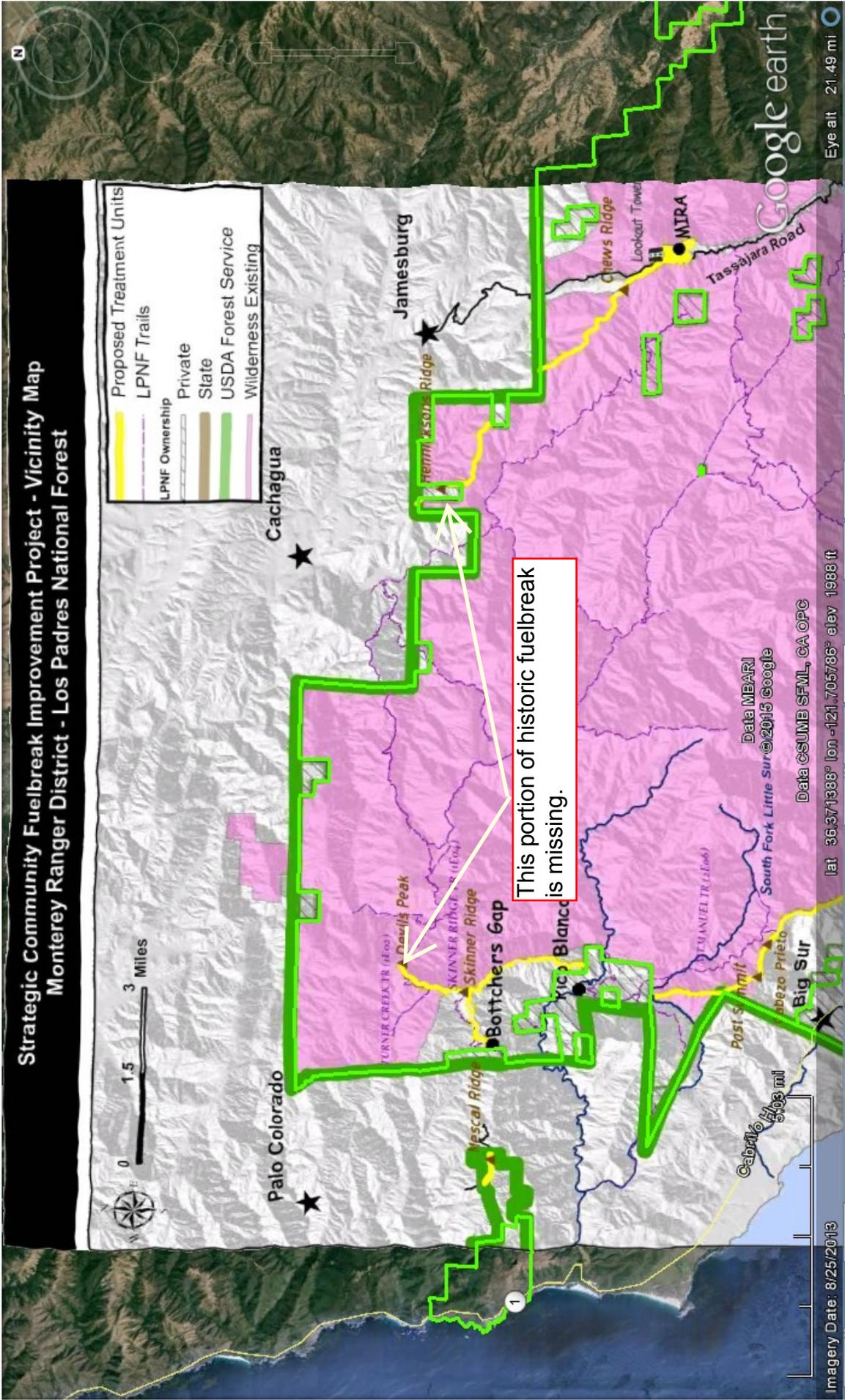


EXHIBIT 9, PG. 1

Michael Caplin testimony on
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 May 5, 2015.

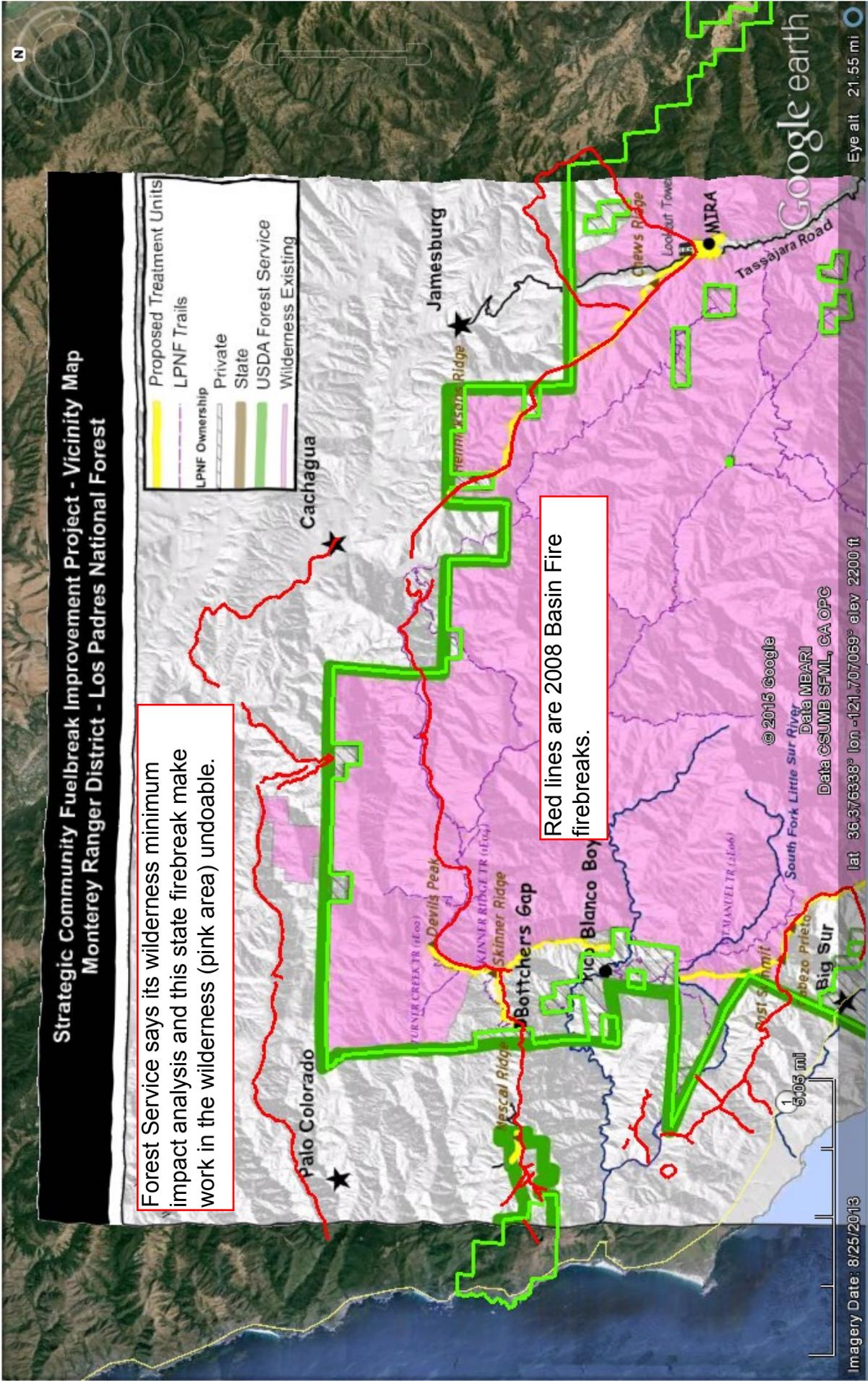
**Strategic Community Fuelbreak Improvement Project - Vicinity Map
Monterey Ranger District - Los Padres National Forest**

Forest Service says its wilderness minimum impact analysis and this state firebreak make work in the wilderness (pink area) undoable.

Red lines are 2008 Basin Fire firebreaks.

Proposed Treatment Units

- LPNF Trails
- LPNF Ownership
- Private
- State
- USDA Forest Service
- Wilderness Existing



Imagery Date: 8/25/2013

lat 36.376338° lon -121.707069° elev 2200 ft

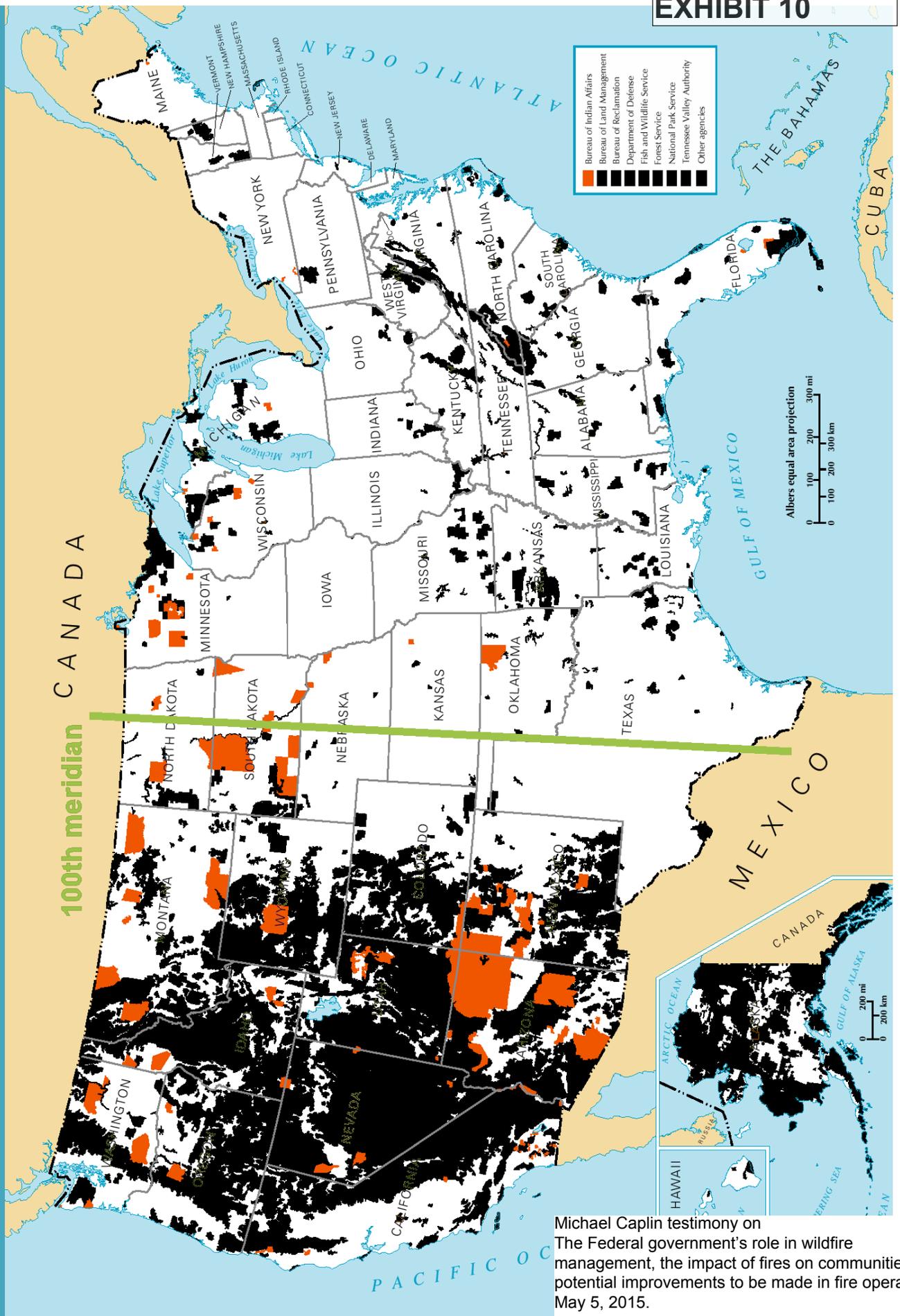
© 2015 Google
Data MBARI
Data CSUMB SFML, CA OPC

Eye alt 21.55 mi

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management, the impact of fires on communities, and
potential improvements to be made in fire operations"
May 5, 2015.

FEDERAL LANDS AND INDIAN RESERVATIONS

EXHIBIT 10



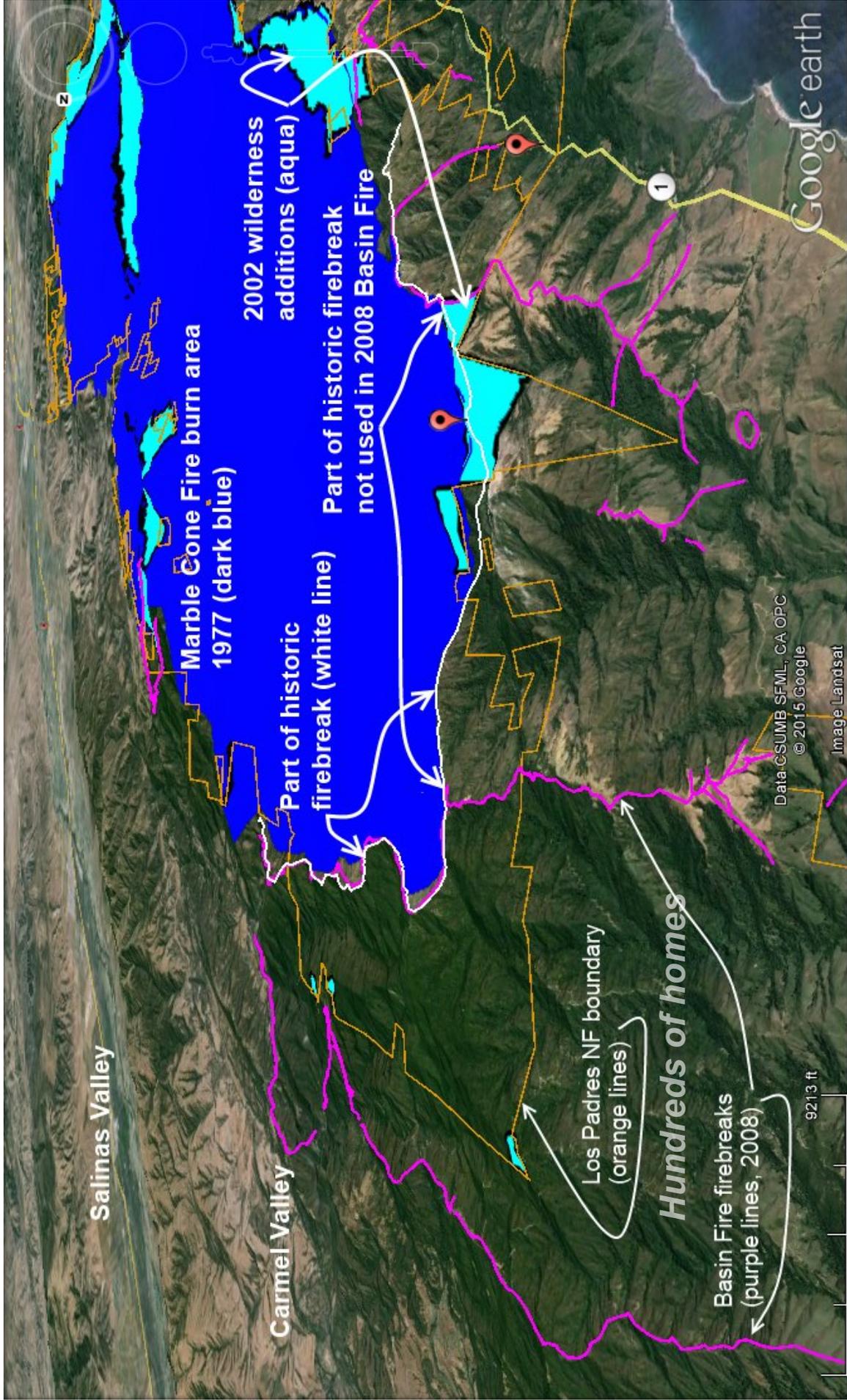
Michael Caplin testimony on The Federal government's role in wildfire management, the impact of fires on communities, and potential improvements to be made in fire operations" May 5, 2015.



EXHIBIT 11

Wildfire fuels left in creek after fuel reduction project due to over-regulation of wetlands/waterways.

Michael Caplin testimony on "The Federal government's role in wildfire management, the impact of fires on communities, and potential improvements to be made in fire operations" May 5, 2015.



Michael Caplin testimony on
 The Federal government's role in wildfire
 management, the impact of fires on communities, and
 potential improvements to be made in fire operations"
 May 5, 2015.

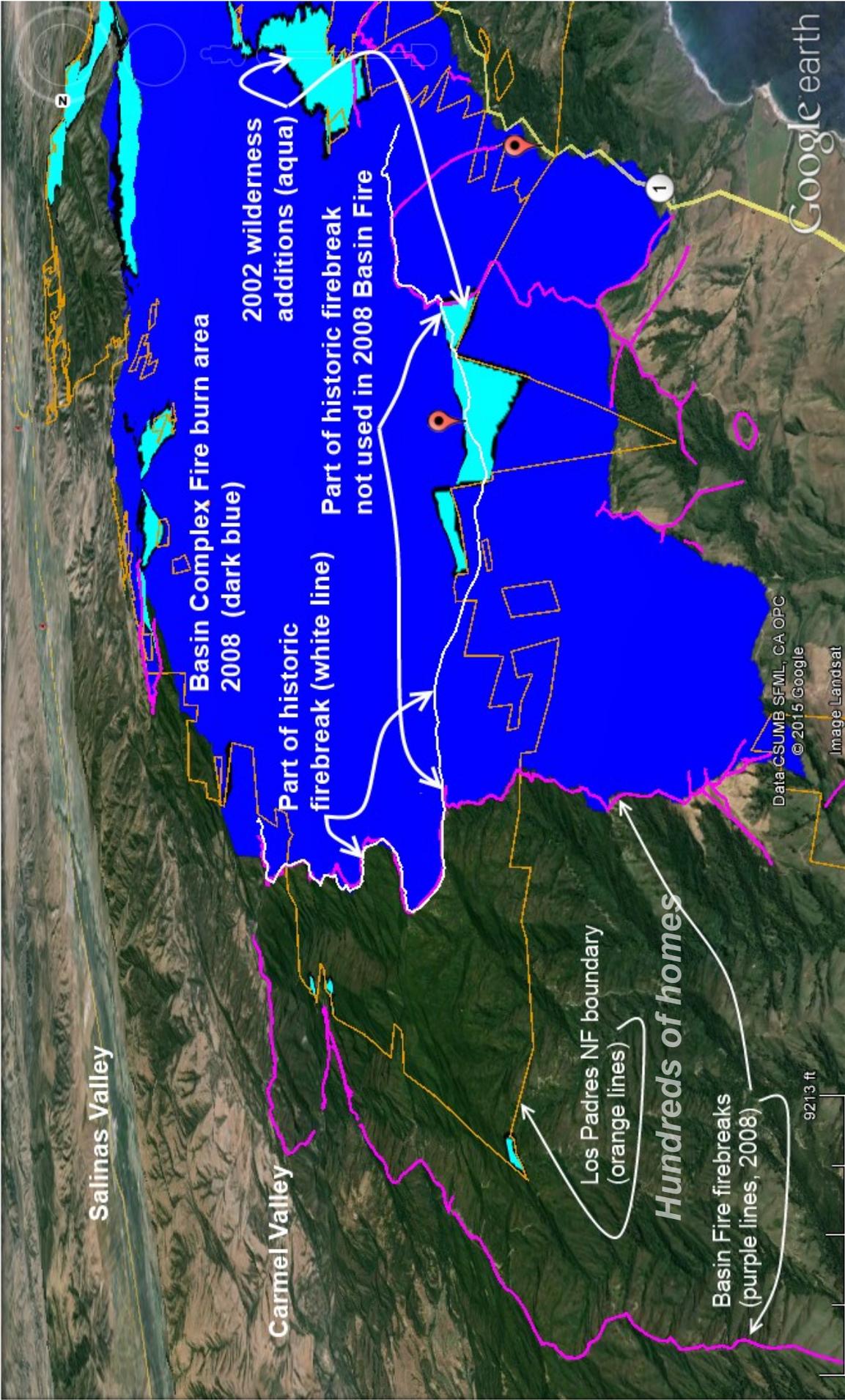


EXHIBIT 12, PG 2

Michael Caplin testimony on
 The Federal government's role in wildfire
 management, the impact of fires on communities, and
 potential improvements to be made in fire operations"
 May 5, 2015.