



File Code: 1570

Date: March 8, 2002

Dear Mediated Settlement Partners:

Those of you familiar with the Sierra Nevada Forest Plan Amendment, Final Environmental Impact Statement (FEIS) and record of Decision (ROD), otherwise known as the Framework, may have already read the following, regarding our meeting plan amendment obligations under the Mediated Settlement Agreement (MSA). The FEIS states:

Sequoia National Forest Mediated Settlement Agreement. The Sequoia National Forest Mediated Settlement Agreement, 1990, and the Presidential Proclamation, 1992, define management of giant sequoia groves until the Tahoe, Sierra, and Sequoia National Forests complete forest plan amendments governing giant sequoia grove management. Subject to funding, these forest plan amendments are scheduled for completion by 2003. With respect to the Sequoia National Forest, this FEIS meets Forest Service obligations regarding the NEPA process for livestock grazing, oak management, old growth, wildlife, fisheries, and riparian area management. Areas in the settlement agreement not addressed in this FEIS include allowable sale quantity, suitable lands, roadless areas, special areas, and off highway vehicle use (FEIS p. 2-21).

I am writing this letter to explain more fully where we believe the Framework does and does not meet our obligation to take certain provisions of the MSA through the Land Management Plan (LMP) amendment and the NEPA process. I will start by recalling the structure of the MSA itself.

Basically, the MSA does these four things:

- 1) It makes some land allocations on an interim basis pending LMP amendment (e.g.: giant sequoia grove delineation and management)
- 2) It specifies management prescriptions, standards and guidelines in some resource areas pending LMP amendment (e.g.; riparian standards and guidelines)
- 3) It requires collection of certain data and completion of studies
- 4) It provides for future dispute resolution

Of these four, the first two must go through the NEPA process as part of our LMP amendment process; the second two remain in force until Plan revision (MSA p. 3). In this letter I am dealing with the specific MSA items in the first two categories that we agreed to take through the



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**Land Management Plan
1990 Settlement Agreement**

LMP amendment process. As you will see, the Framework took care of many, though not all, of them.

The following tables detail the MSA items that are to go through LMP amendment and the NEPA process. They are taken from the comprehensive list of MSA tasks included in the appendix of each of our annual reports for the last 10 years. On Table 1, I have indicated where in the Framework a given MSA topic is dealt with most explicitly. It is very important to understand that these are not the only possible references in the Framework since there is a high degree of overlapping direction (See ROD Appendix A, p. 22-24). I have included the Framework references I felt were the most convenient sources of direction, both the place for you to start to understand provisions of the Framework in these subject areas and to see that our LMP amendment and related NEPA obligations have been discharged for these subject areas.

Table 1: The MSA and the Framework

MSA Topic	Where Found in Framework
Riparian Standards and Guidelines (MSA p. 5)	Framework ROD, Appendix A, p. 5-8 & 51-62
Grazing and Hardwoods (MSA p. 28-40)	Framework ROD p. 49 Framework ROD, Appendix A, p. 14, 27, 30, 31, 38, 57-62
Furbearer Standards & Guidelines (MSA p. 55-58)	Framework ROD, Appendix A, p. 1-4, 29, 39, 45
Goshawks (MSA p. 58-59)	Framework ROD, Appendix A, p. 36-37
Fisheries – Resource Aspects (MSA p. 64-66)	Framework ROD, Appendix A, p. 5-8 & 51-62
Roadless Areas (MSA p. 70-75)	Framework ROD, Appendix A, p. 33
Snag Standards and Guidelines (MSA p. 89-91)	Framework ROD, Appendix A, p. 4, 11, 28, 42
Off-Highway Vehicle (OHV) Use (MSA p. 104-108)	Framework ROD, Appendix A, p. 32, 57
Cumulative Watershed Effects (CWE) Methodology (MSA p. 110)	Framework ROD Appendix A, p. 53
Soil Standards and Guidelines (MSA p. 128-130)	Framework ROD Appendix A, p. 32
Monitoring (MSA, Appendix O)	Framework ROD p. 49, FEIS Appendix E

10) Recommend Moses Inventory Roadless Area for wilderness classification	LMP Amendment or Revision
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I hope this explanation answers your questions about the status of the MSA provisions requiring Forest Plan Amendment and NEPA process. If you have any further questions, please contact Julie Allen at (559) 784-1500, extension 1160.

Sincerely,

/s/ Juliet B. Allen "for"

ARTHUR L. GAFFREY
Forest Supervisor

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**MEDIATED SETTLEMENT AGREEMENT
FOR THE SEQUOIA NATIONAL FOREST**

July 1990

I. PREAMBLE

- A. On February 25, 1988, the Regional Forester for the Pacific Southwest Region of the United States Forest Service made a decision to adopt a Land and Resource Management Plan ("Forest Plan," "Plan," or "LMP") for the Sequoia National Forest. His decision was based on a Final Environmental Impact Statement ("EIS") on the proposed Plan and was explained in a Record of Decision ("ROD").
- B. Numerous parties appealed the decision, challenging the Plan and/or the EIS on many grounds. The appellants represent a very wide range of interests and a wide range of forest users. The appellants in each appeal are identified in Exhibit A to this Agreement. The appellants filed their various Statements of Reasons by July 20, 1988. The Forest Service filed its Responsive Statements by March 8, 1989. All appeals not otherwise disposed of were then extended pending the outcome of mediated negotiations.
- C. During the fall of 1988, the Forest Service entered into an agreement with the
- sequoia mediation agreement, july 1990*

California Department of Fish and Game ("DFG") to settle its appeal, No. 2403. That agreement is set forth in a letter from James A. Crates, Forest Supervisor, to George Nokes, Regional Manager, DFG, dated November 15, 1988 (Exhibit B). The issues raised by DFG were also raised by incorporation in Appeal No. 2332. The terms of Exhibit B, therefore, are incorporated by this reference into this Agreement. Where any more stringent requirements are imposed by this Agreement, they will prevail over the terms of Exhibit B.

D. In December, 1988, the Forest Service hired Ms. Alana Knaster of the Mediation Institute to meet with the Forest Service and the various appellants to make a recommendation on whether the parties should attempt to negotiate a settlement and, if negotiations proceeded, to serve as mediator. During January and February, 1989, Ms. Knaster met with the Forest Service and the appellants and recommended that negotiations ensue. Subsequently, the Forest Service and appellants that chose to participate in the negotiations agreed upon Protocols to govern the proceedings. The Protocols are incorporated by reference into this agreement attached hereto as Exhibit C. Where any more stringent requirements are imposed by this Agreement, they will prevail over the terms of Exhibit C.

E. Between March, 1989 and June, 1990, the parties spent many days in face-to-face discussion and negotiation over issues raised in the appeals and an

enormous number of additional hours developing and discussing proposed solutions to identified problems. Many of those solutions require that information presently lacking be gathered and utilized, both to check the validity of Plan assumptions and to refine the Plan over time. The parties, therefore, decided to settle the Plan appeals by (1) presently disposing of some issues on the merits; and (2) setting up processes for developing needed information, monitoring Plan implementation, and addressing other issues over time.

- F. The parties have differing views on many legal and factual issues raised in the appeals. A party's consent to this compromise agreement does not imply such party's concurrence in any particular interpretation of law or fact, except as otherwise expressly stated in this Agreement.
- G. The parties concur that this Agreement binds them only as provided herein. The parties enter into this Agreement pursuant to compromise because of the unique factual circumstances in the Sequoia National Forest and in settlement of disputed claims to avoid prolonged and complicated litigation and to further the public interest. The parties concur that this Agreement applies solely to the issues raised in administrative appeals of the Land Management Plan for the Sequoia National Forest. This Agreement terminates at such time as the Plan is revised in accordance with 36 C.F.R. § 219.10(g).

- H. In the interim period between signing this Agreement and finalizing an amendment incorporating this Agreement into the Plan, the Parties agree that the provisions of this Agreement shall be implemented according to the schedules indicated throughout this document. Such interim action conforms to NEPA direction that, until a record of decision is issued, the agency must not limit the range of choice [40 CFR 1506.1(a)(2)]. Continuing implementation of the Plan as is would destroy the option of implementing some of the provisions of the Agreement; therefore, the Parties agree to this interim direction. The Forest Service anticipates that the NEPA process, including preparation of amendments and an EIS, may take up to two years.
- I. Throughout this Agreement, the Forest Service has agreed to perform certain tasks by specified dates or time periods. All parties contemplate that these deadlines are reasonable and that the Forest Service shall adhere to the deadlines. The parties recognize, however, that events arising from causes beyond the reasonable control of the Forest Service despite the due diligence and good faith efforts of the Forest Service may preclude the Forest Service from completing the specified task by the specified deadline. In such an event, the Forest Service shall, within 21 days of the specified deadline, notify all parties of its inability to complete the task within the specified time, the reasons for that inability, and the date by which the task shall be completed. Any party may challenge in court either the failure to complete the task by the specified

date or the new date set forth by the Forest Service for completion of the task. If such a challenge is made, the burden of proof shall be on the Forest Service to show that the failure to complete the task by the specified date was based on events arising from causes beyond the reasonable control of the Forest Service despite due diligence and good faith efforts and that the new date for completion is reasonable. Any cause of action contemplated by this paragraph arises only for the parties to this Agreement. The parties also contemplate that the existence of litigation against the Sequoia National Forest shall not be precluded from consideration as an event arising from causes beyond the reasonable control of the Forest Service.

II. AGREEMENTS

A. *Riparian Areas, Including Meadows*

1. The Riparian Standards and Guidelines (attached to this Agreement as Exhibit D) shall be incorporated into the Plan through Plan amendment and its attendant NEPA process.
2. Interim: The Riparian Standards and Guidelines as set forth in Exhibit D shall be fully implemented in the interim period before the amendment to the Plan is effective. Any timber sale contract predating this Agreement will be modified to conform to the Riparian Standards and Guidelines.

3. Landings and non-system roads that have been put to bed, are located within streamside management zones, and would be inconsistent with the Standards and Guidelines set forth in Exhibit D, will not be reopened and reused unless the Sequoia National Forest makes a specific finding, based on a project environmental document, that using such roads or landings would cause less harm to riparian resources than building new roads and/or landings.

B. *Giant Sequoia Groves*

1. Background: The Parties to this Agreement state:
 - a. The Giant Sequoia Groves in Sequoia National Forest ("Groves") are a unique national treasure that shall be preserved.
 - b. The goal for the administration of the Groves shall be to protect, preserve, and restore the Groves for the benefit and enjoyment of present and future generations.
 - c. The Converse Basin area has been subject of significant timber harvest since the late 1800s. With the exception of designated areas to be preserved, this area of the Forest will continue to be available for commercial logging.

2. Implementation:

a. Interim Protection

- (1) Until a final Grove boundary for each Grove is determined in accordance with this Agreement, that Grove, based on the most recent data for the location of giant sequoias, shall be protected, including an interim 500 foot buffer extending from a hypothetical perimeter line around the outermost known giant sequoias in the Grove. This will be a no logging, restricted mechanical entry area.

For purposes of this Agreement, the following

mechanical/motorized uses only will be permitted inside an interim or final Grove boundary line:

- (a) expansion of the parking lot at the Trail of the 100 Giants;
- (b) use of existing roads;
- (c) existing use of OHVs on: i) trail #31E56 inside Deer Creek Grove, ii) trail #31E30 from Belknap to Cedar Slope inside McIntyre Grove, and iii) any established trails identified by the Forest Service as existing on the date of this Agreement, with written notice to all parties, provided however, that

OHV use is subject to final determinations made by the Trail Management Plan;

- (d) Management in accordance with approved fuel load reduction plans;
- (e) use of light equipment to build and/or maintain trails; and
- (f) use of equipment to fight wildfires (use of heavy equipment off of existing roads will require Forest Supervisor approval)
- (g) use of battery operated wheelchairs.

New mechanical/motorized uses shall not be automatically precluded within Grove Influence Zones.

- (2) An additional zone of 500 feet, called the Grove Influence Zone, shall be protected from logging activities inconsistent with Section B.2.d.(1). of this Agreement prior to the identification of final administrative Grove Influence Zone boundaries.
- (3) Notwithstanding subsection (2) above, where no Decision Notice

has been executed as of the date of this Agreement for a timber sale within the Grove Influence Zone, no logging plans will be approved by the Forest Supervisor within 1000 feet of the hypothetical perimeter line of the Rundel-identified grove until the Forest Supervisor has determined the Grove and Grove Influence Zone boundaries in accordance with this Agreement.

b. Grove Management

- (1) Within this Plan period, it is desirable that the Sequoia National Forest shall inventory all giant sequoias (3 feet or larger dbh) in each Grove by size and approximate location in order to provide a suitable data base for future protection of the sequoias; the Sequoia National Forest shall request no less than \$40,000 per year in its annual budget request starting FY1992 and extending through the end of the Plan period for giant sequoia inventory purposes, or until the inventory is completed. Priority for inventory of Giant Sequoia Groves will be pursuant to subparagraph (2), below.

- (2) Within this Plan period, the Sequoia National Forest shall begin to inventory and evaluate each Grove for its fuel load build-up. Based on this inventory and evaluation, Groves, or parts of Groves, with risks of catastrophic fire and/or exclusion of new giant sequoia

regeneration because of unnatural fuel load build-up will be identified and prioritized for fuel load reduction treatment. Pursuant to this prioritization, the Forest Service shall begin addressing the Grove fuel load build-up problems during this plan period, with public participation and planning in accordance with NEPA.

- (3) Except as set forth in section II.B.2.a.(1), there shall be no new road-building, logging or mechanical/motorized entry (except for entry on existing roads) within the final administrative boundary of any Grove during the period of time in which the Sequoia National Forest activities are covered by the 1988 Land and Resource Management Plan. For purposes of this Agreement, prohibited logging shall mean any logging activity except logging conducted for the limited and specific purpose of reducing the fuel load in the Groves pursuant to a Grove specific fuel load reduction plan and Grove specific EIS. The only salvage logging permitted in the Groves will be that logging permitted and described in the previous sentence. It is agreed that the methods to be used to remove specific trees from the Groves, as part of an adopted fuel reduction plan, shall be the most environmentally sensitive available. The objective of fuel load reduction plans shall be to

preserve, protect, restore and regenerate the Giant Sequoia Groves, without unnecessary damage to any old-growth trees in the Grove. Any logging component of a fuel reduction program in a grove shall protect the old-growth pine, fir, incense cedar and black oak components of the stand. Any tree identified for removal under this paragraph shall be so identified in the field in consultation with a forester from either the Save-the-Redwoods League ("League") or the Sierra Club ("Club").

- c. *Grove and Grove Influence Zone Boundary Identification Procedures*
- (1) The Sierra Club, the Save-the-Redwoods League, the timber industry ("Industry") and the Forest Service shall each designate one representative to serve on the Grove Boundary Team. The Team shall begin to identify final administrative Grove and Grove Influence Zone boundaries prior to September 15, 1990. The Team shall follow the standards and guidelines outlined in subparagraph 2 below in determining final administrative Grove and Grove Influence Zone boundary lines. The Team shall recommend final administrative Grove and Grove Influence Zone boundaries to the Forest Supervisor by December 31, 1991, subject to paragraph II.B.2.c.(4). Copies of the recommendations shall be sent to all parties, who shall have 45 days from mailing to submit

comments for the Forest Supervisor's consideration.

(2) Standards and Guidelines for Grove and Grove Influence Zone

Boundary Identification:

- (a) There will be two zones created adjacent to and external to the hypothetical perimeter line of the outermost known giant sequoia trees in each Grove. The first zone will be included within the final administrative Grove boundary. The second zone shall be called a Grove Influence Zone.
- (b) Though Grove identification is a matter of interpretation, and some adjacent Groves shall be managed as if they were a single large Grove (as later described in this Agreement), the Rundel Grove identifications in the Forest Plan are used in this Agreement by name as the basis for Grove and Grove Influence Zone boundary identification.
- (c) Sequoia Grove boundaries have not yet been precisely defined. Giant sequoias naturally occur in "scattered" locations outside of, or on the periphery of, aggregations of giant sequoias consensually recognized as sequoia "Groves."

- (d) The final administrative Grove boundaries shall be identified to include both (i) the area within a hypothetical perimeter line around the outermost giant sequoia trees in the Grove, and (ii) a buffer area (which may differ in size for different groves, as later described) beyond the hypothetical perimeter line which shall be included in the final administrative boundary of a Grove.

- (e) In determining the hypothetical perimeter line around the outermost giant sequoia trees in a Grove (which becomes the basis for identifying the interim protection zone and the administrative boundaries of the Grove and Grove Influence Zone), the following guidelines shall apply:
 - i) Any naturally occurring giant sequoia (1 foot or larger dbh) which is located within 500 feet of at least 3 other giant sequoias (each 1 foot or larger dbh), shall always be included within the hypothetical perimeter line; provided, however, that the Grove Boundary Team may reasonably adjust the perimeter line for a specific Grove so long as there is a rational basis for the adjustment (such as topographic features) and all participating team members

agree to the adjustment.

ii) Notwithstanding subsection (i) above, all giant sequoias consensually recognized as being included in a Grove identified in the Rundel Grove list used in the Forest Plan shall always be included within the hypothetical perimeter line. In other words, the guidelines for identifying the hypothetical perimeter line shall not be used to fragment the existing groves as identified by Rundel.

iii) Where, as described later in this Agreement, several adjacent Groves are to be managed as if they were one large Grove, the hypothetical perimeter line, as defined, shall be a single line around the outermost giant sequoia trees in the complex of Groves, taken as a whole.

(f) Boundaries shall also be identified for Grove Influence Zones (which may differ in size for different Groves, as later described), which shall be contiguous to each Grove. (See Section B.2.d. regarding management of Grove Influence Zones.)

- (g) The parties agree that the Grove and Grove Influence Zone boundary guidelines are minimum protection criteria. The parties also agree that management protection such as SOHAs, roadless area management, condor nesting sites, etc., may provide for protection of areas adjacent to Giant Sequoia Groves which exceed the minimum protection described below.

- (h) Further, the parties also agree that the types of management protection such as those set forth in (g) above may also minimize or eliminate issues concerning precise Grove and Grove Influence Zone administrative boundaries for many Groves, as well the presence of adjacent National Park, State, Indian, or private lands.

- (i) Topographical features such as ridges may take precedence over field distance measurements in finalizing boundaries of a Grove and/or Grove Influence Zone where such features logically and physically separate giant sequoias from the general forest. However, man-made impacts such as existing roads shall not diminish the size of the Grove and/or Grove Influence Zones, unless agreed upon pursuant to subsection

(k) of this section.

(j) Specific Grove, Grove Influence Zone, and Isolated Sequoia Tree Standards and Guidelines

i) Black Mountain Grove: (a) The narrow corridor of general forest between the Black Mountain Roadless Area and the Black Mountain Grove in Sections 1 and 12 will be a no logging, restricted mechanical entry area. The extension of road 21S12, beyond its intersection with road 21S25 in Section 1, shall be closed to the public. (b) The balance of the Black Mountain Grove shall receive a 500 foot no logging, restricted mechanical entry zone outside of the hypothetical perimeter line around the outermost giant sequoias in the Grove within its final Grove boundary line and an added 500 foot Grove Influence Zone.

ii) Belknap McIntyre/Wheel Meadow Grove Complex: This will be treated as one large Grove in drawing the hypothetical perimeter line of outermost giant sequoias in the Grove. The Grove Boundary Team may consider a no logging, restricted mechanical entry zone that would extend north and east to Highway 190. The other boundaries of the

Grove shall include a 500 foot no logging, restricted mechanical entry zone outside of the hypothetical perimeter line of outermost giant sequoias of the Grove within the final Grove Boundary line and an added 500 foot Grove Influence Zone.

iii) The Greater Evans Grove Complex: The following Groves shall be integrated into this complex and managed as one large Grove in drawing the hypothetical perimeter line of outermost giant sequoias in the Grove: Lockwood Grove, Evans Grove, Kennedy Grove, Burton Grove, Little Boulder Grove, and Boulder Grove. There shall be a 500 foot no logging, no mechanical entry zone outside of the hypothetical perimeter line of the outermost giant sequoias in the Grove within the final Grove boundary line and an added 500 foot Grove Influence Zone.

iv) Freeman Creek Grove and Watershed: (a) There shall be no logging and no motorized vehicle use by the public anywhere in the Freeman Creek Grove Management Area as shown on the map, Exhibit E. The Sequoia National Forest shall manage this Area as a Botanic Area.

(b) All land areas outside of the Botanic Area but within the Freeman Creek watershed, west of Lloyd Meadow Road, as designated on the map, Exhibit F, shall be managed by the Regulation Class II, single tree or small group selection uneven-aged management prescription. There shall be no green timber sales scheduled in the watershed west of the Botanic Area in this planning period. Existing plantations may be managed; provided, however, that no management prescription outside and upslope of Giant Sequoias shall adversely impact the hydrology of the Sequoias. (c) The Freeman Creek Trail from North Road to the Lloyd Meadow Road shall be designated as Sensitivity Level One.

v) Indian Basin Grove: (a) There will be no logging except for safety reasons in and near the Princess Campground area south and east of Highway 180, and (b) a 500 foot no logging, restricted mechanical entry zone outside of the hypothetical perimeter line of the outermost giant sequoias in the Grove within the Grove boundary plus an added 500 foot Grove Influence Zone.

vi) The following Groves shall receive a 500 foot no logging, restricted mechanical entry zone outside of the hypothetical perimeter line of the outermost giant sequoias in the Grove within the Grove boundary line plus an added 500 foot Grove Influence Zone: Bearskin Grove, Big Stump Grove, Deer Creek Grove, Grant Grove, Landslide Grove, Long Meadow Grove, Packsaddle Grove, Peyrone Grove, Red Hill Grove, Redwood Mountain Grove, Starvation Creek Grove and Tenmile Grove.

vii) The following Groves shall receive a 300 foot no logging, restricted mechanical entry zone outside of the hypothetical perimeter line of the outermost giant sequoias in the Grove within the Grove boundary line plus an added 300 foot Grove Influence Zone: Powderhorn Grove, Alder Creek Grove, Abbott Creek Grove, Cherry Gap Grove, Mountain Home Grove and Cunningham Grove.

viii) The six hundred (600) acres of Converse Basin Grove recommended for preservation (see section B.2.e.(2) below) shall receive a 500 foot no logging, restricted mechanical entry zone outside of the preservation area.

ix) The following Groves, and their adjacent areas, are protected because of other designations and do not require precise boundary determinations for Sequoia Grove protection purposes: Agnew Grove (Wilderness Area), Burro Creek Grove (to be proposed as Wilderness), Deer Meadow Grove (protected portion of Agnew Roadless Area), Dillonwood Grove (to be proposed as Wilderness), Maggie Mountain Grove (Wilderness), Middle Tule Grove (part Wilderness and part to be proposed as Wilderness), and Silver Creek Grove (to be proposed as Wilderness).

x) Naturally occurring isolated giant sequoia trees (3 feet or larger dbh) located inside or outside of the Grove Influence Zones shall be protected by a restricted mechanical entry within an area equal to at least 2/3 the height of the tree, provided; however that only single tree selection logging is permitted in this area, so long as the giant sequoia tree is protected from unnecessary logging damage.

xi) Naturally occurring giant sequoia trees (under 3 feet

dbh) located inside of the Grove Influence Zone shall be protected from all logging operations, including specifically protecting the root system. Every reasonable effort shall be made to protect naturally occurring giant sequoia trees (under 3 feet dbh) located outside of the Grove Influence Zone from road construction, cable logging, and other logging activities. No additional buffer will be required for these trees, though the Forest Service shall make an effort to preserve them within wildlife clumps, within other small areas not logged under the regeneration mosaic silvicultural prescription, or within areas reserved to meet the seral stage diversity requirements.

- xii) Any detached naturally occurring group (10 or more giant sequoia trees with at least 4 trees with a 3 foot or larger dbh) located outside the Grove Influence Zone, and not identified by Rundel as included in an existing Grove, shall be given the designation of "Grove" and given a 300 foot no logging, restricted mechanical entry zone within the Grove boundary and a 300 foot Grove Influence Zone; provided, however, that the Grove Boundary Team agrees with this designation. If the Grove Boundary Team cannot

agree, the unresolved issue shall be submitted to the Expert Panel for its determination and recommendation to the Forest Supervisor.

xiii) If previously unknown Giant Sequoia trees of any size and number outside of the interim buffer or final Grove boundary are discovered, the applicable Grove boundary and/or Grove Influence Zone shall be modified in accordance with the guidelines set forth in this section.

(k) The Grove Boundary Team may reasonably adjust final boundaries of Groves and/or Grove Influence Zones, subject to final approval by the Forest Supervisor, either to expand or contract these zones, for a specific Grove, so long as there is a rational basis for the adjustment (such as topographic features) and all participating team members agree to the adjustment.

(l) With the exception of Converse Basin, these Grove and Grove Influence Zone boundary line standards and guidelines are solely for the purpose of protecting the Groves and the adjacent areas, and are not intended as a

"release" or a management prescription for other areas of the Forest, which shall be managed or protected as otherwise provided in the forest plan and in this Agreement.

- (3) If any logging is planned to occur within 1,000 feet of any interim or final Grove Boundary, a special written notice shall be sent to the appellants. This notice shall include a topographical map which specifically (1) locates the boundary of the proposed cutting unit, (2) locates the Forest Service interim or final Grove Boundary, (3) predicts the distance between the two, and (4) specifies a date and time, no sooner than 30 days, unless otherwise agreed upon, for the interested parties to accompany the Forest Service into the field to review the plan on the ground with the objective to resolve differences prior to the preparation of an EA or EIS.
- (4) If Grove Boundary Team members fail to reach unanimous agreement on permanent Grove and Grove Influence Zone boundaries for all Groves prior to December 31, 1991, or within a reasonable time thereafter, if a specific extended time period is agreed upon in writing by all team members, an Expert Panel of three people shall be formed. The Sierra Club and

Save-the-Redwoods League shall appoint one member, the Forest Service shall appoint one member (acceptable to the timber industry), and the two appointees shall choose a third Panel member. All should have a background in giant sequoia protection. The Panel will address itself to each Grove as to which the Team failed to reach agreement. The Panel will review the maps, the differing opinions of the Team Members, and will go into the field to review the matter on the ground. The Panel will make a formal, public written recommendation to the Forest Supervisor for the boundary line of each disputed Grove. The Forest Supervisor shall, upon receiving the final recommendations of the Grove Boundary Team and the Expert Panel (if one is convened), issue a Plan amendment establishing the boundaries of Groves and Grove Influence Zones.

- (5) Except as otherwise provided in this agreement (see section B.2.e.(2) below, re: Converse Basin), each Grove, with final administrative Grove boundaries determined as described herein, shall remain outside the suitable land base.

- d. Complementary Management in Grove Influence Zones and Outside of Groves

- (1) Within the Grove Influence Zone, only Regulation Class II, single tree, small group uneven-aged management silvicultural prescriptions will be permitted both before and after final administrative Grove Influence Zone boundaries are identified; provided, however, that if a more protective management designation also applies to the area, or portions of the area (such as streamside management zones, SOHAs, etc.), the more protective designation shall govern what, if any, logging activity is allowed in the Grove Influence Zone.

- (2) In all situations where logging or road construction is planned outside of, but upslope of a Grove, a special written notice shall be sent to all appellants during initial development of project alternatives. This notice shall explain fully the action proposed and shall include a topographical map which specifically (1) locates the proposed cutting unit or road to be built, (2) locates the Grove boundary, (3) predicts the distance between the two, and (4) specifies a date and time, no sooner than 30 days, unless otherwise agreed upon, for the interested parties to accompany the Forest Service into the field to review the plan on the ground with the objective to resolve differences prior to the preparation of an EA or EIS. The Decision document for any such activity shall include a

specific finding that the Grove will not be harmed.

- (3) The Sequoia National Forest shall consider Regulation Class 2 helicopter single tree removal for logging operations outside and upslope of, and in close proximity to, a Grove.

e. Special Area Designations

- (1) The Sequoia National Forest shall manage the Freeman Creek Grove Management Area as a Botanic Area. (See further discussion in section B.2.c.(2)(j)(iv) above).
- (2) The Sequoia National Forest shall amend the Plan to provide for management of the Converse Basin Grove under Regulation Class II small group or single tree selection and shelterwood silvicultural prescriptions; provided, however, that the regeneration mosaic prescription may be used, if appropriate, in certain limited circumstances (ie. areas logged since circa 1950). No other clearcutting will be permitted in the Converse Basin Grove. Such management activity in the Converse Basin Grove must be pursuant to a plan and EIS that shall, among other things, (a) allocate the 600 acres previously recommended by the Forest Service for preservation to preservation management with a buffer,

and (b) allocate 10% of the remaining (approximately) 2400 acres (240 acres) in the Grove for preservation and regeneration of Giant Sequoias to replace trees cut at the turn of the century. This 10% should be chosen in areas where there has been significant regrowth of the giant sequoia (ie. areas where 70-100 year old giant sequoias are abundant), and no designated preservation units shall be less than 40 acres. All giant sequoias 3 feet or larger dbh in Converse Basin shall be preserved, regardless of any other permitted logging activity. Small giant sequoias may be cut along with other species.

f. Regeneration of Cut-Over Giant Sequoia Groves

- (1) The objectives of regenerating cutover Giant Sequoia Groves will be to restore these areas, as nearly as possible, to the former natural forest condition.

- (2) The Forest shall implement the regeneration plan required by the Stipulation for Entry of Judgment dated 12/27/89, in Sierra Club v. U.S. Forest Service, Case No.CVF-87-263 EDP.

g. This Agreement and the standards and guidelines which it contains shall be interpreted liberally, in the event of ambiguity, in order to

implement the purpose of protection of the Giant Sequoia Groves and Grove Influence Zones.

- h. Research projects may be permitted if consistent with this Agreement. Research projects are subject to NEPA.

C. *Grazing and Oak Management*

1. Introduction: Livestock grazing is subject to applicable riparian standards and guidelines. The Plan will be amended to clarify that Animal Unit Months ("AUMs") allotted under the Forest Plan will not be increased over recent historic levels of approximately 68,000 annually.

2. Livestock Grazing in Blue Oak Savanna -- The Plan shall be amended to change management area prescription B06 on page 4-77 of the Plan to:
 - a. Range
 - (1) Give priority to maintaining and enhancing blue oak.

 - (2) Develop water, fences, trails, etc., to facilitate optimum use of forage.

 - (3) Retain at least 700 lbs./acre residual dry matter (RDM) as the utilization standard for livestock use.

- (4) Winter grazing allotments will limit browse utilization to a change of no more than 15% of preferred browse or 5% of staple species to heavily browsed conditions (form class 3 or 6). Limited browsing will maintain browse in satisfactory condition and indicate that green feed is available for wildlife during winter "green up" (inadequate green forage period).
- (5) Allotment Management plans will emphasize wildlife use of mast crops.
- (6) Pursuant to a contract with the Forest Service, the University of California through the Fresno Foundation California Agricultural Technology Institute, has completed and published in November, 1989 a study of reproduction and age-class frequency of blue oaks on the Sequoia National Forest. Based upon the results of this study, the Sequoia National Forest will adopt allotment specific minimum threshold levels of oak recruitment for implementation in allotment plan revisions beginning in 1991 or sooner as specified in item (7) below.

(7) The Sequoia National Forest will identify allotments where oak reproduction is at or below the minimum recruitment threshold level and will develop long-term strategies to increase recruitment of oaks into these stands. Upon renewal, allotment management plans will be used to prescribe management strategies to improve management of oak and enhance recruitment based on the University of California study of the Sequoia National Forest along with other studies. A variety of strategies will be considered to obtain an adequate recruitment of oak. The Forest Service will monitor recruitment of oak species into the stands as part of allotment plan inspections and analysis.

3. Oak Management-- The Plan shall be amended to change management direction on page 4-30 of the Plan under Oak Management to:
- a. In mixed conifer-hardwood stands, leave at least 20 square feet per acre basal area of oaks where this currently exists.
 - b. Where it currently exists in pure hardwood stands maintain a minimum average of 50 square feet per acre basal area. Leave

heavy mast-producing trees in any harvest of oaks.

- c. Where it currently exists, leave a minimum of 30 square feet per acre basal area of oaks in mixed conifer hardwood stands identified as key deer areas.
 - d. Live oak stands will not be subject to vegetative manipulations other than prescribed burning, thinning for vigor, or for wildlife and watershed habitat improvement.
 - e. In mixed hardwood-conifer or hardwood stands, favor retention of oak trees exhibiting active use as cavity nesting sites or graineries.
4. Black Oak. Prescription OW6 -- The Plan shall be amended to change management area prescription OW6 on pages 4-79 and 81 of the Plan to:

Emphasis

Livestock grazing will be emphasized in black oak woodlands. Where black oak stands are overstocked, thinning may be done to improve age structure, mast production, vigor, or to create fuelbreaks. Range improvement will be provided as needed.

Opportunities

Wood harvesting in black oaks will be permitted to improve age structure, mast production, vigor, or to create fuelbreaks. Recreation activities which are acceptable within Semi-Primitive Non-Motorized class will be emphasized. Camp and picnic facilities will not be developed. Dispersed recreation will be limited. Watershed improvements which enhance and protect range productivity will receive priority. Transportation system planning and management will favor range activities. Wildlife habitat will be managed to maintain or enhance harvest species and to maintain viable populations of oak woodland dependent species.

Fish and Wildlife

- a. Provide for 1.5 snags per acre. See section J.1.c.
- b. Maintain at least 50 square feet basal area per acre of oaks where it currently exists.
- c. Maintain understory vegetation to provide horizontal and vertical diversity.
- d. Ensure a stable or upward trend in supply of oaks.

- e. There should be a good distribution of all age classes of oaks that will optimize acorn production. The desired objective is to establish good regeneration and a healthy, viable stand.

seedlings	0-20 years
saplings	21-80 years
mature and decadent	81-250 years

Range

- a. Develop water, fences, trails, etc., to facilitate optimum use of forage.
- b. Retain at least 700 lbs./acre residual dry matter (RDM) as the utilization standard for livestock use.
- c. Winter grazing allotments will limit browse utilization to a change of no more than 15% of preferred browse or 5% of staple species in heavily browsed conditions (form class 3 or 6). Limited browsing will maintain browse in satisfactory condition and indicate that green feed is available for wildlife during winter "green up" (Inadequate green forage period).

- d. Allotment Management plans will emphasize wildlife use of mast crops.

- 5. Livestock Grazing of Burned Mixed Chaparral -- The Plan shall be amended to change management area prescription MC6 on page 4-82 of the Plan to:

Fish and Wildlife

- a. Provide wildlife adaptations in all water developments.
- b. Consider wildlife needs for cover and edge in vegetation manipulation projects.

Range

- a. Use prescribed fire as primary method to accomplish age class management.
- b. Implement vegetative manipulation projects on slopes less than 40% when crown cover of browse species is greater than 70% or average height exceeds 5 feet.
- c. Develop water supplies, fences, and trails where needed on

intensively treated lands.

- d. Allotment Management Plans will be used to prescribe management strategies for the first three growing seasons to manage livestock grazing to promote recovery of the mixed chaparral community and maintain native plant species diversity following prescribed fire. Salting, managing water development, riding, deferring or changing season of use and drift fencing are some of the strategies to be considered for implementation following fire to maintain native plant species diversity.
6. *Effects of Prescribed Fire on Age-Class and Diversity in Mixed Chaparral* --
- A Plan amendment will change management indicator species on pages 3-25, 3-26, and 3-27 of the plan to:
- a. Page 3-25 -- Species associated with early successional stages: deer and California quail.
 - b. Pages 3-26 and 3-27, Table 3.6, "Indicator Species Used to Determine Changes in Habitat" on page 3-26 and the write-up on "Early Successional Stage" on pages 3-26 and 3-27 of the plan will be changed to include the California quail.

7. Prescription MC5 -- The Plan shall be amended to change management area prescription MC5 on page 4-69 of the Plan to:

Fish and Wildlife

- a. There should be a good distribution of chaparral age classes with the objective of maintaining a healthy, viable stand.

seedlings, sprouts	1-10 years
young	11-30 years
mature/decadent	31+ years

- b. Implement vegetative manipulation projects only when crown density of browse species is greater than 70% or average height exceeds 5 feet.
- c. Develop water supplies on intensively treated lands.
- d. Treat vegetation on slopes greater than 40% to establish a 31+ year age-class rotation.

8. Prescription MC6 --The Plan shall be amended to change management area prescription MC6 on page 4-82 of the Plan:

Fish and Wildlife

- a. Provide wildlife adaptations in all water developments.
- b. Consider wildlife needs for cover and edge in vegetation manipulation projects.

Range

- a. Use prescribed fire as primary method to accomplish age-class management. No more than 60% of the vegetation should be in the seedling/sprout--young age-class. Slopes over 40% are allocated to provide age-classes of 31+ years and older.
- b. Implement vegetative manipulation projects on slopes less than 40% when crown cover of browse species is greater than 70% or average height exceeds 5 feet.
- c. More than 50% of the prescribed fires are to occur in the late summer and fall.

- d. Develop water supplies, fences, and trails where needed on intensively treated lands.
9. Type Conversion -- References to type conversion are to be deleted from the Plan. A Plan amendment will make the following deletions:
- a. Delete the statement "convert chaparral types to annual grass on slopes less than 10%" from the Fish and Wildlife Section, item 2, on pages 4-46 and 4-69, and from the Range section, item 2, on page 4-82 of the Plan.
 - b. Delete the statement "limit type conversions" from the Fish and Wildlife section, item 4, on page 4-44 of the Plan.
 - c. Delete the statement "allow type conversions in ecosystems for wildlife needs" from the Fish and Wildlife section, item 2, on page 4-72 of the Plan.
 - d. Delete the words "chaparral type conversions and" from Fish and Wildlife section, item 2, on page 4-82 of the Plan.
 - e. Delete the words "or type converted" from Vegetation sections, 1)

chaparral on page 4-9 of the Plan.

10. Allotment Plans and Effectiveness -- The Plan shall be amended to make the following changes:
 - a. To Forest-wide Standards and Guidelines add on page 4-30 of the Plan under Range: Allotment management plans will include specific information on range condition, trends, livestock grazing capacity, utilization maps and measurements, and forage and habitat allowances for wildlife and they will assess grazing impacts on wildlife, fisheries, water quality and other environmental values. Where such information is lacking from an allotment management plan, it shall be added when the plan is next amended or renewed. Management plans will develop strategies to minimize or discourage livestock use in botanical areas. Where livestock use is in direct conflict with the values for which the botanical area was established, that use will be eliminated. Where livestock grazing is shown to be beneficial for the endangered or sensitive species, it will remain.
 - b. Forest-wide Standards and Guidelines on page 4-30 of the plan under Riparian Areas: The Plan shall be amended to change the

last sentence to read, "Monitor the effectiveness of the Sequoia National Forest's Riparian and Wetlands Standards and Guidelines.

- c. The quarterly project planning schedule shall include the allotment plans that are scheduled for renewal or amendment.

D. Allowable Sale Quantity

1. *Background*

- a. Calculation of a sustainable, maximum Allowable Sales Quantity (ASQ) from a given land base requires that the Forest Service make a number of assumptions. These include assumptions about the intensity of future timber management, regeneration success, growth rates, funding levels, probable environmental impacts, and probable success of mitigation measures.
- b. The Sequoia National Forest believes that the assumptions used in developing the Sequoia's yield tables and in calculating the ASQ agreed to below are reasonable ones and are conservative.
- c. The conservation group appellants, however, are concerned that many of the assumptions are unproven and may be overly optimistic. In their opinion the calculated ASQ may not be

sustainable from the Plan's timber land base, and it may have to be reduced based on actual experience. The timber industry, on the other hand, considers the productive capability of the Forest to be at least twice the ASQ agreed to below.

- d. All parties recognize that the assumptions used in calculating the ASQ must be examined in light of actual experience as the Plan is implemented to determine whether the ASQ is appropriate and sustainable. This question will be addressed in the Forest's annual reports and five-year Land Management Plan review. (See Section W.)
- e. The ASQ calculations referred to below assume that herbicides and other forms of brush control will be used on the Forest pursuant to Regional authorization. Nothing in this Agreement implies any party's consent that use of herbicides is appropriate or waives any party's right to challenge herbicide use in the Region.

- 2. ASQ. The ASQ under the Plan for the decade beginning in 1990 shall be 750 million board feet ("MMBF") from the suitable (regulated) land base (green and salvage volumes), subject to 16 U.S.C. § 1611. The Forest may also sell during the decade 50

MMBF of unregulated salvage and other unregulated volume. Any logging of unregulated lands shall be solely for the purpose of achieving a specified wildlife, recreation, fishery, sensitive plant, or research objective; salvage; or restoration in case of a catastrophic occurrence.

3. Short Fall in Timber Sale Program in FY 1988 and 1989. The parties acknowledge that administrative appeals and litigation have significantly reduced the Sequoia's timber sale program during fiscal years 1988 and 1989. As a result, the two principal purchasers of timber on the Sequoia National Forest, Sierra Forest Products and Sequoia Forest Industries, represent that they currently have record low volumes under contract on the Sequoia National Forest. The shortfall in volume between the volume scheduled in the FLMP and actual volume sold in fiscal years 1988 and 1989 may be made up, if feasible, over the life of the Plan; however, any make-up volume for FY 1988 and 1989 shall be from the salvage of dead and dying trees.

4. Existing Timber Sales Under Contract. As of the date of the signing of this Agreement, the parties agree that any green timber sale under contract on the Sequoia National Forest shall not be subject to further challenge by any party, provided, however, that the Sequoia National Forest shall

continue to enforce the terms of all timber sale contracts. the Forest and Sierra Forest Products agree to suspend logging and related activities in units 12, 32, 33, 34, and 39 of the Scraps timber sale. (These units are within 1.5 miles of the center of a Spotted Owl Habitat Area.) The suspension shall last until the Forest has, with respect to the identified units, complied with the requirements of section D.5.b(2).

5. Interim Timber Sale Program. The sales listed below do not necessarily meet all of the requirements of this Agreement. Nevertheless, the parties agree that these sales may go forward, without further challenge by any party, provided that the terms and conditions set forth in a. and b. below are adhered to. The parties reached this agreement concerning the designated timber sales in a spirit of cooperation: their intent is to facilitate the Forest's orderly implementation of this Agreement while, in the interim, minimizing disruption of the local timber supply. Their intent is also to address, in an expeditious manner, important environmental concerns (particularly spotted owls and watershed conditions) that were raised in connection with the listed sales.

EA's Drafted or Issued & Subject to Appeal (FY 89-90)

<u>District</u>	<u>Sale</u>	<u>Volume</u>	<u>WS > 80%</u>	<u>Aff. Vol.</u>	<u>Net Vol.</u>
HL	Lightning*	2.0			2.0
HL	Dorsey	2.2	1		2.2
HL	Buck Rock	3.5			3.5
TR	Mountaineer	3.0			3.0
TR	Jerkey	4.5			4.5
HS	Vincent	6.0	1	.485	5.5
HS	Ranger 13%	1.7	2	.03	1.67
GH	Liebel 14%	8.5	4	.95	7.5
CM	Paloma*	5.4	1	1.07	4.3
CM	Casa-Guard	<u>18.7</u>	4	7.5	<u>11.2</u>
	Total	55.5		10.14	45.38

EA's Yet to be Drafted (FY 90)

HL	Rabbit	2.0
HL	Hyde	1.0
GH	Flat*	5.1

Total Potential Volume	69.0	Total Volume Released Unconditionally	51.68
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* Designates FY 89 Carryover Sales

a. Watershed Review.

- (1) For each timber sale listed above which contains units within a subwatershed above 80% of the threshold of concern, harvesting of those units shall be deferred until the Forest conducts a site specific field inspection to verify the pre-

project Cumulative Watershed Evaluation ("CWE") calculation for each watershed and to verify that the proposed project will generate the projected Equivalent Roaded Areas ("ERAs") that have been identified.

- (2) The review referenced in section D.5.a(1) above will be conducted by Forest Service personnel within 60 days of the signing of this Agreement. Both the timber industry and conservation appellants will have the opportunity to designate one individual to observe the review of the field verification work. However, the Sequoia will set and manage the schedule to meet the deadline. The purpose of the review is to insure that adequate measures have been prescribed for these units for control of erosion and sedimentation, and to determine whether mitigation should be modified, or whether units should be modified or omitted, in order to protect soil and water resources.
- (3) A minimum of two professionals (earth scientists or hydrologists) will field review all units in each of the affected watersheds. For each unit, the reviewer will determine one or more new Erosion Hazard Ratings

("EHR") as necessary for proper site evaluation, taking into consideration variations in slope, aspect, vegetative cover, etc. The EHR will be compared to the disturbance coefficient rating used for the CWE analysis. If the projected disturbance levels are different, a new CWE will be formulated.

- (4) On sites demonstrating a high EHR, the professionals will review the mitigation listed in the Environmental Assessment ("EA") to determine if it is adequate to mitigate the concerns identified and their own professional concerns based on field review. If the mitigation is not adequate, the professionals may propose additional mitigation, modification of units, or elimination of units as necessary to address such concerns. Logging and/or roadbuilding shall not be allowed where it would cause impacts to exceed the Threshold of Concern.
- (5) All proposed mitigation must be financed and completed as part of the proposed project. Unfunded WINI proposals will not constitute acceptable mitigation.

- (6) Post-project monitoring will be conducted in accordance with the Sierra National Forest monitoring plan. Monitoring will be conducted both to ascertain if mitigation was implemented and to evaluate its effectiveness.
- (7) Units which are (1) not subject to the watershed review requirements of sub-paragraph a., and (2) not subject to re-evaluation concerning spotted owls (see section b below), may be released for timber harvesting.

b. Spotted Owl Review.

- (1) For the sales listed above, the Forest shall identify timber sale units within 1.5 miles of the center of a SOHA (an "adjacent SOHA" for the purposes of this Agreement). The Forest shall allow no harvesting of such units (the "affected units") until the spotted owl review provisions of this subsection b. have been completed.
- (2) Affected units shall be reviewed as follows:
 - (a) Unless the Forest has already determined such occupancy status during the last five years, the Forest

shall conduct field work to determine occupancy status of each adjacent SOHA, (including attempting to locate any owl pairs, and a pair's nest site or major roosting site(s).

- (b) The Forest shall review for compliance with Regional protocols the pre-project survey methods and analyses that were used for network and non-network owls. Any pre-project survey not in compliance shall be brought into compliance.
- (c) The spotted owl biological evaluation will be brought into compliance with the requirements of section E.2.b.(2) and (3) of this Agreement.
- (d) If after following the procedures set forth above, the Forest determines that there are no spotted owl pairs in the timber sale area or in the adjacent SOHA(s), it may proceed with the sale as planned unless the requirements of section E.2.b(3)(f) apply.
- (e) If after following the procedures set forth above, the

Forest finds a spotted owl pair in the affected units, but not in the adjacent SOHA, the Forest shall conduct a field review to reassess the best 1000 acres of core and 650 acres of replacement habitat and to determine if the Forest should recommend adjusting the SOHA boundary to include the owl pair. If the Forest recommends a change, it shall protect both the original SOHA and the proposed SOHA pending a Regional decision.

- c. With respect to the Casa Guard timber sale, the timber industry agrees to assist the Forest Service in addressing the erosion problem at Rodeo Flat and to repair water bars and side drains within the Fish Creek drainage.

- d. The parties agree not to challenge the Flat, Rabbit, and Hyde timber sales, provided the following conditions are met: these sales shall be subject to the Interim Timber Sale Program Watershed and Spotted Owl requirements in section D.5.a. and b., and shall otherwise meet all requirements of this Agreement, except CWE (section N), spotted owls (section E.2.b.) and the EAs (section P). As to the EAs, the Forest shall complete the EAs in conformity

with Forest Service regulations and procedures, and shall make every reasonable effort to comply with section P below, consistent with the objective of completing the EAs for inclusion of the timber sales in the 1990 sales program. The Flat Timber Sale shall also comply with legal requirements for protection of the Mariposa Lily (per the Species Management Guide). Before issuance of the EAs for any of these sales, a representative of the conservation appellants will meet with Ken Fisk or the appropriate District Ranger to attempt in good faith to work out any problems. For the conservation appellants, the representatives will be, for Flat, Brett Matzke; for Rabbit and Hyde, John Rasmussen.

6. Timber Industry Fund. Beginning with FY 90, the timber industry agrees to pay \$1 per thousand board feet for volume harvested into a fund that will be managed by the companies to finance watershed improvement, reforestation or recreation related projects which benefit the Sequoia National Forest. For each year, the fund shall be contributed within 30 days after the end of the calendar year based upon the actual volume of timber harvested (net scale) during the prior year.

7. The Regional Forester agrees to expedite and decide all remaining pending administrative appeals involving Sequoia National Forest timber

