

April 11, 2011

Martin Dumpis, Acting Forest Supervisor
Angeles National Forest
701 N Santa Anita Ave.
Arcadia, CA 91006

Re: Freedom of Information Act Request (FOIA)

Dear Acting Supervisor Dumpis,

The purpose of this FOIA request is to obtain information relating to the tree planting project being planned by the US Forest Service for the Angeles National Forest to “restore” areas burned during the 2009 Station Fire.

We are making this FOIA request because:

1. We have learned from reliable sources within the USFS that major concerns raised by USFS staff about this project have been ignored due to agency pressure to “plant trees.” It also appears as if trees are being planted based on seedling availability, grants, and institutional inertia rather than sound ecological planning. This is not how public lands should be managed.
2. We are concerned about the planting of trees in areas that are characterized by chaparral and the replacement of burned big-cone Douglas fir stands with Coulter pines. Both actions have the potential of type-converting valuable native habitats the USFS is charged to protect.
3. The USFS appears to have inadequately considered the negative impact of planting trees in native ecosystems and appears to misunderstand the native shrubland landscape it manages.

A very small percentage of the area burned in the Station Fire impacted forested areas since the vast majority of the San Gabriel Mountains are covered by native shrublands, especially chaparral. Rather than focusing on “planting trees,” the most logical

management action would be for the USFS to examine the entire landscape and use a science-based approach to determine how to respond to the events of 2009.

For example, big-cone Douglas fir stands that still exist are a remnant of a much wider distribution in the San Gabriel Mountains that have been eliminated by human activity over the past century or more. Given the fact that the USFS's own land management plan lists the big-cone Douglas fir as a significant indicator species that requires special protection, we find it difficult to understand how the agency could justify type-converting these stands to another conifer.

Also, attempting to "restore" forested lands by tree planting has proven to be problematic in many situations by compromising post-fire habitat that is critical to healthy successional processes. Contrary to conventional wisdom, burned forests are not "destroyed" landscapes. They are, in fact, incredibly rich ecosystems.

Finally, one of the greatest threats to the shrubland dominated Angeles National "Forest" is type-conversion to non-native weeds. The Station Fire accelerated this conversion in many areas. Addressing this damage needs to be a major priority.

While we understand the public's love of trees and the pressure on the agency to try and "do something" after the Station Fire, it is critical that we do not cause harm to the landscape we all love. In a program similar to the one the USFS is planning now, millions of trees were planted in the San Gabriel Mountains during the 1920's in a misguided effort to "fix" the so-called useless "brush." Land managers did not understand that chaparral (and chaparral-like plant communities) is the natural climax ecosystem in landscapes characterized by Mediterranean-type climates.

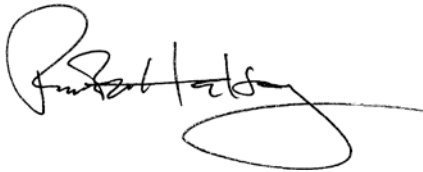
The program introduced non-native species, compromised the ecological health of the surrounding shrublands, and ended up wasting a significant amount of time and money. Many of the trees eventually died from drought and fire because they did not belong where they were planted.

Consistent with the CCI mission and consistent with the federal Freedom of Information Act, 5 U.S.C. § 552, we respectfully request the following information on behalf of CCI:

1. All formal and informal documentation relating to the tree planting program planned by the USFS in the area of the Angeles National Forest burned by the 2009 Station Fire.
2. All formal and informal documentation relating to how the areas were selected for reforestation in the above mentioned tree planting program.
3. All formal and informal documentation relating to tree planting efforts by non-governmental groups such as Tree People.

4. Any maps and location information indicating where trees will be planted in the above mentioned tree planting program.
5. Any historical vegetation maps indicating what vegetation communities and/or habitats existed prior to the Station Fire in the areas selected for the above mentioned tree planting effort.

Sincerely,



Richard W. Halsey
Director
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Formed in 2004 and incorporated as a non-profit corporation in 2009, the California Chaparral Institute (CCI) is a research and educational organization dedicated to promoting a better understanding of and appreciation for California's shrubland ecosystems. Our main objectives are to ensure the protection and preservation of chaparral plant communities as well as supporting the creative spirit as inspired by the natural environment.

Request for Fee Waiver

The California Chaparral Institute requests that you waive all fees in connection with this matter. As shown below, CCI meets the two-pronged test under FOIA for a fee waiver, 5 U.S.C. § 552(a)(4)(A)(iii), as implemented by the Department of Agriculture's fee waiver regulations at 7 C.F.R. Part 1, Subpart A. In particular, CCI has demonstrated that the disclosure of this information will significantly contribute to public understanding of the operations or activities of the government.

In considering whether CCI meets the fee-waiver criteria, it is imperative that the U.S. Forest Service remember that FOIA carries a presumption of disclosure and that the fee-waiver amendments of 1986 were designed specifically to allow non-profit, public interest groups such as CCI access to government documents without the payment of fees. As stated by one Senator, "[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information . . ." 132 Cong. Rec. S. 14298 (statement of Sen. Leahy). In interpreting this amendment, the

Ninth Circuit has stated that the amended statute “is to be liberally construed in favor of waivers for noncommercial requesters.” McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy). The Ninth Circuit has also explicitly pointed out that the amendment’s main purpose was “to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under the FOIA.” Id. Thus, both Congress and the courts are clear in their interpretation that the main legislative purpose of the amendments is to facilitate access to agency records by “watchdog” organizations, such as environmental groups, which use FOIA to monitor and challenge government activities. As the District of Columbia Circuit Court has stated, this waiver provision was added to FOIA “*in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,*” in clear reference to requests from journalists, scholars, and, most importantly for our purposes, non-profit public interest groups. Better Gov’t Ass’n v. Department of State, 780 F.2d 86, 93-94 (D.C. Cir. 1986), quoting Ettlinger v. FBI, 596 F. Supp. 867, 876 (D. Mass. 1984) (emphasis added).

I. The subject of the requested records concerns “the operations or activities of the government”

The subject matter of this request relates to the operation and activities of the USFS. See Judicial Watch, 326 F.3d at 1313 (“‘[R]easonable specificity’ is ‘all that FOIA requires’ with regard to this factor.”) (internal quotations omitted).

II. The disclosure is “likely to contribute” to an understanding of government operations or activities (the informative value of the information to be disclosed)

The information requested will help provide CCI with insight into whether or not the USFS’s tree planting program is consistent with its own land management plans and the need to protect valuable public lands. Documents relating to this are not readily available. Their release is not only “likely to contribute,” but is in fact certain to contribute to better public understanding of the USFS’s tree planting program. The public is always well served when it knows how government activities, particularly matters touching on legal and ethical questions, have been conducted. See Judicial Watch, 326 F.3d at 1314 (“[T]he American people have as much interest in knowing that key [agency] decisions are free from the taint of conflict of interest as they have in discovering that they are not.”).

III. The disclosure of the requested information will contribute to “public understanding”

In McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d at 1286, the court made clear that “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations....” In this instance, all the requested documents potentially provide new information about

the status of the USFS's tree planting program. Moreover, the information will provide important oversight of USFS. See Western Watersheds Project v. Brown, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) ("WWP asserted in its initial request that the information requested was either not readily available or never provided to the public, facts never contradicted by the BLM. Therefore, the Court finds that WWP adequately demonstrated that the information would contribute significantly to public understanding."); see also Community Legal Services v. HUD, 405 F.Supp.2d 553 (D. Pa. 2005) ("Thus, as in Forest Guardians, the CLS request would likely shed light on information that is new to the interested public."); see also Institute for Wildlife Protection v. U.S. Fish and Wildlife Service, 290 F.Supp.2d 1226, 1230 (D. Or. 2003), (finding that the FOIA request was informative of government operations because "there is substantial public interest in agency activities relating to endangered species.")

IV. The disclosure is likely to contribute significantly to public understanding of government operations or activities

Public oversight and enhanced understanding of the USFS's tree planting program is important because of the possible damage it may cause to native ecosystems. CCI's track record of active participation in oversight of governmental agency activities and CCI's consistent contribution to the public's understanding of agency activities are well established. In determining whether the disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject. Carney v U.S. Dept. of Justice, 19 F.3d 807 (2nd Cir. 1994).

The documents requested in this FOIA request will be used to determine the impact of the USFS's tree planting program. Concurrent with any action which CCI may take after obtaining the requested documents, CCI will publicize the reasons for the action and the underlying actions of the USFS and other government agencies that have prompted the action. This is certain to result in a significant increase in public understanding of government agency activity. Our informational publications continue to contribute information to public media outlets, as well. For example, information such as that presently requested is often disseminated through our e-mail updates and our web page. CCI representatives also routinely speak with the news media and make public presentations on issues concerning the protection of native ecosystems and the impact government action may have on these ecosystems. See Forest Guardians v. DOI, 416 F.3d 1173, 1180 (10th Cir. 2005) ("Among other things, Forest Guardians publishes an online newsletter, which is e-mailed to more than 2,500 people and stated that it intends to establish an interactive grazing web site with the information obtained from the BLM. By demonstrating that the records are meaningfully informative to the general public and how it will disseminate such information, Forest Guardians has shown that the requested information is likely

to contribute to the public's understanding of the BLM's operations and activities.”).

V. Obtaining the information is of no commercial interest to POC

Access to government documents and similar materials through FOIA requests is essential to CCI's role of educating its members, affiliated groups, and the general public. As a non-profit organization, CCI has no commercial interest and will realize no commercial benefit from the release of the requested information.

We hope that this letter has demonstrated to your satisfaction that CCI qualifies for a full fee-waiver, and that you will immediately begin to search, copy, and deliver the requested material. Please send all materials to the address below.

If you have any questions while processing this request, please contact us via phone (760-822-0029) or email (rwh@californiachaparral.org). Thank you for your assistance.

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