Blogs
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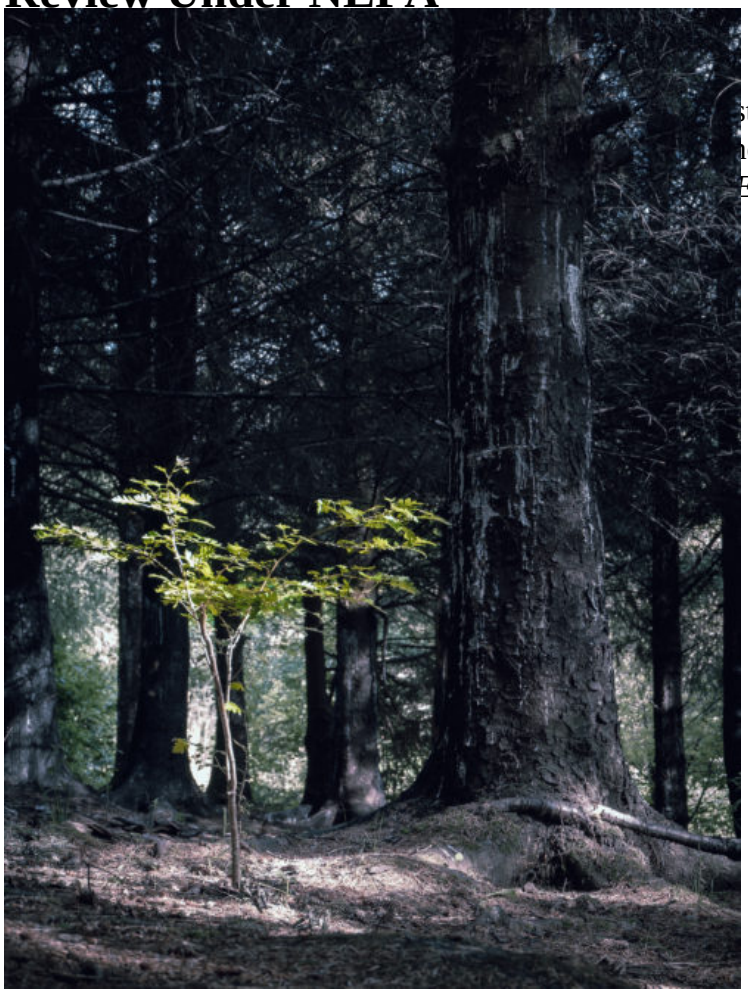
Logging Plan Not Categorically Excluded From Environmental Review Under NEPA



st Service plan for commercial logging of some 4,700 ot reasonably be interpreted as falling within a NEPA *EPIC v Carlson*, 968 F.3d 985 (9th Cir. 2020).

The 2018 Ranch Fire burned more than 400,000 acres in Northern California, including almost 300,000 acres in the Mendocino National Forest. After the fire, the Forest Service approved the Ranch Fire Roadside Hazard Tree Project, authorizing the Service to solicit bids from private logging companies for the right to fell and remove large fire-damaged trees up to 200 feet from either side of roads in the forest. In total, the project authorized logging of millions of board feet of timber on nearly 4,700 acres of National Forest land. Rather than preparing an environmental assessment or environmental impact statement for the project, the Forest Service relied on a NEPA categorical exclusion for road repair and maintenance in 36 C.F.R. §220.6(d)(4). As of November 2019, logging had begun in two areas of the project and the Forest Service had finalized bidding on a third area. Plaintiff, an environmental organization, sought an injunction in federal district court, which was denied. The Ninth Circuit reversed, finding plaintiff had established a likelihood of success on the merits of its claim that the project did not qualify as road maintenance and repair. The appellate court reasoned that, although the felling of dangerous dead or dying trees right next to the road came within the scope of "repair and maintenance," many of the trees encompassed by the project

(including large, partially burned "merchantable" trees located 150 feet or more from any road) posed no imminent hazard and would not come close to the nearest road even if they fell directly towards it. The "repair and maintenance" categorical exclusion could not reasonably be interpreted to authorize a project that allowed commercial logging of large trees up to 200 feet away from either side of hundreds of miles of Forest Service roads.

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