



MEMORANDUM

November 2, 2022

TO: FORTERRA BOARD OF DIRECTORS

FROM: JO PERINI-ABBOTT AND KRISTEN TRANETZKI

RE: REPORT OF INVESTIGATION INTO ALLEGATIONS BY THE
SNOQUALMIE INDIAN TRIBE

I. Executive Summary

On May 6, 2022, Forterra applied for a \$35.7 million grant for its Forest to Home project through the United States Department of Agriculture's ("USDA") Partnership for Climate-Smart Commodities program. At its highest level, Forterra described Forest to Home as "Converting industrial timber and traditional forest product manufacturing to a BIPOC-owned, high-technology, vertically integrated, carbon sequestration supply chain for residential and commercial construction." The grant application proposed two phases of the project: a three-year pilot phase "focuse[d] initially on maximizing carbon sequestration on 12,000 acres of ancestral land owned by the Snoqualmie Indian Tribe ("the Tribe") from which sufficient fiber will be harvested to build up to 1,000 mass timber attainable housing units for underserved communities"; and "[a]fter three years of innovating and measuring the supply chain, the Pilot will be expanded to include an additional 100,000 acres of industrial timberland and multiple applications of mass timber." The Tribe is listed in the grant application as a "Project Partner" and the application included a resolution from the Snoqualmie Tribal Council to "approve[] and affirm[] its support for the Tribe's involvement as the Primary Tribal Partner in Forterra's Pilot Project Application for the 'Partnerships for Climate-Smart Commodities' grant from the USDA, to be submitted in April 2022."

On September 23, 2022, following the announcement that Forterra had been preliminarily selected for a partial grant (up to \$20 million of the \$35.7 million they asked for), the Tribe sent a letter to Robert Bonnie, the USDA Under Secretary of Agriculture for Farm Production and Conservation, withdrawing its support for Forterra's grant application ("the Letter"). The Letter identifies five areas of concern in the grant application:

1. "Forterra told the USDA that it would use timber harvested from our Ancestral Forest 'to manufacture 20,000 cubic meters of carbon-sequestering mass timber commodity elements per year.'" The Letter states that this volume was never discussed with the Tribe and that such a harvest would be "unsustainable and irresponsible."
2. "Forterra represents to the USDA that the Tribe has agreed to certain forest management standards" and to "share data related to harvest activities." The

Letter states that “[t]his was never discussed with the Tribe, and it was never agreed to by the Tribe.”

3. “[T]he Tribe is concerned that Forterra has misrepresented the manner and mechanism with which the Tribe was able to reacquire our Ancestral Forest” and that “it is offensive and completely inaccurate for Forterra to say that the ‘Coalition’ played this role.”
4. “[T]he grant application outlines nearly \$1.5 million in ‘matching funds’ allegedly promised by the Tribe.” However, “[t]he Tribe had no knowledge of any match requirement, and the Tribe did not agree to provide any match contribution.”
5. “[A]t no point in the preparation of this grant was the Tribe made aware that the dominant narrative would be that the harvesting of the Tribe’s timber would provide both the raw material and predicate action necessary for rebuilding multiple disadvantaged or suffering communities to whom Forterra had made unilateral promises.”

The Letter also states that the Tribe had to obtain a copy of the grant application from a third-party and was told by Forterra it would not receive a copy of the application without first signing a non-disclosure agreement with Forterra.

Upon receiving the Letter, the Board of Directors for Forterra engaged the Angeli Law Group to conduct an independent investigation of the Tribe’s five areas of concern and the interaction between the Tribe and Forterra during the grant application process. From our investigation, we found:

General Findings

General Finding 1: Forterra’s pursuit of the Climate-Smart Commodities Grant was in good faith and driven by Forterra’s mission. Generally, any missteps and misstatements do not appear to have resulted from any malicious or deceptive intent.¹

General Finding 2: Forterra did not provide the Tribe with full information about the planned partnership which deprived the Tribal Council of the ability to make an informed decision in

¹ After releasing this Report to the Tribe, we are adding this clarification: General Finding 1 relates to the overall grant process. Our findings with regard to Forterra's interactions with the Tribe and statements about the Tribe are in General Finding 2 and our Specific Findings.

passing its resolution. Further, Forterra's interactions with the Tribe in this grant application process, particularly the delay in contacting the Tribe, took for granted the Tribe's partnership.

Findings Specific to the Areas of Concern

Area of Concern 1 – Quantity of Timber to be Harvested on Snoqualmie Land

Specific Finding 1.1: The grant application is internally inconsistent about the amount of fiber that would be harvested and needed to meet the housing goals.

Specific Finding 1.2: Forterra never intended to procure fiber from only the Snoqualmie Ancestral Forest during the pilot phase but failed to make that clear in the grant application language.

Specific Finding 1.3: Forterra did not discuss with the Tribe expected quantities of harvest.

Specific Finding 1.4: Forterra guaranteed the Tribe control over the amount of timber harvested from its land; this was not expressly reflected in the grant application.

Area of Concern 2 – Commitment to Specific Management and Reporting Standards

Specific Finding 2.1: Forterra did not clearly communicate with the Tribe about Forterra's recommendation for the measurement standards and reporting plan to use in the grant application.

Area of Concern 3 – Representations About Forterra's Role in the Tribe's Reacquisition of its Ancestral Forest

Specific Finding 3.1: The language used on page 12 of the grant application describing Forterra's plan to help producers/landowners implement CSAF practices is confusing and does not accurately reflect what occurred with respect to the reacquisition of the Snoqualmie Ancestral Forest.

Specific Finding 3.2: Other sections of the grant application more appropriately describe Forterra's role and reflect input from Forterra's tribal consultant.

Area of Concern 4 – Commitment by the Tribe to Provide Matching Funds

Specific Finding 4.1: Forterra did not properly obtain the Tribe's consent to include matching funding in the grant application.

Area of Concern 5 – Commitment of Tribal Resources to Specific BIPOC Communities in Specific Quantities

Specific Finding 5.1: Forterra provided the Tribe with only generalized statements about using timber harvested from the Snoqualmie Ancestral Forest to build attainable housing in BIPOC communities and failed to inform the Tribe of the specific commitments in terms of quantity and timing made to specific BIPOC communities. The grant application as written places improper pressure on the Tribe as the primary source of fiber for specific housing units.

II. Methodology of Investigation

Upon learning of the Tribe's concerns, the Board of Directors for Forterra (the "Board") engaged the Angeli Law Group to investigate the allegations in the Letter. Angeli Law Group has no prior relationship with Forterra. The Board did not impose any limits on our work, other than specifying the issues within our scope, as listed below.

A. Scope of Investigation

Our investigation focused on Forterra's interaction with the Tribe through this grant writing process and the five areas of concern in the Letter. Our investigation did not address the following: interactions with other project partners during the grant writing process; personnel issues that did not affect the grant writing process; how the Tribe obtained a copy of the grant application when they could not obtain it from Forterra directly; other potential issues with the grant application not identified in the Letter; and conduct by anyone outside of Forterra. Within these parameters, we alone determined what conclusions to draw and recommendations to propose.

B. Documents Collected

Forterra collected and provided to us the following documents for review as part of our investigation:

- Internal emails about the grant writing process;
- External emails with both the Tribe and other project partners;
- All drafts of the grant application, including track-changes information showing who edited or commented during the drafting process (drafts range from February 23 to May 6);
- Grant applications, proposals, and supporting materials for related projects;
- Several versions of the grant budget;

- The Microsoft Teams discussion page for this grant application; and
- The project's Asana page (a project management program).

In addition to the documents collected by Forterra, we also asked witnesses for additional documents if something pertinent came up during an interview. These additional documents included handwritten notes, text messages, call logs, or documents relied on in drafting. Interviewees were generally responsive in providing these documents although we cannot know the full universe of documents that exist and whether something was not provided.

C. Interviews Conducted

We interviewed seven Forterra employees, including individuals on the executive leadership team and key individuals from the team that worked on the grant application. We spoke more than once with multiple individuals as part of our follow-up inquiries. We also interviewed three individuals outside of Forterra with relevant information, including a representative from the Tribe. We are grateful for their participation in this investigation.

We reached out to two former Forterra employees involved in the grant writing process, but they did not respond to our outreach.² We also communicated through the Forterra employees we spoke with that if anyone inside or outside of Forterra felt they had relevant information they could reach out to us directly. If we receive new information from anyone coming forward after this report, we will update the report accordingly. As part of our investigation, we took steps to maintain confidentiality of information shared by Forterra employees and provide assurance there would be no retaliation for participating in our investigation.

D. Limitations and Possible Follow-Up

Our investigation had several limitations. First, because several key individuals involved in the grant process left Forterra before our investigation began, and those individuals have not responded to our outreach, we do not have their insights. We have been able to review many of their emails, but we did not have the benefit of their direct input. If they come forward, we will supplement this report.

Second, there may be some relevant documents that were overlooked during our collection. Again, we believe we have a fulsome picture, but if new information is identified we will supplement our report. Relatedly, we were informed that during our investigation an employee's (now former employee) computer crashed, and the hard drive has not yet been recovered. We are unaware of any pertinent document that existed exclusively on that computer

² On October 7, 2022, 78 former Forterra employees submitted an open letter expressing support for the Tribe. Our investigation took their letter into account.

that might materially affect our investigation, but the event limits our ability to obtain follow-up documents.

III. Background

A. Grant Application Process

This grant opportunity was one of the largest opportunities for which Forterra had ever applied. It had a relatively abbreviated timeline for grant applications of this size (particularly before the deadline was moved from April 8 to May 6). The grant writing process was primarily led by Forterra's former Vice President of Transactions³, but involved numerous individuals across the Forterra organization, with varying levels of participation. The grant application process also involved gathering support from more than twenty project "partners."

B. Nature of the Grant

The Partnerships for Climate-Smart Commodities - Building Markets and Investing in America's Climate-Smart Farmers, Ranchers & Forest Owners to Strengthen U.S. Rural and Agricultural Communities (the "Partnership for Climate-Smart Commodities Grant"), was a funding opportunity from the U.S. Department of Agriculture ("USDA"). It was intended to help build markets and invest in America's climate-smart farmers, ranchers, and forest owners to strengthen U.S. rural and agricultural communities. Through it, the USDA wanted to support the production and marketing of climate-smart commodities⁴ by funding a set of pilot projects that implement climate-smart production practices, activities, and systems on working lands; measure/quantify, monitor, and verify the carbon and greenhouse gas (GHG) benefits associated with those practices; and develop markets and promote the resulting climate-smart commodities. Accordingly, any proposal had to include the following elements:

- (1) a plan to pilot implementation of climate-smart agriculture and/or forestry practices on a large-scale, including meaningful involvement of small or historically underserved producers, consistent with spirit of the Justice40 initiative (the "Pilot");

³ This individual's formal title was Vice President of Real Estate Transactions but is referred to in the grant application as Vice President, Transactions so we use the Title Vice President of Transactions in this report.

⁴ The grant materials defined a "climate-smart commodity" as "an agricultural commodity that is produced using agricultural (farming, ranching, or forestry) practices that reduce greenhouse gas emissions or sequester carbon."

(2) a quantification, monitoring, reporting, and verification plan (“MMRV”); and

(3) a plan to develop markets and promote climate-smart commodities generated as a result of project activities.

Up to approximately \$1 billion was available for these climate-smart commodity projects through two funding pools: a first funding pool for proposals from \$5 million to \$100 million (with applications initially due April 8, 2022) and a second funding pool for proposals from \$250,000 to \$4,999,999 (with applications initially due May 27, 2022). The grant was designed as a cost-reimbursement contract, meaning an awardee like Forterra would be paid only on allowable expenses actually incurred, based on benchmarks for each project. Advances were to be considered in only limited circumstances. It was projected to be a highly competitive grant, with the USDA expecting to make approximately 30-50 awards.

The grant agreement would only be with one entity (called the “partner”), but the USDA encouraged multiple partners to coordinate on projects. It was expected that generally these relationships would be accomplished through being subrecipients of the award.

There was no specific match requirement for the grant, but applicants were to be evaluated, in part, on the relative contribution of non-Federal resources to the project. Matching funds could consist of contributions of cash, services, materials, equipment, or third-party in-kind contributions. Matching funds had to be committed at the time of the application submission and were expected to be met by the award period of performance end date.

The grant application itself consisted of a 15-page narrative describing the project, a project budget, Letters of Support from all project partners, and the resumé for the lead project administrator. The narrative had to include the following: 1) an executive summary of pilot project; 2) a plan to pilot Climate-Smart Agriculture and Forestry (“CSAF”) practices on a large scale; 3) an MMRV plan; and 4) a plan to develop and expand markets for climate-safe commodities. Other information that had to be provided in the narrative included: a list of project partners; a list of underserved/minority-focused project partners; a compelling need for the project; geographic focus; an approach to minimize transaction costs associated with project activities; an approach to reduce producer barriers to implementing CSAF practices for the purpose of marketing climate-smart commodities; and the project management capacity of partners.

C. Timeline of the Grant Application

Forterra first learned about the grant on February 10, 2022, when a third party emailed a Forterra staff member with the USDA’s Notice of Funding Opportunity. Forterra staff exchanged emails internally on February 11 and February 12, discussing what Forterra program might best fit the funding opportunity. On February 12, the Forterra Vice President of Transactions stated that the opportunity “[c]ould be huge” and proposed that Forterra pursue

\$40 million to partner with Snoqualmie . . . *to test and pilot the feasibility of self-sustaining rematriated ancestral lands*. Grant funds would be used to restore the streams and forests of the 13k acres of the North Tolt by traditional riparian restoration and conservation harvesting for the production of downstream carbon sequestration building materials (mass timber) in a local production plant.

(emphasis in original.) The next day, he proposed as a working title for the grant application “Restoring and converting carbon-degraded industrial timberland to Tribal stewardship through conservation harvest and downstream carbon sequestration.” He suggested that Forterra staff look at the research related to the Forest to Home program, Whitehorse Timber log sourcing, and the Ancestral Land Funds when considering the grant application.

Two Forterra staff members were charged with reviewing the application materials and evaluating whether it was an appropriate funding source for Forterra. On February 17, they circulated a memorandum expressing some skepticism, suggesting that Forterra may need to employ additional resources to satisfy the technical requirements of the grant application, in particular, the MMRV component. They also noted that, if awarded, Forterra would need to generate measurable results within the first year of the program. After he watched the USDA’s webinar on the grant, the Forterra Vice President of Transactions expressed more optimism about the funding opportunity, stating in a February 17 email, that the opportunity “[s]eems like it was written to support the entire Forest to Home concept, including ALF [Ancestral Land Fund].” He then convened a grant writing group.

On February 18, several Forterra staff members met to begin drafting the grant application. According to the meeting invitation, the Forterra Vice President of Transactions planned on preparing the initial draft of the project narrative himself by February 25. He projected that the costs covered by the grant would include the following: “All FNW [Forterra Northwest] and partner staff time for entire Forest to Home supply chain; Training for new Tribal lands departments; Design and/or deployment of a fiber tracking system from Forest to Home; Conservation thinning costs beyond normal harvest costs to prove out the new method; Mass timber production costs beyond normal production costs to prove out the new method; Carbon credit applications and production designs.” He identified several potential partners, including the Snoqualmie Indian Tribe and downstream users of product from Darrington Wood Innovation Center (“DWIC”).⁵

As planned, the Forterra Vice President of Transactions prepared the first draft of the grant application narrative by February 23 and circulated it internally. Although several parts

⁵ DWIC is a collaboration between the Town of Darrington, Snohomish County, and Forterra, to develop a 94-acre campus that will house high-tech wood product companies and re-energize the woods products industry in the town, county, and the Pacific Northwest.

needed additional information, the narrative was generally consistent with the final application that was submitted to the USDA. It stated that the Pilot would focus “initially on maximizing carbon sequestration on 13,000 [acres] of ancestral land owned by the Snoqualmie Indian Tribe from which will be harvested sufficient fiber to build up to 1,000 mass timber affordable housing units.”⁶ Initial internal feedback was that the grant appeared to be written for the second funding pool, which had a funding ceiling of \$5 million. In response, the Forterra Vice President of Transactions stated that they should instead try for the first funding pool and seek \$32 million in funding. The deadline for applications for the first funding pool was April 8.

In an email on February 23, the Forterra Vice President of Transactions suggested that another Forterra staff member reach out to a third-party consultant on carbon policies for advice and to potentially “outsource” writing the grant application’s sections on carbon sequestration tracking methodology and plan to pilot CSAF practices. On March 1, that Forterra staff member informed the grant writing team that they had a good conversation with that consultant, who thought the grant was a good fit for Forterra and offered to serve as a project partner. This consultant also indicated that it would not be able to assist with writing the grant other than to provide some guidance on the MMRV section.

Forterra staff continued to revise and update the grant application narrative on a near-daily basis through March 28, the day they intended to provide the draft to the graphic designer to finalize. That day, Forterra learned the deadline for applications was extended until May 6 and decided to continue reviewing and editing the draft. According to the draft’s version history, the document was then edited on April 6, April 15, April 18, and April 19.

As early as February 24, Forterra staff began preparing the grant budget. The earliest draft budget (in Microsoft Word format) requested money for personnel (including for Forterra specialists, tribal forest stewardship trainers, tribal forest stewards, and mass timber manufacturing trainers and interns), harvesting and sawmill equipment, and consultants, among other items. No matching funds were identified in this initial draft. A different draft budget was created in Excel format by a different Forterra staff member on February 28. This version more closely matches the final version that was submitted, but it did not include any matching funds from the Tribe. It did, however, include matching funds from other project partners. The Forterra Vice President of Transactions indicated in an email that he was going to work on the budget on March 21, but based on the materials that were available to us, we cannot readily tell what, if any, edits he made to either version of the grant budget.

On March 21, Forterra first contacted the Tribe about participating in the grant (as discussed further below), and also began contacting other potential project partners for Letters of Support. Forterra requested return of the signed Letters of Support by March 28.

⁶ A later version of the grant application corrected the acreage to 12,000.

Despite the many moving pieces and the uncertain commitment from project partners, Forterra staff planned to submit the grant application to a graphic designer on March 28. In an internal email on March 27, the Forterra Vice President of Transactions asked, “how do we accommodate last minute changes such as one partner, at the last minute, not signing their support letter and needing to be deleted, etc.” He expressed that “I don’t expect anything major but am worried about minor edits coming up...” Figuring out how to accommodate such changes was not necessary, however, as Forterra learned on March 28 that the application submission deadline had been extended until May 6 and paused the graphic designer’s work to allow for further edits.

On March 29, it became apparent to at least one Forterra staff member that representatives from Forterra’s Legal and Finance departments had not yet reviewed the grant application, even though they should have been included in the process according to Forterra’s protocol. On April 6, to ensure sufficient time would be provided for their review before the grant application would be given to the graphic designer under the revised deadline, that Forterra staff member proposed the following grant review and submission schedule: Legal and Finance would finish their review of the grant application narrative and budget on April 11, with Letters of Support acquired by April 15, and the final copy sent to the graphic designer no later than April 18, for a targeted submission date of May 4. This schedule recognized that the Snoqualmie Tribal Council would not vote on a resolution until after the April 18 final copy deadline, apparently presuming there would not be significant changes to the grant application following the vote.

During the week of April 10, it became clear that it would be hard to meet the April 18 copy deadline because Forterra had not yet received a significant number of Letters of Support. The Forterra Vice President of Transactions suggested delaying review by Legal and Finance until after the Letters of Support were received on April 15, but other Forterra staff members doubted that the letters would be collected by then. It was ultimately decided that Forterra would not submit the Letters of Support to the graphic designer and instead attach them to the final submission. To avoid having to change the application after it was sent to the graphic designer, Forterra staff were told to ensure they had express commitments from each project partner by April 18, even if the actual Letter of Support was not finished.⁷

There were further delays to the review schedule. On April 14, the Forterra Vice President of Transactions indicated that he would finish with the grant application narrative by that evening so that Legal and Finance could review, but that he would not finish revising the grant budget until April 18 or April 19—past the final copy deadline. Forterra staff expressed

⁷ This internal deadline was extended again as Forterra faced additional delays in acquiring some Letters of Support. Some of these delays were caused by the belated outreach. This caused frustration internally, as a Forterra staff member wanted to ensure that the project partners listed in the grant application had actually submitted Letters of Support, as required by the USDA.

concern that this pressured Legal and Finance personnel to review after normal business hours and on an expedited schedule, and that Forterra ultimately would not meet the graphic designer's deadline.

On April 18, the day the copy was due to the graphic designer, Finance was provided the draft grant budget for review. Finance expressed concern that Forterra's funding requests did not align with the grant's cost-reimbursement structure and other requirements of the grant. Finance provided guidance on the appropriate budgeting, and the grant budget was subsequently revised on April 21. As part of these revisions, funding for the Tribe and other partners was expressly broken out, the narrative text was updated to match the larger grant application narrative, and additional expense types were added. Although there was match funding identified for other parts of the project, there was no match funding listed for any of the Tribe's line items in this draft. Finance provided ongoing guidance on compliance with budgeting requirements, leading to further revisions. At the time of that finance review, match funding for the Tribe was not in the draft budget. It appears that the Forterra Vice President of Transactions added the information about the Tribe's matching funds on May 4.⁸ It is difficult to tell from the draft budgets if there was a Finance review after the Tribe's matching funds were inserted.

Forterra staff worked with the graphic designer to finalize the grant application narrative within the 15-page limitation, while also finalizing the grant budget and ensuring that all the Letters of Support were collected. The application was successfully submitted by the May 6 deadline. The application requested \$35.7 million in funding.

D. Interactions with the Tribe for the Grant

Although the Tribe was a central part of the grant application's narrative from its inception, the Tribe was not contacted until six weeks into the process. Information obtained through our interviews and the documents we collected, suggests that the Forterra Vice President of Transactions is the only Forterra employee who had direct contact with the Tribe throughout the process. Forterra first approached the Tribe about potential involvement with the grant on March 21, 2022, through a third party who worked with the Tribe. At the request of the Forterra Vice President of Transactions, the third party emailed the Executive Director of Governmental Affairs and Special Projects for the Tribe. They explained

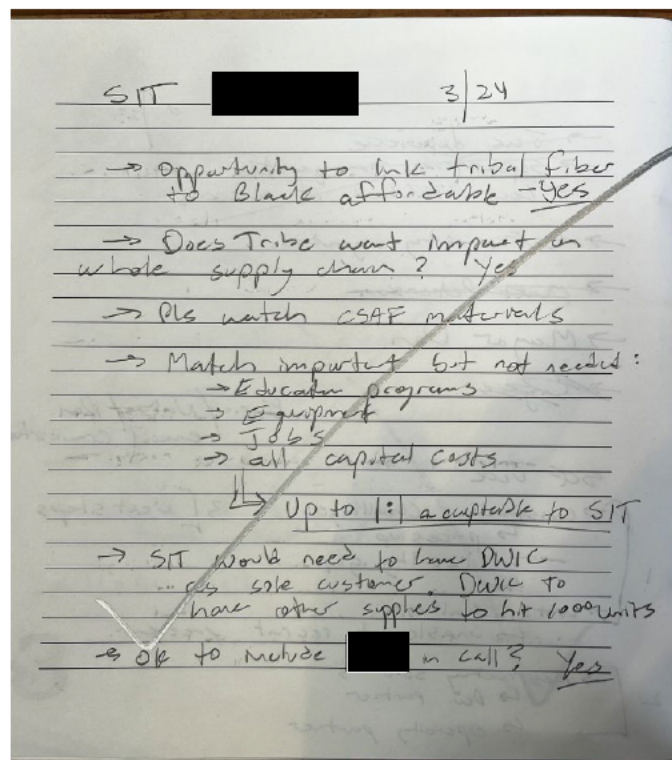
Forterra is applying for a multi-million dollar USDA grant . . . [we are] providing a list of equipment that would optimize timber harvesting on properties like Tolt that have steep slopes. The grant could have funding for tribal training and other opportunities. We

⁸ This conclusion is based on based on a screenshot of track changes made to the document. Due to a technical error, the full SharePoint revision history of the May 4th version could not be recovered and provided to us.

believe the grant will have a much higher success of being awarded if your group was involved.

The Tribe expressed interest; the Executive Director of Governmental Affairs and Special Projects for the Tribe and the Forterra Vice President of Transactions planned a call for March 24. At the time of this initial outreach, the deadline for the application submission was just over two weeks away; Forterra requested that the Tribe respond by no later than April 1. As noted above, the deadline for the grant application was later moved to May 6.

Based on handwritten notes provided by the Forterra Vice President of Transactions (a copy of which is included below), the call went forward on March 24. The Executive Director of Governmental Affairs and Special Projects for the Tribe could not confirm based on her calendar that this was the day of the call but did not dispute a call with the Forterra Vice President of Transactions occurred. The Forterra Vice President of Transactions explained that these notes reflect that he had drafted an outline of topics for discussion (with each topic following an arrow). If he received verbal confirmation on a point during the call, he then wrote the "yes" following that line in the notes.



Although there is not a "yes" next to the discussion of matching, the Forterra Vice President of Transactions recalls discussing matching and explaining that the match could come in the form of in-kind services already being provided (such as scholarships or jobs the Tribe was already providing). The Executive Director of Governmental Affairs and Special Projects for the Tribe

was unequivocal that Forterra never asked the Tribe about matching funds. The Executive Director of Governmental Affairs and Special Projects for the Tribe explained that the requirement of matching funds would have made this a “non-starter” for the Tribe. She is not authorized to commit funds on behalf of the Tribe; only the Tribal Council could do that. And with the timeline they had—at that point a commitment was needed by April 1—identifying the funds and having the Tribal Council agree would have been impossible. The Executive Director of Governmental Affairs and Special Projects for the Tribe did not recall any conversation about including as matching funds those services already being provided.

On March 25, the Forterra Vice President of Transactions emailed the Executive Director of Governmental Affairs and Special Projects for the Tribe a three-page executive summary of the project (“Executive Summary”). The email explained that the grant envisioned “primary” and “secondary” tribal partners and that Forterra hoped the Tribe would commit to being a “primary partner.”⁹ The Executive Summary explained

The Pilot focuses initially on maximizing carbon sequestration on ancestral land owned by the Tribes of Washington State from which sufficient fiber will be harvested to build up to 1,000 mass timber affordable housing units in BIPOC communities. At each stage in this vertical supply chain, cutting-edge carbon tracking technology will be used to measure the Pilot success against a baseline of industrial timberland management and, further downstream, traditional construction commodities like stick-framing, concrete and steel.

Over the next two days, the Executive Director of Governmental Affairs and Special Projects for the Tribe exchanged emails with the Forterra Vice President of Transactions, with the aim of providing greater clarity to the Tribal Council as to the specific items in the grant application that would involve the Tribe. On March 25, the Executive Director of Governmental Affairs and Special Projects for the Tribe wrote to the Forterra Vice President of Transactions that she “want[ed] to make sure I understand what the *exact ask* is for the Tribe so I can put together a brief one page memo outlining the specifics for Snoqualmie.” (emphasis added). In this email, the Executive Director of Governmental Affairs and Special Projects for the Tribe provided a list of bullet point items summarizing the Tribe’s role and responsibilities in the grant and the Forterra Vice President of Transactions provided responses by email. In addition to other logistics, their email exchange contained the following discussion regarding the amount of fiber that would be harvested (the black text is from the Executive Director of Governmental Affairs

⁹ This division of “primary” and “secondary” partners was not in the draft grant application at that time and never made it into any draft or the final version. The draft application at this time (and throughout) did, however, reflect the Snoqualmie as central to the project in a way that the other partner tribes were not.

and Special Projects for the Tribe and the green text, beginning with “Correct,” is the Forterra Vice President of Transactions confirming):

- In signing on to be a primary partner, the Snoqualmie Tribe would be partnering with Forterra (and [REDACTED]) to have conservation thinning completed in the Ancestral Forest, but all work completed would be done with Tribal consent, and within the parameters of the Tribe's greater forest management plan **Correct, the grant really does not change your existing plans in any way. It provides subsidy for staff, training etc.**

Our understanding from the Executive Director of Governmental Affairs and Special Projects for the Tribe is that this commitment—that “all work completed would be done with Tribal consent, and within the parameters of the Tribe’s greater forest management plan”—was critical to the Tribe, as this represented a commitment to the principle of Free, Prior, and Informed Consent.¹⁰ The Executive Director of Governmental Affairs and Special Projects for the Tribe’s email summary of what she understood the grant terms to be did not include any mention of match funding, and in his response, the Forterra Vice President of Transactions did not add it. The Executive Director of Governmental Affairs and Special Projects for the Tribe also asked for a call on March 28 that would include the Tribe’s Environmental and Natural Resources’ director. The Executive Director of Governmental Affairs and Special Projects for the Tribe recalls a call happening that involved the Natural Resources’ director although she did not confirm the date. Before speaking with us, the Executive Director of Governmental Affairs and Special Projects for the Tribe spoke with the Natural Resources’ director and confirmed that on the call they were both part of, the idea of matching was never discussed.

On April 5, the Forterra Vice President of Transactions emailed the Tribe (the Executive Director of Governmental Affairs and Special Projects for the Tribe and others) with more specific information about what would be included in the grant application for the Tribe, including training for members, staffing, carbon measurement, research and development, and optimizing carbon access.¹¹ Again, this email makes no mention of a match commitment from the Tribe. The email does reference as a line item “carbon measurement to determine carbon

¹⁰ Free, Prior, and Informed Consent is a concept from the United Nations Declaration on the Rights of Indigenous Peoples that requires indigenous people be given right to control their territory and resources. Any agreement that affects the territory of indigenous people must be freely acquired, before action is taken, and be based on sufficient information to make an informed choice. Any such consent may also be withdrawn at any time.

¹¹ At some point between the March 26 communication and this communication, Forterra must have informed the Tribe of the change in the due date for the grant, but we have not seen that communication.

volumes on property” and notes that Forterra will research this topic. The Executive Director of Governmental Affairs and Special Projects for the Tribe responded on April 7, attaching a Word document version of the summary points exchanged between the Forterra Vice President of Transactions and herself on March 25 and 26. She also requested an “updated statement from Forterra about the grant.” We do not have evidence that one was ever sent.

It appears that on April 14, the Forterra Vice President of Transactions made proposed edits to the one-page summary from the Executive Director of Governmental Affairs and Special Projects for the Tribe. In addition to logistical changes (for example, the due date), the Forterra Vice President of Transactions added:

- If successful under the grant, fiber from the conservation thinning of the Ancestral Forest would be provided at **no less than market rate** for the manufacturing of affordable housing at the Darrington Wood Innovation Center for underserved communities in the State of Washington.

While we do not have the communication where this was sent back to the Tribe, it likely was sent because this language appears in the Tribal Council Resolution. Again, there is no mention of fund matching, or specific management, measurement, and reporting standards, or the intended quantity of timber that would be harvested. Rather, the language excerpted above is repeated (“all work will be done with Tribal consent, and within the parameters of the Tribe’s greater forest management plan.”).

At no point during these communications did the Tribe request a full copy of the grant application including the narrative and budget. Rather, the Tribe appears to have been relying on the Executive Summary document first provided by Forterra and the summary bullet points exchanged between the Executive Director of Governmental Affairs and Special Projects for the Tribe and the Forterra Vice President of Transactions. Given the request on March 25 that those bullet points embody the “exact ask” of the Tribe, there is no evidence that the Tribe would have any reason to believe there were commitments outside of what was documented.

The next written communication between Forterra and the Tribe about the grant application was on April 21 following the Tribal Council meeting, letting Forterra know that the Tribal Council approved the resolution to “support and participate in the application.” The Executive Director of Governmental Affairs and Special Projects for the Tribe included a copy of the draft resolution which states in relevant part:

WHEREAS, if awarded, the grant would provide the Tribe with an estimated \$3,200,000 in grant funds over the next 5 years as a sub-recipient of the grant; and

WHEREAS, if the grant funding is awarded, Forterra and the Tribe would partner to have conservation thinning completed in the Tribe's Ancestral Forest and the fiber from the conservation thinning would then be sold at no less than market rate for the manufacturing of affordable housing at the Darrington Wood Innovation Center for underserved communities in the State of Washington; and

WHEREAS, the Tribe believes that its partnership with Forterra and the USDA grant funding, if awarded, would benefit the Tribe, its land, and the community;

This appears to be the last communication between Forterra and the Tribe specifically about the grant, other than a brief exchange in which the Forterra Vice President of Transactions asked the Executive Director of Governmental Affairs and Special Projects for the Tribe for a summary of her resume, until later in the summer when the Tribe inquired about its status. There were conversations between the Tribe and Forterra throughout the summer on other projects.

When Forterra learned it had been awarded the grant, it reached out to the Tribe, through the Executive Director of Governmental Affairs and Special Projects for the Tribe, about attending the press conference in Tacoma, Washington. Forterra initially invited a tribal representative to speak at the press conference, but the Executive Director of Governmental Affairs and Special Projects for the Tribe declined. From the talking points Forterra had provided, she felt she did not have a full picture of the grant or the project to be funded. The day after the press conference, she requested a full copy of the grant application from the Forterra Vice President of Transactions but he told her that Forterra could not provide it. The Executive Director of Governmental Affairs and Special Projects for the Tribe thought it was strange that as a partner she could not see the application, so she brought the issue to the Tribe's legal counsel.

Counsel for the Tribe communicated with in-house counsel for Forterra about obtaining a copy of the grant. Because of these requests, the Forterra Vice President of Transactions contacted the USDA and asked whether the grant application was available for distribution under the Freedom of Information Act ("FOIA"). Forterra, through the Forterra Vice President of Transactions, did not make it clear to the USDA that the entity seeking a copy was a project partner. A representative for the USDA responded that "[w]e are working with our FOIA team to determine if or what is shareable under FOIA. Since we are still in negotiations I would not recommend sharing at this time." Based on that communication, Forterra continued to express to the Tribe that it would not share the grant application unless the Tribe agreed to not further distribute it. The Tribe eventually received a copy of the grant application from an unknown source and the Letter followed.

IV. Findings

A. General Findings

1. General Finding 1: Forterra’s pursuit of the Climate-Smart Commodities Grant was in good faith and driven by Forterra’s mission. Generally, any missteps and misstatements do not appear to have been the result of any malicious or deceptive intent.¹²

All Forterra employees interviewed demonstrated a sincere commitment to the goals of the Forest to Home project and to tribal partnerships. Forterra staff uniformly showed dedication to Forterra’s mission statement: “Forterra innovates and scales land-based solutions to address the climate crisis and support equitable, green and prosperous communities.” The directive of the grant aligns with this mission, particularly for the Forest to Home project, and Forterra’s purpose for applying for this grant appears to have been driven by this mission. We did not see evidence that pursuit of this funding opportunity was driven by an improper purpose.

As discussed in General Finding 2, there were problems with the grant application process, particularly in how Forterra interacted with the Tribe. As discussed in the Specific Findings below, there were also errors in the information included in the grant application. However, it is difficult to assess the intent behind such errors. In our investigation, we did not see any direct and undisputed evidence of deceptive intent by Forterra in the errors that were made in the drafting of the grant application. Rather, subject to two caveats discussed below, these errors generally appear to be the result of a rushed process, loose enforcement of review procedures, failure to conduct a technical review of the information contained in the application, and an elevation of a compelling narrative over technical accuracy.

There was an overarching theme running through our interviews that this grant application was a “moonshot” that was unlikely to come to fruition. While not an excuse to include inaccurate information in a grant application, there was a general belief among those working on the application that this application was about telling the story and the specifics (both for the program and with partners) would be figured out after the initial award—if Forterra even won—when they negotiated the contracts with the USDA and partners as sub-grant recipients.

Forterra staff did generally strive to ensure accuracy and compliance with the grant requirements. For example, one employee brought to the team’s attention several times that no entity or person could be listed as a project “partner” without a Letter of Support. While this

¹² After releasing this Report to the Tribe, we are adding this clarification: General Finding 1 relates to the overall grant process. Our findings with regard to Forterra’s interactions with the Tribe and statements about the Tribe are in General Finding 2 and our Specific Findings.

employee had to raise this concern several times before it was acknowledged, it was ultimately addressed in the application.

During our interviews, however, some Forterra employees suggested that information was siloed throughout the drafting process, which made identifying areas for correction difficult. For example, the Forterra Vice President of Transactions was apparently the only individual in communication with the Tribe. Based on the information provided to us, it appears that he did not include other Forterra employees on emails or involve them in calls. The only other person involved in any of Forterra's communications with the Tribe was a third-party logging consultant, but his involvement with these communications was limited to setting up the first call with the Tribe. Thus, Forterra employees who fact-checked the grant application, other than the Forterra Vice President of Transactions, could not confirm what discussions had taken place and whether all relevant information had been provided to the Tribe.

As noted above, this general finding is subject to two caveats. While we found no direct and undisputed evidence of deceptive intent, the fact that pertinent information about the contents of the grant application was not shared with the Tribe while obtaining its consent to include it as a partner is troubling. Our investigation did not find a supportable explanation for why the Tribe was not contacted until six weeks into the grant writing process, as further discussed in General Finding 2. Also, including matching funds for the Tribe in the grant application with no written confirmation from it, and after a resolution was passed by Tribal Council without mention of such funds, is very concerning, as further discussed in Specific Finding 4.1. The information available to us suggests that these specific areas of concern were attributable to one individual who has now been terminated. We do not have concerns that this specific behavior is a systemic problem at Forterra, nor do we have reason to believe that others condoned the conduct that we find to be particularly concerning. As discussed in our recommendations, however, there are systemic opportunities for improvement at Forterra to guard against such situations in the future.

2. General Finding 2: Forterra did not provide the Tribe with full information about the planned partnership which deprived the Tribal Council of the ability to make an informed decision in passing its resolution. Further, Forterra's interactions with the Tribe in this grant application process, particularly the delay in contacting the Tribe, took for granted the Tribe's partnership.

The Snoqualmie Indian Tribe is a federally recognized tribe. It is a sovereign tribal nation with its own constitution, laws, and governing processes, including the need for Tribal Council approval of issues involving land and money. Forterra's interactions with the Tribe through the grant application did not provide the Tribal Council with sufficient information to make a fully informed choice on a partnership that implicated the use of both land and money.

The Tribe's Constitution states that it is the Tribal Council's purview to: (1) "govern, approve, or veto, any . . . encumbrance or use of Tribal lands"; (2) "set aside and spend Tribal

funds for Tribal purposes”; and (3) “manage develop, protect, and regulate . . . natural resources within the Tribe’s jurisdiction.”¹³ Although Forterra staff may have had varying degrees of knowledge of the Tribe’s Constitution, the communications with the Tribe indicated that specific information was needed for Tribal Council approval. In her communications with the Forterra Vice President of Transactions, the Executive Director of Governmental Affairs and Special Projects for the Tribe made clear that she needed to understand the “exact ask” of the Tribe to present to the Tribal Council. The summary she proposed to him had no discussion of the planned amount of timber to be harvested from Snoqualmie land, no discussion of the management standards or reporting that would be used, and no discussion of matching funds. Yet at no point did he clarify that those items would be included in the grant application to ensure that those items would receive Tribal Council approval. This oversight appears to be rooted in a lack of appreciation that the Tribal Council is a legislative body that must have full and complete information to decide issues that directly affect items within its authority to regulate. In failing to provide full information to the Tribe, Forterra also overlooked the principle of Free, Prior and Informed Consent. While this principle, as articulated by the United Nations, technically applies only to interactions between governments and Tribes, the Executive Director of Governmental Affairs and Special Projects for the Tribe made it clear during her interview that this principle is central to all of its engagements with partners.

The timing of Forterra’s first outreach to the Tribe about the grant shows that Forterra took for granted that the Tribe would commit to the partnership. Forterra learned of this grant opportunity on February 10. At that time, the deadline for submission was April 8. On February 12, the Forterra Vice President of Transactions first suggested that Forterra “go for \$40 million to partner with Snoqualmie . . . to test and pilot the feasibility of self-sustaining rematriated ancestral lands.” Ten days later, there was an initial draft of the grant narrative written centered around conservation thinning on the Tribe’s Ancestral Forest. Forterra then waited four more weeks, until March 21, before reaching out to the Tribe to discuss the grant. In those four weeks, numerous drafts were exchanged internally at Forterra—all centering the narrative around the Snoqualmie Ancestral Forest. Forterra planned to submit the grant application to the designer by March 28. Thus, had the Tribe declined to partner with Forterra, Forterra would have had just one week to completely re-write a document it had spent six weeks drafting.

When asked what it would have done if the Tribe had declined to partner with Forterra, employees seemed confident that they could have pivoted to another source of fiber (discussed more fully in Specific Finding 1.2). But, even accepting that as true, Forterra’s delay in asking the Tribe about the partnership was improper. It placed unnecessary urgency on the Tribe to quickly respond to the request. Forterra first asked for a commitment from the Tribe by April 1. That gave the Executive Director of Governmental Affairs and Special Projects for the Tribe less than two weeks to fully understand the grant, draft a summary to propose to the Tribal Council,

¹³ The Tribal Council has other areas within its power. This list is limited to those that are relevant to the grant application.

and obtain Tribal Council approval to sign on as a partner. While we understand that the overarching timeline for a grant of this size was compressed and placed a great deal of stress on Forterra, we did not hear any justification for this six-week delay in approaching the Tribe about a partnership. Luckily, the deadline was ultimately extended, which provided additional time for the Tribe to consider the proposal. However, much of the rushed work had been done driving towards the April 1 deadline.

The timeline for communicating with the Tribe stands in stark contrast to when Forterra first reached out to the third-party consultant on carbon policies. Forterra reached out to the consultant on February 23 asking for their explicit help in drafting the grant. In contrast, Forterra waited over a month to contact the Tribe on which they were centering the entire grant narrative.

Overall, the tone of Forterra's communications with the Tribe and the justifications provided in interviews for the manner of communication suggest that Forterra did not recognize the significance of the Tribe's governance processes. Further, in this application the Tribe was not like other project partners. The Tribe was central to the entire narrative of the grant application. Such a critical project partner should have been involved in the discussion from the beginning.

B. Findings Specific to the Tribe's September 23rd Letter

- 1. Area of Concern 1: Amount of Harvest - "Forterra told the USDA that it would use timber harvested from our Ancestral Forest 'to manufacture 20,000 cubic meters of carbon-sequestering mass timber commodity elements per year.'" The Letter claims that this volume was never discussed with the Tribe and that such a harvest would be "unsustainable and irresponsible."**

Central to Forterra's grant application is the Pilot to harvest timber from the Snoqualmie Ancestral Forest to build up to 1,000 units of attainable housing. That goal would require more timber than could be sustainably harvested on the Snoqualmie land. Other than in passing statements, however, the application does not mention any other sources intended to be used in the Pilot. Despite this, our investigation found that there was no intent to overharvest from the Tribe's land. Rather, the intent (although not clear in the application) was to obtain timber from multiple sources, even during the Pilot. The grant application also includes contradictory measurements as to the expected timber harvest and mass timber commodity production from the Tribe's land. These errors appear to have been the result of poor grant writing as to the intended sources of fiber and an equally poor understanding by Forterra staff as to what these measurements represented. This is discussed further below.

- a. Specific Finding 1.1: The grant application is internally inconsistent about the amount of fiber that would be harvested and needed to meet the housing goals.**

The grant application includes conflicting statements about its harvesting and construction goals. It states that in the first three years of the project (the Pilot), enough timber will be harvested from the 12,000 acres of the Snoqualmie Ancestral Forest to build up to 1,000 units of attainable housing. But it also states that 100 acres, harvested responsibly, can produce 50 cubic meters of timber per year, which is enough for a single bedroom cross laminated timber (“CLT”) attainable housing unit.¹⁴ That means, at most, 12,000 acres can produce 6,000 cubic meters of timber per year, for a construction of 120 housing units annually. Using the application’s own math, Forterra would need to harvest timber from 33,000 acres to meet the goal of 1,000 housing units over a three-year period.

Moreover, the statement specifically identified in the Letter discusses the end-product—20,000 cubic meters of carbon-sequestering mass timber commodity elements per year produced by DWIC—not 20,000 cubic meters of harvested timber. It takes more timber to create fewer cubic meters of output (CLT and glulam) because wood volume is lost in production. The BECK Group has estimated that 21.4 nominal board feet of lumber will be required for every cubic foot of CLT produced.¹⁵ As such, production of 20,000 cubic meters of CLT by DWIC, as described in the grant application, could require up to 15 million board feet per year.¹⁶

The grant application also provides Galbraith Mountain as a case study, but it, too, shows that the projected goals of up to 1,000 housing units in three years and 20,000 cubic meters of end-product annually could not be reached through harvesting on 12,000 acres. The grant application says that at Galbraith Mountain, 3,000 acres yielded 1.5 million board feet per year. Applying a conversion factor of 21.4, this would produce 70,000 cubic feet (2,000 cubic meters)

¹⁴ An earlier version of the grant application cites to a USDA Resource Bulletin from 1992 as support for the calculation that 100 acres could produce 50 cubic meters of timber annually. This 1992 report summarized a 1988-90 timber resource inventory of 19 counties in western Washington. It did not discuss conservation harvesting, nor did it even provide this calculation, instead providing estimates of the net volume of timber growth in cubic feet and the net volume of sawtimber in board feet. The grant application’s use of cubic meters instead of board feet (which is the more standard measurement for harvest yields) likely added to the confusion over the project’s timber harvest projections. To convert board feet to cubic meters requires a number of assumptions and calculations.

¹⁵ This number can vary depending on practices and procedures at the CLT manufacturer. See, e.g., The BECK Group, *Mass Timber Market Analysis, Completed for: Council of Western State Foresters*, November 2018, available at: <https://www.oregon.gov/ODF/Documents/ForestBenefits/Beck-mass-timber-market-analysis-report.pdf> (last visited Oct. 27, 2022).

¹⁶ The Tribe had estimated that it would likely require at least 8 million board feet per year, a number which still was unattainable from the Tribe’s Ancestral Forest.

of CLT. As such, at least 30,000 acres would be required to produce 20,000 cubic meters of CLT per year.

When asked about these measurements, Forterra staff showed a lack of understanding of the various figures used throughout the application. Other than the Forterra Vice President of Transactions, the individuals we interviewed involved with drafting and reviewing the grant application had limited or no experience with forest mensuration and calculating timber harvests or the production of mass timber commodities. Individuals interviewed candidly admitted it was not in their area of expertise. Other than the Forterra Vice President of Transactions, these employees had not worked previously on the Forest to Home project at Forterra. They were thus unable to review these numbers for accuracy. They were also unable to readily assess what these figures meant on a practical level with respect to the Snoqualmie Ancestral Forest and the Tribe's intended conservation harvest practices. The general sentiment was that they relied on the Forterra Vice President of Transactions, who was responsible for inputting these figures, to get them right.

Notably, an earlier version of the grant application stated that 90,000 cubic meters of carbon-sequestering mass timber commodity elements would be produced by DWIC from the Snoqualmie Ancestral Forest per year. This was later revised downward to the 20,000 figure used in the grant application. When asked about the basis for these two figures, the Forterra Vice President of Transactions stated that he did not remember where these numbers came from but speculated that the 20,000 figure was based on the amount of fiber needed to construct 1,000 units (using the equation of 20 cubic meters per module, with the average unit being 2 modules¹⁷). He did not know why he had initially used the 90,000 figure, speculating that it may have been a mistake or was based on the five-year life of the project rather than an annualized number. When asked whether the 20,000 cubic meters referred to the volume of timber that was harvested or the volume of the finished CLT product, the Forterra Vice President of Transactions did not know and expressed doubt in the application's math. He ultimately acknowledged that "I'm sure the calculation is wrong at this point."

b. Specific Finding 1.2: Forterra never intended to procure fiber from only the Snoqualmie Ancestral Forest during the Pilot phase but failed to make that clear in the grant application.

The Tribe expressed concern that the grant application, as written, proposes an unsustainable level of timber harvesting from its Ancestral Forest to satisfy the project's construction objectives during the Pilot. Through our investigation it was confirmed that harvesting this quantity would be both unsustainable and an irresponsible forestry practice, as discussed above. The language in the grant application strongly suggests that the Snoqualmie Ancestral Forest was to be the only source of fiber for the first three years of the project.

¹⁷ We note that this would be 40,000 cubic meters, not the 60,000 cubic meters that would come from 20,000 cubic meters annual for three years.

However, Forterra never intended to rely exclusively on fiber from the Snoqualmie Ancestral Forest to satisfy the grant's objectives.

All interviewed individuals with knowledge (including Forterra employees, as well as unaffiliated third parties) confirmed that Forterra never expected the Tribe to be the exclusive source for timber, even during the initial three years of the project. Forterra's intention to procure fiber from multiple sources was corroborated by studies of potential timber sources that had been previously commissioned by Forterra. Multiple individuals expressed confidence that they could obtain sufficient fiber from these sources.

Critically, Forterra staff were clear that procuring that much fiber from the Snoqualmie Ancestral Forest would violate the core tenants of Forterra and the grant because it would require irresponsible forestry practices. Such "Lorax-like" clear-cutting practices were never intended for the Tribe's Ancestral Forest, or any other land. Use of these clear-cutting practices was also not reflected at page 11 of the grant application, which promotes managing forest health through "thoughtful conservation harvests or thinning and selective harvesting" and discusses the need to protect environmental and cultural values.

Although it could be stronger, there is also language in the grant application suggesting other sources of timber. For instance, the budget narrative indicates that all three partner tribes have "ownership and management of ancestral lands," suggesting that all three may be a source. Another section of the grant application narrative also discusses recruiting small landowners during the first three years to participate in the project. Additionally, the grant application narrative refers to the primary site as "western Washington" not just the Snoqualmie Ancestral Forest. And, as already discussed, the math throughout the application also makes clear that harvesting sufficient timber for 20,000 cubic meters of mass timber commodity per year simply is not possible from the Tribe's land. The numbers do not support the conclusion that all the harvesting was to be done there. The forest management principles discussed on page 11 of the grant application likewise make clear that overharvesting was never intended.

Forterra staff also expressed a shared belief that the grant application was a non-binding proposal such that if any element changed following the award, Forterra would be able to negotiate revised terms with the USDA. This included any changes in what any sub-recipients, such as the Tribe, wanted to do with respect to the grant. As such, Forterra's expectation was that if the Tribe's forest management plan (which had not been adopted by the time the grant application was submitted) involved a lower than expected level of harvesting, Forterra and the Tribe would be able to address that change during the award negotiation process.

c. Specific Finding 1.3: Forterra did not discuss with the Tribe expected quantities of harvest.

The Letter's statement that the volume of timber intended to be harvested from the Tribe's land was never discussed between Forterra and the Tribe leading up to the grant application is accurate. The documents we reviewed support this statement and none of the

individuals we interviewed disputed its accuracy. Communications with the Tribe contained only two references to the amount of timber to be harvested. First, in the summary of the grant application provided to the Tribe on March 25, Forterra explained “The Pilot focuses initially on maximizing carbon sequestration on ancestral land owned by the Tribes of Washington State from which sufficient fiber will be harvested to build up to 1,000 mass timber affordable housing units in BIPOC communities.” We have been informed that to build 1,000 mass timber affordable housing units would require between 20,000 and 60,000 cubic meters of mass timber product, depending on the size of the units. We have seen nothing indicating that these calculations were discussed with the Tribe. Further, the Executive Director of Governmental Affairs and Special Projects for the Tribe indicated—consistent with the language in the Executive Summary shared with the Tribe—that she understood the timber that would be used in the project would come from all tribal partners’ land as well as private lands. She also understood that the timber harvested from Snoqualmie land would be achieved through conservation harvesting on only a small portion, not the full 12,000 acres.

Second, in the email exchange between the Forterra Vice President of Transactions and the Executive Director of Governmental Affairs and Special Projects for the Tribe on March 25 and 26 that formed the basis for the summary presented to Tribal Council, the Executive Director of Governmental Affairs and Special Projects for the Tribe wrote to confirm that:

all [timber harvesting] would be done with Tribal consent, and within the parameters of the Tribe’s greater forest management plan.

The Forterra Vice President of Transactions confirmed and added:

This would not change the Tribe’s existing plans for timber harvesting in any way, other than the subsidize the staff and training costs the Tribe will realize in doing the harvesting.

The Executive Director of Governmental Affairs and Special Projects for the Tribe included this exact language in the one-page summary she sent to the Forterra Vice President of Transactions on April 7. It remained unchanged when the Forterra Vice President of Transactions provided comments back to the Tribe on April 14. The email exchanges around this content made it clear that this was the information the Executive Director of Governmental Affairs and Special Projects for the Tribe intended to present to the Tribal Council. The Executive Director of Governmental Affairs and Special Projects for the Tribe confirmed to us that it was important to the Tribe that there was no set commitment of the amount of fiber that would be harvested.

In interviews, two Forterra employees referenced an understanding of the Tribe’s intended timber harvesting plans based on work Forterra did with the Tribe in advising on the reacquisition of the Ancestral Forest in fall of 2021. But our understanding is that Forterra did not make any attempt to re-confirm that those projected harvest numbers were still accurate as the Tribe developed its forest management plan. More importantly, those harvest numbers are

still significantly less than what would be needed to produce 20,000 cubic meters of mass timber product per year or to build 1,000 attainable housing units over three years under Forterra's calculations.

d. Specific Finding 1.4: Forterra guaranteed the Tribe control over the amount of timber harvested from its land; this was not expressly reflected in the grant application.

As discussed in connection with Specific Finding 1.3, Forterra guaranteed the Tribe absolute control over the amount of timber to be harvested from the Ancestral Forest. Such a commitment is appropriate and necessary under the concept of Free, Prior and Informed Consent.

The grant application, however, fails to explicitly acknowledge this agreement between Forterra and the Tribe. Rather, the grant application narrative suggests that the Tribe has committed to certain quantities of harvest. The grant application does make a general statement that "[t]he Coalition will protect and support cultural values, especially for ancestral land relationships central to underserved communities" which included "adjust[ing] management plans as necessary to protect and respect Tribal assets." But this statement falls short of explicitly confirming for the Tribe the agreement to absolute control over the amount of timber to be harvested.

**2. Area of Concern 2: Forest Management Standards & Reporting -
"Forterra represents to the USDA that the Tribe has agreed to certain forest management standards" and to "share data related to harvest activities." The Letter claims that "[t]his was never discussed with the Tribe, and it was never agreed to by the Tribe."**

At several points in their discussions, Forterra provided general information to the Tribe indicating that the grant would require the adoption of forest management measurement standards and reporting requirements, which Forterra was researching. However, Forterra did not clearly communicate with the Tribe about Forterra's recommended approach for forest management standards and reporting, or that these standards and requirements were expressly included in the grant application.

a. Specific Finding 2.1: Forterra did not clearly communicate with the Tribe about Forterra's recommendation for the measurement standards and reporting plan to use in the grant application.

Before communicating with the Tribe, Forterra had already included in the draft grant application its intention to use the Improved Forest Management ("IFM") methodology adopted by the American Carbon Registry ("ACR") for measuring, monitoring, and verifying results for carbon-sequestration benefits. By March 7, the draft grant application expressly stated that the project would use the IFM methodology adopted by the ACR to satisfy its measurement and

reporting obligations. On March 16, a Forterra staff member made additional edits to this section, suggesting that additional consideration had been given to these measurement and reporting standards.

Rather than identifying Forterra's proposed approach to the Tribe, the Forterra Vice President of Transactions told the Tribe on March 25 that some form of measuring would still need to be developed during the project. The Executive Summary he provided to the Tribe stated: "Measuring: The project includes developing, testing and implementing a carbon tracking methodology that follows carbon usage from its earliest presence in forest to its commodity deployment in the built environment." This summary also generically describes "[a]t each stage in this vertical supply chain, cutting-edge carbon tracking technology will be used to measure the Pilot success against a baseline of industrial timberland management." In follow-up, on April 5, the Forterra Vice President of Transactions told the Tribe that Forterra would "research" what carbon measurement standards to use in the grant application. It is unclear why the Forterra Vice President of Transactions did not identify the standards already described in the draft grant application at that time. We are not aware of further communications from Forterra with the Tribe on this issue.

Separately, pages 10 and 11 of the grant application propose some specific principles for forest management that would maximize carbon sequestration. These standards are discussed generally as a means to pilot CSAF practices rather than a framework for what would be done by the Tribe on its own land. However, the grant application also states that these practices would be deployed by the "Coalition," which, as discussed further in Specific Finding 3.1, includes the Tribe. Accordingly, it could be read that the Tribe is planning on adhering to these particular forest management principles. This confusion appears to be the result of poor grant writing, rather than an intentional attempt to bind the Tribe to any particular forest management plan. At the time, Forterra was aware that the Tribe was in the process of adopting its own forest management plan for the Ancestral Forest. Language contained on Page 11 of the grant application indicates that a tribe's own management plan would preempt any conflicting principles, and that these principles deferred to other cultural and environmental values. The grant application's language in this section, however, could have been stronger to reflect Forterra's agreement with the Tribe that all work would be done with the Tribe's consent and consistent with the Tribe's forest management plan.

3. Area of Concern 3: The Manner in which the Tribe reacquired the Ancestral Forest and Forterra's role - "[T]he Tribe is concerned that Forterra has misrepresented the manner and mechanism with which the Tribe was able to reacquire our Ancestral Forest" and "it is offensive and completely inaccurate for Forterra to say that the 'Coalition' played this role."

The Tribe expressed concern that Forterra misrepresented the manner and mechanism with which the Tribe was able to reacquire its Ancestral Forest. As discussed below, there are specific statements within the grant application that do not accurately reflect Forterra's role in

the reacquisition. But the grant application also contains additional language better reflective of Forterra's role, which incorporated input from Forterra's tribal consultant.

a. Specific Finding 3.1: The language used on page 12 of the grant application is confusing and does not accurately reflect what occurred with respect to the reacquisition of the Snoqualmie Ancestral Forest.

Page 12 of the grant application describes five financial mechanisms that Forterra proposes could be used by landowners in land acquisition or implementation of CSAF practices as part of the pilot project. This is not a section specifically discussing the Tribe and there is no need to reference the Tribe with respect to these financial mechanisms. However, the grant application then states that these five financial mechanisms were "combined in a single methodology" that "has allowed the Coalition to succeed in the Snoqualmie Indian Tribe's acquisition" of the Ancestral Forest.

It is unclear what the grant application meant by "single methodology" as these five complex financial mechanisms cannot readily be employed at the same time in support of a transaction. But, in any event, these five financial mechanisms were not used in conjunction by the Tribe in its reacquisition of the Ancestral Forest. The reference to the "Coalition" blurs the specific roles actually played by Forterra and the Tribe in the reacquisition of the Tribe's Ancestral Forest and, more problematically, suggests involvement of others who had zero participation. The grant application defines the term "Coalition" extremely broadly as "[n]on-profit project applicant Forterra NW, in conjunction with public and private partners from across the spectrum of forestry, wood product commodity manufacturing and BIPOC communities." Use of the term here suggests involvement by *all* of the partners and supporters of the grant in the Tribe's reacquisition of its own Ancestral Forest, which is not accurate.

This problematic language was not included in initial drafts of the grant application narrative. It was added relatively late in the drafting process by the Forterra Vice President of Transactions—on March 27—and it received only minor wordsmithing edits before the grant application was finalized. It is possible that, given the confusing nature of the section (including what was meant by combining various complicated financial structuring mechanisms into a "single methodology"), any inaccuracies were the result of poor grant writing or the failure of the reviewer to understand the technical nature of the statement. Likewise, it appears that use of the shorthand term "Coalition" here was also the result of poor grant writing. Other places in the grant application similarly use the term "Coalition" inappropriately, when just one or several of the partners should be specifically identified. Such usage throughout the grant application suggests an effort to try to standardize the terms used and present a cohesive narrative, rather than an intentional effort to mislead.

b. Specific Finding 3.2: Other sections of the grant application more appropriately describe Forterra's role and reflect input from Forterra's tribal consultant.

Although page 12 contains inaccurate language describing the Tribe's reacquisition of the Ancestral Forest, other sections of the grant application more appropriately describe Forterra's role and relationship with the Tribe. On page 6, the grant application describes how "Forterra facilitated the \$45 million return of the North Tolt headwaters to the Snoqualmie Indian Tribe." Likewise, on page 14, the grant application states that the Tribe was "advised by Forterra" on this reacquisition and that "Forterra is a partner with the Tribe on other projects pertaining to the Tribe's conservation and management of its ancestral land." It is our understanding that these statements more accurately reflect the assistance Forterra provided to the Tribe's purchase of the Ancestral Forest and their general relationship.

Notably, Forterra staff expressly reached out to a tribal consultant who they had worked with on prior transactions about what language to use to describe the history and scope of Forterra's partnerships with the Tribe.¹⁸ This outreach demonstrated a good-faith interest in accurately conveying this information in the grant application. The tribal consultant proposed: "Forterra assisted and advised the Snoqualmie Indian Tribe on its historic acquisition of 12,000 acres of its ancestral homelands in King County and facilitated financial aspects of the deal. Forterra is a partner with the Tribe on other projects pertaining to the Tribe's conservation and management of its ancestral lands." In fact, this language proposed by the tribal consultant about the Tribe was incorporated into the grant application with only minor revisions. This language also tracks the Tribe's own public acknowledgement of Forterra's assistance with the transaction.

Forterra's interest in accurately describing the reacquisition also played out during the drafting process. In an interim version of the grant, language was added on page 6 that overstated Forterra's role in the reacquisition of the Snoqualmie Ancestral Forest. Another Forterra staff member suggested changing this language, noting in a comment that it did not feel accurate, and ultimately it was revised to the current description included in the final grant application.

Overall, it appears that Forterra was mindful about how they should describe their role in the reacquisition of the Snoqualmie Ancestral Forest and expressly reached out to their tribal consultant on that point. As noted, when there was potential overreach in the description, it was called out and changed. This makes it all the more likely that inclusion of the offending language on page 12 was not intentional by Forterra and was more likely the result of poor grant writing and insufficient review of technical aspects of the grant application.

4. Area of Concern 4: Matching Funds - "[T]he grant application outlines nearly \$1.5 million in 'matching funds' allegedly promised by the Tribe."

¹⁸ It is unclear why Forterra did not simply reach out directly to the Tribe to have this discussion. It is also important to note the scope of this consultation was limited to how to describe the historical partnership between Forterra and the Tribe. Forterra did not clearly explain the nature of the project and the Snoqualmie's intended role or ask this consultant to provide guidance on the overall grant.

But “[t]he Tribe had no knowledge of any match requirement, and the Tribe did not agree to provide any match contribution.”

The grant application budget commits approximately \$1.5 million in matching funds from the Tribe. These funds cover expenses such as new staff positions and scholarships for college and advanced degrees. Although there is a factual dispute over what was discussed, the Letter’s statement that the Tribe never agreed to committing these funds is accurate because appropriate approval through a Tribal Council resolution was never sought or provided. However, the extent to which Forterra was aware that this particular authorization was required in the context of a grant application is unclear. Nonetheless, the circumstances as to how and when the matching funds were added to the grant budget are concerning.

a. Specific Finding 4.1: Forterra did not properly obtain the Tribe’s consent to include matching funding in the grant application.

There are competing narratives about what was verbally discussed about matching funds between the Forterra Vice President of Transactions and the Executive Director of Governmental Affairs and Special Projects for the Tribe. The Forterra Vice President of Transactions recalls a discussion of matching funds and receiving confirmation that the Tribe would match in the form of already committed funds (staff positions and scholarships). The Executive Director of Governmental Affairs and Special Projects for the Tribe is clear in her statement that matching was not discussed and that the Tribe could not commit to matching; if matching had been required the Tribe would have passed on the grant. Her account appears to be supported by the documents. While the Forterra Vice President of Transactions’ notes show that he planned to discuss matching, there is not a note indicating that the Tribe agreed as there is in other sections. Additionally, in the summary provided by the Executive Director of Governmental Affairs and Special Projects for the Tribe the following day, she does not include any information about a match. The Forterra Vice President of Transactions never corrects her to add matching despite her request that the “exact ask” of the Tribe be summarized.

Setting aside any credibility determination, however, it is still clear that Forterra did not go through the proper process to obtain consent from the Tribe to include match funding. As discussed above, committing funds is a function left to the Tribal Council. In the email exchange of March 25 and 26, the Executive Director of Governmental Affairs and Special Projects for the Tribe explained that she was gathering information to draft a summary about what would be asked of the Tribe in the grant. That summary did not include a match. She later turned that summary into a one-page document in advance of the Tribal Council’s vote and emailed that document to the Forterra Vice President of Transactions. Despite multiple communications about this document, the Forterra Vice President of Transactions never asked that matching funds be added to the summary. Even if there was a discussion about matching through already committed funds, the Tribe could not commit to such a match without approval from the Tribal Council. The resolution of the Tribal Council did not include matching funds. Forterra knew that specific authorization was not being sought and was not received from the Tribal Council.

The timing of when the matching funds were added to the budget also raises concerns. There is a draft budget on April 22—the day after the Tribal Council resolution—that did not include any matching funds for the Tribe. When the matching funds were added and by whom has been difficult to determine due to the later versions of the budget being password protected when we received them. But it appears from a screenshot of track changes to the document that the matching funds were added by the Forterra Vice President of Transactions on May 4, just two days before the submission of the grant application and after most others at Forterra had completed their final review. At the time the matching funds were added Forterra knew that the Tribe’s resolution did not include a match.

5. Area of Concern 5: Commitment of fiber from the Snoqualmie Ancestral Forest to build attainable housing for specific BIPOC communities.

The Letter expressed concern that the grant application imposed specific timber harvest obligations on the Tribe that were directly tied to housing specifically promised to other disadvantaged communities. Although Forterra informed the Tribe about general project goals (including up to 1,000 attainable housing units for BIPOC communities), Forterra failed to provide to the Tribe the articulated goals of serving delineated housing needs of specific communities in Washington. Moreover, the grant application as written placed unnecessary pressure on the Tribe by identifying its land as the primary source of timber during the Pilot.

b. Specific Finding 5.1: Forterra provided the Tribe with only generalized statements about using timber harvested from the Snoqualmie Ancestral Forest to build attainable housing in BIPOC communities and failed to inform the Tribe of the specific commitments in terms of quantity and timing made to specific BIPOC communities. The grant application as written places improper pressure on the Tribe as the primary source of fiber for specific housing units.

Forterra was clear with the Tribe from the beginning that the concept behind the grant application was to use conservation harvesting on tribal ancestral lands to build attainable housing from CLT for BIPOC communities throughout Washington. The Tribe understood that vertical chain and even included approval for it specifically in its resolution: “. . . fiber from the conservation thinning would then be sold at no less than market rate for the manufacturing of affordable housing at the Darrington Wood Innovation Center for underserved communities in the State of Washington.” This information was in the Executive Summary Forterra provided the Tribe on March 25. And the Tribe showed its support of this overarching concept in its resolution.

What was not made clear to the Tribe was that, as part of the grant application narrative, *specific* housing units were being committed to *specific* communities in need. The grant application reads: “The prototype and scale of the Pilot’s development and expansion of markets for climate-smart commodities, the Coalition is supporting four attainable housing projects in

underserved and overburdened Washington communities: [listing four specific communities].” The application then goes on to identify how many units are committed to each community. These communities, as well as the specific housing units planned for each, were not mentioned in the summary documents provided to the Tribe. Rather, the information provided to the Tribe was general and discussed building “up to” 1,000 units. The Letter makes clear that the Tribe’s objection to the grant is not an objection to working with or helping any of these groups; building attainable housing in these communities is a critical goal. Rather, the Tribe’s overarching concern appears to be that specific promises were made on behalf of the Tribe that the Tribe may not be able to satisfy, and the Tribe did not want other communities to suffer from unfulfilled promises as a result. Like the issues discussed in Specific Findings 1.3 and 2.1, the failure to communicate clearly with the Tribe about the contents of the grant application obfuscated the actual commitment the Tribe was making.

Related to Specific Finding 5.1, the grant application’s omission of sources of timber outside of the Snoqualmie Ancestral Forest places unnecessary pressure on the Tribe in connection with the commitments made to the specific communities for housing. The narrative in the grant application suggested that the first 1,000 units will be developed from timber harvested from the Snoqualmie Ancestral Forest. As discussed in Specific Finding 1.2, this does not appear to be the actual intention of the project. But that narrative as written places a pressure on the Tribe to alter its contemplated harvesting plans to satisfy the commitment made to other communities in need. Tying the Tribe’s consent to the volume of timber that could be harvested on their land to a commitment to another community in need (without informing the Tribe first) creates a pressure that is at odds with the concept of informed consent being freely given.

V. Recommendations

The challenges identified in this report are not unique to Forterra and, while concerning, provide Forterra with an opportunity for important changes that can be leveraged by the organization to better serve all aspects of its mission. Our specific recommendations are limited to the express scope of our investigation, although the Board may wish to consider taking additional action considering the information contained in this report, including corrective actions related to the Forterra NW Partnerships Climate-Smart Commodities grant.

In light of our findings, we recommend Forterra implement the following changes to Forterra’s grant writing process going forward:

- Improve rigor around grant application process, including adopting specific policies around grant writing and approval. We suggest the following be included in any policies adopted:
 - Ensure input from the company’s leadership team input on decision to apply and focus of application.
 - Involve more than one key decisionmaker in the decision to apply.

- Require Board approval for grants of certain size.
- Provide early review opportunities for Legal and Finance.
- Clearly identify the nature of the grant and any requirements particular to it (e.g., cost-reimbursement) at the beginning of the process to inform the grant writing procedure.
- Involve the appropriate technical experts in the grant writing process (e.g., the involvement of forestry and CLT experts to ensure the referenced sources for a project meet that project's expected demand).
- Require a "fact check" in addition to legal and finance review. This should include confirming that cited statistics are correct, applicable, and not outdated. It should also include a check for support of all commitments by partners referenced in the application.
- Provide transparency to project partners and ensure their informed consent.
 - Provide copies of and allow sufficient time for project partners to review all sections of grant application directly applicable to them.
 - Ensure that there is written consent from project partners for any obligations identified in grant applications, including matching funds.
 - Unless there are confidentiality concerns raised by a partner, make partners aware of all partners on the project and the role of each partner.
- Treat tribal partners with the deference and respect owed to them as sovereign governments.
 - When working with tribal partners set expectations early in the process for what is needed in terms of approval.
 - Be familiar with tribal partners' governing documents and approval requirements.
 - In discussions of agreements with tribes, ensure that Free, Prior and Informed Consent is front of mind and explicitly stated.
 - Engage in ongoing training for Forterra staff about working with tribal partners.
- Continue building an organizational culture where employees feel safe voicing concerns and raising questions to supervisors about accuracy of materials.

