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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

CENTER FOR BIOLOGICAL DIVERSITY,	)	Case No. _____
	)	
Plaintiff,	)	<b>COMPLAINT</b>
vs.	)	
	)	
UNITED STATES FOREST SERVICE,	)	
	)	
Defendant.	)	

**INTRODUCTION**

1. Plaintiff Center for Biological Diversity (“the Center”) challenges the decision of Defendant United States Forest Service (“Forest Service”) to authorize and proceed with the Jacob-Ryan logging project on the North Kaibab Ranger District of the Kaibab National Forest. The Forest Service violated the National Forest Management Act (“NFMA”) by failing to amend the Kaibab Forest Plan prior to implementing a significant change in management direction for the northern goshawk (“goshawk”) as part of the Jacob-Ryan logging project. The Forest Service also violated the National Environmental Policy Act (“NEPA”) by failing to adequately consider and disclose

within the “Environmental Assessment” (“EA”) a number of significant issues and concerns regarding the agency’s management of goshawks in the southwest. The Center also challenges the Forest Service’s failure to comply with NEPA and NFMA prior to significantly changing the management direction for goshawk habitat across the Southwest Region (which includes all national forests in Arizona and New Mexico).

2. The goshawk is classified by the Forest Service as a “sensitive species,” and is considered vulnerable to extirpation or extinction in Arizona.

3. The Jacob-Ryan logging project is located on the Kaibab Plateau, north of the Grand Canyon, an area of critical importance for the viability of the goshawk. Goshawk reproduction on the Kaibab Plateau showed a significant decline from 1991 to 2005. Goshawks are assumed to be declining on the Kaibab National Forest.

4. In 1996, the Forest Service amended all Forest Plans in the Southwest Region, including the Kaibab National Forest, to provide standards and guidelines to protect the goshawk from logging and other activities (“1996 Plan Amendment”). Recent scientific evidence indicates that goshawks are continuing to decline even where the Forest Service is implementing the 1996 Plan Amendment.

5. In 2006-07, the Forest Service made significant changes in how it manages goshawk habitat across the Southwest Region. The Forest Service changed the scale by which it measures forest canopy cover, from the stand scale (or “sites”), which typically range from 30 to 100 acres, to the much smaller group level, which range from less than an acre to 4 acres. The Forest Service also began to no longer include “open space” or “interspace” in its calculation of “vegetative structural stage” (“VSS”) classes.

6. As result of this change in goshawk management direction, a significantly larger proportion of the trees in goshawk habitat in the Southwest Region are now allowed to be logged, including a significantly increased number of large trees. The Forest Service acknowledges that this change will lead to a much more open forest over time compared to prior management pursuant to the 1996 Plan Amendment standards and guidelines. Similarly, the Arizona Department of Game and Fish has commented that these changes may significantly reduce the amount of forest cover within treated areas.

7. Due primarily to past logging, large trees greater than 16 inches in diameter at breast height presently comprise only 3% of ponderosa pine forests in the Southwest Region. The remaining large trees and old-growth forests are ecologically important for a number of wildlife species including the goshawk. The Jacob-Ryan logging project would log hundreds of large, old-growth trees, including trees over 180 years old.

8. The Center seeks declaratory relief that the Forest Service violated NFMA by implementing its new direction for goshawk management through the Jacob-Ryan logging project without amending the Kaibab Forest Plan. In addition, the Center seeks declaratory relief that the Forest Service violated NEPA in developing the Jacob-Ryan project. The Center seeks injunctive relief to prohibit implementation of the Jacob-Ryan project, pending compliance with NFMA and NEPA.

9. The Center also seeks declaratory relief that the Forest Service has violated NFMA and NEPA by significantly changing the management direction for goshawk habitat throughout the Southeast Region without complying with mandatory NEPA and NFMA procedures. The Center seeks to enjoin the Forest Service from implementing its

change in management direction for goshawk habitat in the Southwest Region until the agency first complies with NEPA and NFMA.

### **JURISDICTION AND VENUE**

10. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including NFMA, 16 U.S.C. §§ 1601, *et seq.*; NEPA, 42 U.S.C. § 4332; and the APA, 5 U.S.C. § 706.

11. Venue is properly vested in this Court under 16 U.S.C. § 1540(g)(3)(A) and 28 U.S.C. § 1391(e) because the Center resides in this district, Defendant U.S. Forest Service has offices in this district, and a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

12. An actual, justiciable controversy exists between Plaintiff and Defendant, and the requested relief is proper under 28 U.S.C. §§ 2201-02.

### **PARTIES**

13. Plaintiff Center for Biological Diversity (“the Center”) is a nonprofit conservation organization with approximately 40,000 members dedicated to the preservation, protection, and restoration of biodiversity and ecosystems throughout the world, including the Kaibab National Forest in northern Arizona.

14. The Center has offices in a number of states, including Tucson and Flagstaff, Arizona. The Center works to insure the long-term health and viability of animal and plant species across the United States and elsewhere, and to protect the habitat these species need to survive.

15. The Center and its members regularly use and enjoy the national forests in the Southwest Region of the Forest Service, including the Kaibab National Forest and more specifically including the North Kaibab Ranger District and the area of the Jacob-Ryan logging project, for hiking, fishing, hunting, camping, photographing scenery and wildlife, and engaging in other vocational, scientific, and recreational activities. The Center and its members derive recreational, inspirational, religious, scientific, educational, and aesthetic benefits from their regular use and activities on these national forests and within these areas.

16. The Center and its members intend to continue to use and enjoy the national forests throughout the Southwest Region, including the North Kaibab Ranger District, and more specifically including within and around the Jacob-Ryan project area, frequently and on an ongoing basis in the future, including this summer and fall.

17. The aesthetic, recreational, scientific, educational and religious interests of the Center and its members have been and will continue to be adversely affected and irreparably injured by the Forest Service's failure to comply with NFMA and NEPA prior to changing the management direction for goshawk habitat in the Southwest Region, and in preparing and authorizing the Jacob-Ryan logging project. These are actual, concrete injuries caused by the Forest Service's failure to comply with mandatory duties under the NFMA, NEPA, and the APA. The injuries would be redressed by the relief sought.

18. Defendant United States Forest Service is an agency of the United States, within the Department of Agriculture, and is responsible for the lawful administration of the national forests in the Southwest Region, including the Kaibab National Forest. The

Forest Service proposed, developed, and authorized the Jacob-Ryan logging project that the Center challenges in this case. The Forest Service also developed and is implementing the change in goshawk management that is challenged herein.

## **LEGAL BACKGROUND**

### **National Forest Management Act**

19. The National Forest System is comprised of 155 national forests, 20 national grasslands, and various other lands under the jurisdiction of the Department of Agriculture. The Southwest Region of the Forest Service includes 11 national forests in Arizona and New Mexico, including the Kaibab National Forest.

20. In 1976, Congress enacted NFMA to govern the National Forest System. NFMA sets forth a three-tiered approach to forest management. At the highest tier, NFMA requires the Secretary of Agriculture to promulgate national regulations that govern the development of regional and site-specific plans. 16 U.S.C. § 1604(g).

21. The second tier of regulatory oversight on national forests is the regional “land and resource management plans” (“Forest Plans”) that are prepared for each individual national forest or grassland. 16 U.S.C. § 1604(a). A Forest Plan must form one integrated Plan for the national forest. 16 U.S.C. § 1604(f)(1).

22. Forest Plans define the uses allowed in the various regions of the national forest, establish goals and objectives, and set forth mandatory standards and guidelines that limit various uses, including logging.

23. Forest Plans may be amended or revised only in accordance with NFMA procedures, including public participation requirements. 16 U.S.C. §1604(d), (f); 36 C.F.R. § 219.10(f-g).

24. The third tier is the so-called “site-specific” projects, which are prepared to effect specific, on-the-ground actions. Site-specific projects must comply with and be consistent with the applicable Forest Plan. 16 U.S.C. § 1604(i).

25. In order to amend or revise a Forest Plan, the Forest Service must comply with mandatory public participation requirements, and must assess the potential environmental impacts of the proposed amendment or revision, pursuant to NEPA.

#### **National Environmental Policy Act**

26. NEPA is our basic national charter for protection of the environment. 40 C.F.R. § 1500.1(a). “NEPA was passed by Congress to protect the environment by requiring that federal agencies carefully weigh environmental considerations and consider potential alternatives to the proposed action before the government launches any major federal action.” *Lands Council v. Powell*, 395 F.3d 1019, 1026 (9th Cir. 2005).

27. The purpose of NEPA is to ensure “that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience that may also play a role in both the decisionmaking process and implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

28. NEPA establishes three “categories” of agency action. First, federal proposals that may significantly impact the quality of the environment automatically trigger preparation of an EIS. 40 C.F.R. § 1501.4(a)(1). Second, agencies may designate types of actions that normally can be “categorically excluded” from further NEPA analysis. 40 C.F.R. §§ 1508.4, 1501.4(a)(2). Third, any action that does not fall into the first or second category should be evaluated in an EA, which must analyze whether impacts from the action may be significant and, therefore, require an EIS. 40 C.F.R. §§ 1501.4(b), 1508.9.

29. In determining whether an EIS is required, NEPA directs agencies to consider a number of factors, including the degree to which the environmental effects are likely to be highly controversial, the degree to which the possible effects are highly uncertain or involved unknown risks, the degree to which the action may establish a precedent for future actions with significant effects, and whether the action is related to other actions with individually insignificant but cumulative significant impacts. 40 C.F.R. § 1508.27(b). NEPA further requires agencies to consider and disclose all “reasonably foreseeable” environmental impacts of their proposed actions. 40 C.F.R. §§ 1508.7, 1508.8(b), 1508.25.

30. “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b). The information in an NEPA analysis must be of high quality, as accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. *Id.*

31. A NEPA analysis must candidly disclose the risks of a proposed action and any scientific uncertainty. It must also disclose responsible scientific opinion in opposition to the proposed action, and make a good faith, reasoned response to opposing scientific opinion.

32. NEPA imposes a continuing duty on agencies to supplement previous environmental documents. *Price Road Neighborhood Ass'n. v. U.S. Dept. of Transp.*, 113 F.3d 1505, 1509 (9<sup>th</sup> Cir. 1997). Agencies must prepare a Supplemental Environmental Impact Statement (“SEIS”) if the agency makes substantial changes to an action that are relevant to environmental concerns; or there are significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. 40 C.F.R. § 1502.9(c).

## **FACTUAL BACKGROUND**

### **Northern Goshawk**

33. The northern goshawk (*Accipiter gentilis atricapillus*) (“goshawk”) is the largest North American member of the genus *Accipiter*. The goshawk preys on small to medium size birds and mammals.

34. Goshawk nest areas are consistently comprised of mature and older forests.

35. In the southwestern United States, goshawks are primarily found in ponderosa pine forests. There is concern that populations and reproduction of the goshawk are declining in these forests and elsewhere in the western United States. These declines may be associated with forest changes caused by timber harvesting.

36. The goshawk is listed as a “sensitive species” by the Southwest Region of the Forest Service. Sensitive species are identified by the Regional Forester as species that require extra protection to prevent them from becoming designated as threatened or endangered under the Endangered Species Act. The Forest Service defines “sensitive species” as plant and animal species for which population viability is a concern, as evidenced by significant current or predicted downward trends in population numbers or density; and/or significant current or predicted downward trends in habitat capability that would reduce a species’ existing distribution.

37. Goshawks are considered vulnerable to extirpation or extinction within Arizona with a total estimated population between 3,000 and 10,000 birds.

### **Kaibab National Forest**

38. The Kaibab National Forest, located in northern Arizona, is close to 1.6 million acres in size and includes three separate ranger districts. The Forest Service completed a Forest Plan for the Kaibab National Forest in 1987.

39. The North Kaibab Ranger District of the Kaibab National Forest consists of 655,248 acres located north of Grand Canyon National Park. The North Kaibab Ranger District is located on the Kaibab Plateau, which is an uplifted “island” of high elevation forests surrounded on all sides by canyon country and desert habitats. Nestled among Grand Canyon National Park to the south, the Grand Staircase-Escalante National Monument to the north, and the proposed Vermilion Cliffs National Monument to the northeast, the Kaibab Plateau provides a central link between protected core areas of the southern Colorado Plateau.

40. Most of the Kaibab Plateau consists of the North Kaibab Ranger District of the Kaibab National Forest, managed by the Forest Service. The Kaibab Plateau supports a diverse mix of flora and fauna. The crest of the Kaibab Plateau is heavily forested with spruce-fir, aspen, and mixed-conifer forests. Stands of ponderosa pine and pinyon-juniper woodlands at lower elevations stretch from 8000 feet down to about 5500 feet above sea level.

41. Due in large part to its remoteness, the Kaibab Plateau contains some of the best remaining old growth ponderosa pine forest in the Southwest. The North Kaibab Ranger District, however, is extensively roaded and much of it has been logged.

42. The Forest Service's objective for sensitive species is to maintain viable populations in habitats that are distributed throughout their geographic range on National Forest System lands. Sensitive wildlife species found within the North Kaibab Ranger District include the goshawk.

43. The Kaibab Plateau holds one of the most concentrated populations of goshawks in North America. Goshawk reproduction on the Kaibab Plateau has been highly variable over the past 15 years, and the data show a significant decline from 1991 to 2005. Goshawk reproduction is currently not sufficient to replace adult mortality on the Kaibab Plateau.

44. Goshawks are assumed by the Forest Service to be declining on the Kaibab National Forest.

**1996 Forest Plan Amendment for Southwest Region**

45. The initial Forest Plans in the Southwest Region, including the 1987 Forest Plan for the Kaibab National Forest, were prepared prior to heightened concern for goshawks, and prior to the listing of the Mexican spotted owl as a threatened species. Little information on the habitat needs of the goshawk was available during preparation of these Forest Plans, and thus even though the Forest Plan for the Kaibab National Forest recognized the goshawk as a sensitive species it contained few specific standards and guidelines for their protection.

46. After reviewing the status of the northern goshawk in 1990, the Forest Service in the Southwest Region established a task force and scientific committee to review the goshawk's habitat management needs. This led to the issuance of interim guidelines in 1991. An environmental assessment was completed under NEPA to evaluate the effects of implementing the interim goshawk management direction.

47. In 1992, the Forest Service issued "Management Recommendations for the Northern Goshawk in the Southwestern United States," General Technical Report RM-217 ("1992 Management Recommendations").

48. The 1992 Management Recommendations identified three components of goshawk habitat: the nest area; the post fledgling family area; and the foraging area. Nest areas are approximately 30 acres and contain one or more stands of large, old trees with dense canopy cover. Post fledgling areas are approximately 420 acres and surround the nest area. The foraging area is approximately 5400 acres in size and surrounds the post fledgling area.

49. The 1992 Management Recommendations set forth the desired forest conditions within goshawk habitat in terms of “vegetation structural stages” (“VSS”). According to the 1992 Management Recommendations, VSS is a forest description that is based on the tree diameter distribution within a stand. Stand is defined as an area of trees possessing sufficient uniformity to be distinguishable from trees on adjacent areas.

50. For post fledgling family areas and foraging areas, the 1992 Management Recommendations set forth the following recommendations for forest management in goshawk habitat: 10% VSS 1 (grass/forb/shrub); 10% VSS 2 (seedling, sapling); 20% VSS 3 (young forest); 20% VSS 4 (mid-aged forest); 20% VSS 5 (mature forest); and 20% VSS 6 (old forest). Thus 40% of the forest is recommended to be comprised of mature and old growth forests.

51. The 1992 Management Recommendations define VSS 1 as “grass-forb-shrub (opening).” “Opening” is further defined as a break in the forest canopy that may be covered by grasses, forbs, shrubs, tree seedlings; or areas with sapling-sized trees and larger that are stocked less than 10 percent.

52. For VSS 4, 5, and 6, the 1992 Management Recommendations set forth the recommended canopy cover. For post-fledgling areas in ponderosa pine forest, the portions that are in VSS 5 and 6 are to have a minimum canopy cover of 50%. For the portions in VSS 4, one-third is to have canopy cover of at least 60%, with the other two-thirds at least 50%. For the foraging areas in ponderosa pine forest, the portions that are in VSS 4, 5 and 6 are to have a minimum canopy cover of at least 40%.

53. In 1992, the Forest Service published a notice of intent to prepare an “environmental impact statement” (“EIS”) pursuant to NEPA, concerning its proposal to amend the Forest Plans in the Southwest Region to incorporate management standards and guidelines for the goshawk and Mexican spotted owl. A draft EIS was published in 1994, with a final EIS completed in 1995. The Record of Decision was issued in 1996.

54. The 1996 Record of Decision amended all Forest Plans in the Southwest Region, including the Forest Plan for the Kaibab National Forest, to include new standards and guidelines for the protection of northern goshawks and Mexican spotted owls (“1996 Plan Amendment”).

55. For northern goshawks, the 1996 Plan Amendment largely adopted and incorporated the 1992 Management Recommendations. In fact, the 1996 Plan Amendment requires the Forest Service to refer to the 1992 Management Recommendations for scientific information on goshawk ecology and management.

56. The 1996 Plan Amendment requires the Forest Service to establish a post-fledgling family area that includes six nesting areas for each pair of nesting goshawks. Within nesting areas, the Forest Service must manage for old age trees to insure that as much old forest structure as possible is sustained over time across the landscape.

57. The 1996 Plan Amendment requires the Forest Service to identify post-fledgling family areas of approximately 600 acres in size, which include the nest sites and the habitat most likely to be used by goshawk fledglings during their early development.

58. For goshawk habitat outside of the post-fledging family areas, which is referred to as foraging habitat, the 1996 Plan Amendment requires the Forest Service to

manage for: 10% VSS 1 (grass/forb/shrub); 10% VSS 2 (seedling, sapling); 20% VSS 3 (young forest); 20% VSS 4 (mid-aged forest); 20% VSS 5 (mature forest); and 20% VSS 6 (old forest).

59. According to the 1996 Plan Amendment, the distribution of VSS is to be a product of “site quality” in the ecosystem management area, and the Forest Service is to use “site quality” as a guide in the distribution of VSS.

60. For VSS 4, VSS 5, and VSS 6, the 1996 Plan Amendment sets forth minimum canopy cover requirements. For ponderosa pine forests in foraging areas, canopy cover in VSS 4, 5, and 6 is to average at least 40%. For ponderosa pine forests within post-fledgling family areas, canopy cover for VSS 4 is to average at least 60% for one-third of the area and 50% for two-thirds of the area; and canopy cover for VSS 5 and 6 is to average at least 50%.

61. The 1996 Plan Amendment includes additional standards and guidelines for old-growth forests. The Forest Service is required to allocate no less than 20% of each forested ecosystem management area as old-growth, with old-growth defined by specific minimum numeric criteria.

62. The 1995 EIS that was prepared for the 1996 Plan Amendment includes a number of definitions. Canopy is defined as a layer of foliage, generally the uppermost layer, in a forest stand. Stand is defined to be the same as site, which is an area of trees possessing sufficient uniformity to be distinguishable from trees in adjacent areas, and further defined to include patches and groups of trees. Openings are defined as breaks in

the forest canopy that may allow the forest floor to be covered by grasses, forms, shrubs, tree seedlings, and areas with trees stocked less than 10 percent of the areas capacity.

63. In the decade following the 1996 Plan Amendment, the Forest Service interpreted the canopy cover requirements as applying at the stand level. For the decade following the 1996 Plan Amendment, the Forest Service interpreted the VSS 1 class as including open space between groups of trees.

64. The Center challenged the 1995 EIS that was prepared for the 1996 Plan Amendment, asserting that the Forest Service failed to analyze and disclose responsible scientific opposition to the agency's conclusion that goshawks are habitat generalists. In 2003, the Ninth Circuit held that the 1995 EIS failed to disclose and discuss responsible scientific viewpoints in the final statement itself, in violation of NEPA. *Center for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157 (9<sup>th</sup> Cir. 2003).

65. In 2006, the Forest Service prepared a Supplemental Environmental Impact Statement ("SEIS") to address the issue of scientific disagreement over the habitat preferences of the goshawk. In 2006, the Forest Service signed a Record of Decision.

#### **Change in Management Direction from the 1996 Plan Amendment**

66. In late 2006 and early 2007, the Forest Service in the Southwest Region changed course in how it interprets and implements key components of the 1996 Plan Amendment. The Forest Service made two related changes that have significant implications for goshawk habitat management across the Southwest Region.

67. First, the Forest Service began calculating canopy cover in goshawk habitat at the much smaller “group” level instead of the larger “stand” level. Groups are typically 0.5 to 4 acres in size. Stands, by contrast, range in size from 30 to 100 acres.

68. Second, the Forest Service began not including the open spaces (or interspaces) between groups of trees within its calculation for VSS 1.

69. By calculating canopy cover at the group level instead of the stand level, and by not including open space in its VSS classification, considerably more trees within goshawk habitat are now allowed to be logged across the Southwest Region, including considerably more of the remaining large trees in VSS 4, 5, and 6.

70. The Center learned of the Forest Service’s change in management direction concerning the 1996 Plan Amendment when it received the Forest Service’s February 23, 2007 document entitled, “Implementation Guide Region 3, Northern Goshawk Standards and Guidelines” (“2007 Goshawk Guidelines”).

71. The 2007 Goshawk Guidelines explain the Forest Service’s change in how it now interprets and implements the 1996 Plan Amendment. Instead of measuring canopy cover within each VSS at the stand level, the 2007 Guidelines state that the Forest Service should measure canopy cover at the much smaller “group” or “clump” level.

72. As acknowledged by the Forest Service, calculating canopy cover at the group level instead of the stand level, and not including open spaces within the VSS 1 calculation, will lead to a much more open forest over time than prior interpretations of the 1996 Plan Amendment.

73. In 2007, the Forest Service first attempted to implement its new direction for managing goshawk habitat in the Southwest Region through the Jack Smith logging project on the Coconino National Forest.

74. In comments on the Jack Smith project, the Arizona Department of Game and Fish noted that all prior Forest Service projects had calculated canopy cover at the stand level, but that the Forest Service was now proposing to manage canopy cover at the group level. The Arizona Department of Game and Fish stated that this change had the potential to significantly reduce the amount of forest cover within treated areas.

75. As explained by the Arizona Department of Game and Fish, the 1992 Management Recommendations for the northern goshawk described canopy cover for goshawk prey species that was measured at the stand level, not the group level. Thus, by changing the canopy cover targets from the stand level to the group level, the Forest Service may not be meeting the habitat requirements for the northern goshawk as required by the 1996 Plan Amendment.

76. The Center filed an objection to the Jack Smith project due to concerns over the Forest Service's significant changes in goshawk management. In response to the Center's objection, the Forest Service realized that it needed to provide additional analysis, including how the Forest Plan standards and guidelines for goshawks will be met, including VSS distribution and opening size limits.

77. The Forest Service subsequently prepared a revised environmental analysis for the Jack Smith project, in which the agency acknowledges that the term interspace is not addressed in the applicable Forest Plan and that interspace must be considered in the

VSS 1 calculation under the Forest Plan. Similarly, the Forest Service determined that if the agency still chose to proceed with the original proposed action – in which interspace was not included in the VSS 1 calculation – a Forest Plan amendment would be required.

78. Following its reversal of the Jack Smith decision, the Forest Service has continued to recognize that it cannot implement its change in management direction for goshawk habitat through site-specific logging projects in the Southwest Region, without amending the applicable Forest Plan.

79. For the Rim Lakes logging project on the Apache-Sitgreaves National Forest, the Forest Service proposes to amend the applicable Forest Plan to clarify that canopy closure is measured at the tree group scale, to express relative amounts of forest cover including the interspaces between tree groups, and to define the relationship between interspaces and natural openings.

80. For the Four-Forest Restoration Initiative on the Coconino and Kaibab National Forests, the Forest Service proposes to include a Forest Plan amendment as part of the project proposal, in order to address the need to add Forest Plan clarity for interspaces and the relationship between interspaces and openness; and to include a definition of interspace and clarify the relationship between interspaces and openings to the VSS classes.

81. In the context of the Four-Forest Restoration Initiative, the Arizona Game and Fish Department commented that most wildlife studies to date have averaged percent canopy cover at the stand level and not the group level. According to the Arizona Game

and Fish comments, implementing canopy cover at the group level is an untested hypothesis.

82. For the McCracken logging project on the Kaibab National Forest, the Forest Service dropped an alternative from further consideration which would have allowed additional interspace between groups in goshawk habitat that was not considered in the canopy cover calculations. According to the McCracken Environmental Assessment, this alternative was based on an interpretation of the goshawk guidelines that group canopy cover is measured across the canopy zone of the group of trees and does not include interspaces between groups of trees in this calculation. However, Regional direction did not support this interpretation and so this alternative was dropped.

83. By contrast, for the Jacob-Ryan logging project, the Forest Service did not propose a site-specific amendment to the Kaibab Forest Plan in order to implement its new management direction for goshawk habitat, as it has for the Rim Lakes project and for the Four-Forest Restoration Initiative. The Forest Service also did not drop consideration of alternatives that implement the new management direction, as with the McCracken project. Instead, the Forest Service is implementing the new management direction for goshawks in the Jacob-Ryan project without any Forest Plan amendment.

84. The Forest Service has not prepared a NEPA analysis to assess and disclose the potential environmental impacts resulting from its change in direction for managing goshawk habitat across the Southwest Region.

85. The Forest Service has not prepared a region-wide Forest Plan amendment for the Southwest Region to incorporate its new change of direction for managing goshawk habitat across the Southwest Region into the applicable Forest Plans.

86. Further evidence that the Forest Service is implementing the 2007 Goshawk Guidelines on the Kaibab National Forest is the 2009 document prepared by the Kaibab National Forest entitled, “Implementation and Interpretation of Management Recommendations for the Northern Goshawk (“2009 Kaibab Implementation Guidelines”). As with the 2007 Goshawk Guidelines, the 2009 Kaibab Implementation Guidelines calculate canopy cover at the group level rather than the stand level, and do not include interspace in the VSS 1 calculation.

87. The Forest Service has not prepared a NEPA analysis to assess and disclose the potential environmental impacts resulting from implementing the 2009 Kaibab Implementation Guidelines. The Forest Service has not prepared a Plan amendment to incorporate the 2009 Kaibab Implementation Guidelines into the Kaibab Forest Plan.

88. In 2008, a scientific paper was published entitled, “Does forest structure affect reproduction of northern goshawks in ponderosa pine forests?” (“2008 Beier Report”). The 2008 Beier Report found that the production of goshawk fledglings *decreased* as the breeding area’s similarity to the 1996 Plan Amendment increased.

89. According to a Forest Service biologist, the 2008 Beier Report and its findings “sort of rocks the world for the 1996 goshawk guidelines.”

90. Even apart from the Forest Service’s change in management direction for goshawk habitat in the Southwest Region, the 2008 Beier Report raises significant issues

and concerns with the 1996 Plan Amendment and its impact on goshawk populations in the Southwest Region.

91. In 2012, the authors of the Beier Report issued a follow up commentary entitled, “There Is No Evidence That the Forest Service’s Goshawk Recommendations Improve Goshawk Nest Productivity” (“2012 Beier Commentary”). As stated in the 2012 Beier Commentary, in 20 years, the Forest Service has never evaluated whether implementing the 1996 Plan Amendment improves goshawk survival or reproduction. Thus, the 2008 Beier Report remains the first and only attempt to evaluate whether the 1996 Plan Amendment is or is not improving goshawk survival or reproduction.

92. The 2012 Beier Commentary restates that the data suggests that the productivity of goshawk breeding areas *declined* as breeding area resemblance to the recommendations of the 1996 Plan Amendment increased.

### **Jacob-Ryan Logging Project**

93. The Jacob-Ryan logging project is located in the north-central portion of the Kaibab Plateau on the North Kaibab Ranger District of the Kaibab National Forest. The project lies within Geographic Area 13 of the Kaibab National Forest, the Grand Canyon National Game Preserve, and the Kaibab Squirrel National Natural Landmark. The area within the Jacob-Ryan project boundary is considered goshawk habitat in its entirety, either as nest stands, post fledgling areas, or foraging areas.

94. The Forest Service issued an Environmental Assessment (“EA”) for the Jacob-Ryan logging project in January, 2012. The EA and other documents make clear that, for the Jacob-Ryan project, the Forest Service is applying the canopy cover

requirements of the 1996 Plan Amendment at the group level, instead of the larger stand scale. The EA and other documents also make clear that, for the Jacob-Ryan project, the Forest Service is considering “openings” to be outside of the VSS classification and not included as part of VSS 1. Thus, the Forest Service is implementing its new management direction for goshawk habitat as part of the Jacob-Ryan project.

95. The Forest Service does not disclose or address within the Jacob-Ryan EA that it has never evaluated whether or not implementation of the 1996 Plan Amendment standards and guidelines has improved goshawk survival or reproduction.

96. The EA does not disclose or address the 2008 Beier Report, the 2012 Beier Commentary, or the Beier Report’s finding that the production of goshawk fledglings decreased as the breeding area’s similarity to the 1996 Plan Amendment increased.

97. The Forest Service only discusses the 2008 Beier Report in its “response to comments,” in an appendix to the final EA. Even though the Beier Report represents the only attempt by any scientists to evaluate whether implementing the 1996 Plan Amendment actually improves goshawk survival or reproduction, the Forest Service simply identifies what it claims are flaws with the Report and fails to give any serious consideration to its undisputed findings.

98. On January 5, 2012, the Forest Service signed the Decision Notice to authorize and proceed with the Jacob-Ryan logging project. The Decision Notice chooses Alternative 1 from the January 2012 EA. Within the “even-aged” strata of goshawk post-fledgling areas and foraging areas, the Jacob-Ryan project would log 6,293

acres. Within the “uneven-aged” strata of post-fledgling areas and foraging areas, the Jacob-Ryan project would log an additional 14,475 acres.

99. The Jacob-Ryan logging project provides no diameter limit on the size of trees that may be cut. The project would log hundreds of old-growth trees including trees that are over 180 years old.

100. The Forest Service did not prepare an EIS for the Jacob Ryan project, instead determining that the project would not result in any significant impacts on the environment.

101. The Center submitted detailed comments on the Jacob-Ryan logging project, and filed an administrative appeal of the Forest Service’s decision on February 22, 2012. The Forest Service denied the Center’s administrative appeal on April 3, 2012. Logging of the Jacob-Ryan project area may commence as early as July, 2012.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM: Failure to Amend the Kaibab Forest Plan Prior to Changing the Management Direction for Goshawks**

102. The Center hereby incorporates by reference all preceding paragraphs.

103. NFMA requires one integrated Forest Plan for each National Forest, incorporating into one document or one set of documents all of the features required in the Forest Plan. 16 U.S.C. § 1604(f)(1).

104. All site-specific actions, projects, and contracts must be consistent with the applicable Forest Plan. 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e).

105. NFMA requires a Forest Plan to be amended where necessary after final adoption, after public notice; and, if such amendment would result in a significant change in such plan, in accordance with the procedural requirements for adopting the initial Forest Plan. 16 U.S.C. § 1604(f)(4); 36 C.F.R. § 219.10(f).

106. Through the development and authorization of the Jacob-Ryan logging project, the Forest Service is implementing a significant change in management direction for goshawks and goshawk habitat on the Kaibab National Forest, and has altered the standards and guidelines of the Kaibab National Forest with respect to goshawks and goshawk habitat, without amending the Kaibab Forest Plan, and without public notice, in violation of NFMA. 16 U.S.C. §§ 1604(f)(1), 1604(f)(4); 36 C.F.R. § 219.10(f).

107. The Forest Service's failure to amend the Kaibab Forest Plan pursuant to NFMA's public participations requirements, in order to incorporate the agency's change in management direction for goshawks and goshawk habitat on the Kaibab National Forest, prior to implementing the change in management direction through the Jacob-Ryan logging project, violates NFMA and constitutes agency action unlawfully withheld and unreasonably delayed within the meaning of the APA. 5 U.S.C. § 706(1).

108. The Forest Service's decision to authorize the Jacob-Ryan logging project, and thereby change and alter the standards and guidelines of the Kaibab Forest Plan concerning the management of goshawk habitat, without amending the Kaibab Forest Plan in accordance with the agency's established public participation procedures, constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law and to procedures required by law. 5 U.S.C. § 706(2)(A), (D).

**SECOND CLAIM: Failure to Comply with NEPA in Developing and Authorizing the Jacob-Ryan Logging Project**

109. The Center hereby incorporates by reference all preceding paragraphs.

110. The EA prepared by the Forest Service for the Jacob-Ryan logging project violates NEPA for at least the following reasons: (a) the EA fails to disclose and address the significant changes to the standards and guidelines for goshawks in the Kaibab Forest Plan and throughout the Southwest Region; (b) the EA fails to disclose and address conflicting data, information and scientific opinion, including the 2008 Beier Report and 2012 Beier Commentary concerning goshawk management, and the 2010 Evaluation of Management Indicator Species on the Kaibab National Forest; (c) the EA fails to address the scientific uncertainties, unknown risks, and controversy concerning the Forest Service's management of goshawks and goshawk habitat in the Southwest Region; and (d) the EA fails to support its conclusions with hard data and objective analysis.

111. The Forest Service was required to prepare an EIS for the Jacob-Ryan logging project for at least the following reasons: (a) the logging project may result in significant direct, indirect, and cumulative impacts on goshawks and goshawk habitat; (b) the potential environmental effects of the Jacob-Ryan logging project are highly controversial, 40 C.F.R. § 1508.27(b)(4); (c) the potential environmental effects of the Jacob-Ryan logging project are highly uncertain and involve unknown risks, 40 C.F.R. § 1508.27(b)(5); and (d) the approval of the Jacob-Ryan logging project may establish a precedent for future actions with significant effects, 40 C.F.R. § 1508.27(b)(6).

112. The Forest Service's approval and authorization of the Jacob-Ryan logging project, without first preparing a legally sufficient EA or EIS, is arbitrary, capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law. 5 U.S.C. § 706(2). The Forest Service's decision to proceed with the Jacob-Ryan logging project should therefore be held unlawful and set aside. *Id.*

**THIRD CLAIM: Failure to Comply with NEPA and NFMA Prior to Changing the Management Direction for Goshawks in the Southwest Region**

113. The Center hereby incorporates by reference all preceding paragraphs.

114. NEPA requires federal agencies to prepare an EIS for any proposed major federal action that may significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C). The EIS must include an analysis of any adverse environmental impacts that cannot be avoided should the project be implemented, alternatives to the proposed action, and any irreversible and irretrievable commitment of resources which would be involved if implemented. *Id.* To determine whether a proposed action may significantly affect the quality of the environment and require an EIS, the agency may first prepare an EA. 40 C.F.R. §§ 1501.3, 1501.4.

115. Federal agencies are required to prepare a Supplemental EIS ("SEIS") if the agency makes substantial changes to an action that are relevant to environmental concerns; or there are significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. 40 C.F.R. § 1502.9(c).

116. The Forest Service's substantial change in direction for the management of goshawk habitat in the Southwest Region, as described herein, will result in significantly

more open forests with significantly less canopy cover, as compared to the agency's prior implementation of the 1996 Plan Amendment. This substantial change in management direction and the resulting change in forest management will affect goshawks and other wildlife species that reside in and depend on national forests, including the Kaibab National Forest. Moreover, because the Forest Service's change in management direction for goshawks is being implemented region-wide, the environmental impacts resulting from the new direction will likewise occur throughout the Southwest Region.

117. The 2008 Beier Report and 2012 Beier Commentary constitute significant new information relevant to the environmental impacts of the 1996 Plan Amendment.

118. The Forest Service's failure to supplement the 1995 EIS for the 1996 Plan Amendment (and the 2006 SEIS for the 1996 Plan Amendment), despite making substantial changes to the 1996 Plan Amendment and despite significant new information concerning the 1996 Plan Amendment, violates NEPA. 40 C.F.R. § 1502.9(c).

119. The Forest Service's February 23, 2007 "Implementation Guide, Region 3, Northern Goshawks Standards and Guidelines" is a major federal action that will result in significant environmental impacts.

120. The Forest Service's failure to prepare and EIS or EA to assess and disclose the potential environmental impacts resulting from its new management direction for goshawks and goshawk habitat throughout the Southwest Region violates NEPA. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1501.3, 1501.4. The Forest Service's failure to comply with NEPA prior to implementing its changes to goshawk management direction

in the Southwest Region constitutes arbitrary and capricious agency action, and is contrary to law and to procedures required by law. 5 U.S.C. § 706(2)(A), (D).

121. The Forest Service has failed to amend the Forest Plans of the Southwest Region prior to implementing its new management direction for goshawks and goshawk habitat throughout the region, in violation of NFMA. 16 U.S.C. §§ 1604(f)(1), 1604(f)(4); 36 C.F.R. § 219.10(f).

122. The Forest Service's failure to comply with NFMA by failing to properly amend the Forest Plans in the Southwest Region constitutes agency action unlawfully withheld or unreasonably delayed within the meaning of the APA. 5 U.S.C. § 706(1).

123. The Forest Service's decision to significantly change the management direction for goshawk habitat in the Southwest Region without amending the affected Forest Plans constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law and to procedures required by law. 5 U.S.C. § 706(2)(A), (D).

### **PRAYER FOR RELIEF**

The Center respectfully requests that the Court grant the following relief:

A. Order, declare, and adjudge that the Forest Service violated NFMA and NEPA in developing and authorizing the Jacob-Ryan logging project on the Kaibab National Forest;

B. Reverse and set aside the January, 2012, Decision Notice for the Jacob-Ryan logging project;

C. Enjoin the Forest Service from implementing the Jacob-Ryan logging project until the agency demonstrates full compliance with NFMA and NEPA;

D. Order, declare, and adjudge that the Forest Service violated NEPA by failing to prepare a supplemental EIS regarding the 1996 Plan Amendment in order to address the agency's substantial changes to the action and significant new information;

E. Order, declare, and adjudge that the Forest Service violated NEPA and NFMA by significantly changing the management direction for goshawks and goshawk habitat throughout the Southwest Region, without preparing an EA or EIS, and without amending the applicable Forest Plans;

F. Enjoin the Forest Service from implementing its change in management direction for goshawks and goshawk habitat in the Southwest Region prior to complying with NEPA and NFMA;

G. Enter such other temporary, preliminary, and/or permanent injunctive relief as may be requested hereafter by the Center;

H. Award the Center its reasonable costs, litigation expenses, and attorney fees associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and all other applicable authorities; and

I. Grant such further relief as the Court deems just and proper in order to remedy Defendant's violations of NFMA and NEPA.

Dated this 9<sup>th</sup> day of May, 2012    Respectfully submitted,

s/ Marc D. Fink  
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