October 19, 2007

Nora Rasure, Reviewing Officer
United States Forest Service
1824 S. Thompson St.
Flagstaff, AZ  86001
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Dear Reviewing Officer,

This is an objection to the Jack Smith/Schultz Fuels Reduction and Forest Health project ("Jack Smith project"), proposed for the Peaks and Mormon Lake Ranger Districts of the Coconino National Forest ("CNF"). The responsible official is Gene Waldrip, District Ranger of the Peaks and Mormon Lake Ranger Districts.

THE OBJECTOR’S NAMES, ADDRESSES, AND INTEREST IN THE PROJECT:

Center for Biological Diversity (lead objector)
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The Center for Biological Diversity ("the Center") has more than 50 staff and over 35,000 members who have a strong interest and are concerned about the proper management of the CNF, including the area of the proposed Jack Smith project. The Center and its members also have a long-standing and well-established interest in the proper management of the northern goshawk in the Southwest Region and are concerned about recent changes in the management of the northern goshawk, which are being implemented through the Jack Smith project. The Center and its members regularly visit the CNF for a variety of recreational, scientific, and spiritual purposes, including the proposed project area, and the Center’s interests would be harmed if this project proceeds as it is currently proposed. The Center has a long history of involvement on the Peaks District of the CNF, submitted detailed comments on the Jack Smith project during the public comment period, and has standing to object to and challenge this project.
Forest Guardians is a non-profit corporation with its principal office in Santa Fe, New Mexico. Forest Guardians has approximately 3,500 members, most of whom reside in New Mexico, Utah, and Arizona. Members of Forest Guardians frequently use and enjoy forest lands throughout the southwestern United States for recreational, aesthetic, and scientific activities. In pursuit of these activities, Forest Guardians members regularly observe and enjoy wildlife in its natural habitat. Forest Guardians and its members are committed to the protection of intact forest ecosystems throughout the Southwest. To achieve this protection, Forest Guardians works through administrative appeals, litigation, and otherwise to assure that all federal agencies fully comply with the provisions federal environmental laws, including NFMA, HFRA, and NEPA. Forest Guardians, its staff, and its members have a substantial interest in continuing to use the area where the Jack Smith project is planned and are adversely affected and aggrieved by the USFS’s failure to protect the land and comply with the law.

FACTUAL BACKGROUND

In February, 2007, the Forest Service completed its “Implementation Guide, Region 3, Northern Goshawk Standards and Guidelines” (“New Goshawk Guidelines”), which significant revise the agency’s interpretation and implementation of the mandatory standards and guidelines for the northern goshawk. The Forest Service provided no public notice, accepted no public comments, and prepared no National Environmental Policy Act (“NEPA”) analysis before significantly revising its goshawk guidelines.

In May, 2007, the Forest Service issued the “Proposed Action” for the Jack Smith project on the Peaks Ranger District. On June 5, 2007, the Arizona Game and Fish Department submitted comments on the Jack Smith project, expressing concern about the New Goshawk Guidelines and the implementation of the new Goshawk Guidelines for the Jack Smith project. The Department requested an opportunity to formally comment on the New Guidelines.

On June 12, 2007, the Center and Forest Guardians submitted detailed comments on the Proposed Action, raising concerns about the improper implementation of the New Goshawk Guidelines, noncompliance with CNF Forest Plan standards and guidelines for northern goshawks and old growth, and other issues.

On September 14, 2007, the Forest Service announced the completion of the “environmental assessment” (“EA”) for the Jack Smith project. The project proposes “thinning” on 8,493 acres, aspen restoration, prescribed burning on over 9,200 acres, the construction of new roads, and other activities. There is no limit on the size of trees that can be cut, and the EA states that it is not possible for the Forest Service to determine and disclose the number of trees over 16 inches dbh that would be logged as part of the project. Jack Smith Draft EA, p. 83.

Notice of the opportunity to object to the Jack Smith project was provided in the Arizona Daily Sun on September 19, 2007. While the Center and Forest Guardians recognize the need to protect private property from forest fires, and could support some aspects of the proposed project, we have objections to major components of this project, as described in previous comments and set forth below.
SPECIFIC OBJECTIONS TO THE JACK SMITH PROJECT:

I. The Jack Smith Project Violates NFMA by Implementing the New Goshawk Guidelines Without First Preparing a Forest Plan Amendment to Incorporate the New Guidelines

On February 23, 2007, the Forest Service completed the new “Implementation Guide, Region 3, Northern Goshawk Standards and Guidelines” (“New Goshawk Guidelines”), which significantly changed how northern goshawks and goshawk habitat is managed in Region 3. See e.g., Jack Smith Draft EA, p. 17 (acknowledging that managing canopy cover at the group level is a shift in how the District has implemented the Northern Goshawk Standards and Guidelines, and the shift is responsive to the New Goshawk Guidelines); Jack Smith Draft EA, p. 221 (Arizona Dept. of Game and Fish comments stating that previous projects planned canopy cover levels at the stand level, and that the change to the group level, resulting from the New Goshawk Guidelines, “has the potential to significantly reduce the amount of forest cover within treated areas.”); Jack Smith Draft EA, p. 247 (Forest Service acknowledging that in the past, it typically quantified data at the stand level, but that the New Goshawk Guidelines emphasize measurements at the group level).

In addition to shifting the analysis and requirements of canopy cover to the “group” level, the New Goshawk Guidelines also significantly change how goshawk habitat will be managed by the new interpretation that “natural openings” should no longer be included within the VSS1 classification. “Openings” are now considered to be outside of the entire VSS classification system, which will result in significantly more lands that are either open or outside of the VSS4-6 classifications than was previously anticipated, and which may substantially increase logging throughout the Region.

Despite the significant changes within the New Goshawk Guidelines, however, the Forest Service did not allow any public input, notice, or participation regarding the Guidelines during their development or prior to their implementation. The Forest Service also did not prepare either an EA or “environmental impact statement” (“EIS”) regarding the New Goshawk Guidelines, and also failed to amend the Forest Plans in Region 3 to properly adopt the New Goshawk Guidelines before implementing the Guidelines in site specific projects.

The National Forest Management Act (“NFMA”) requires the Forest Service to prepare Forest Plans for each national forest, such as the CNF. 16 U.S.C. § 1604(a). NFMA requires “one integrated plan” for each national forest, incorporating in one document or one set of documents, available to the public, all the features required by NFMA. Id. at § 1604(f)(1). After a Forest Plan is adopted, the Forest Service may only amend the Plan pursuant to specific public notice participation requirements. Id. at § 1604(f)(4).

The Jack Smith project clearly implements the New Goshawk Guidelines, including how it measures canopy cover and vegetation classes. Jack Smith EA, pp. 17, 125, 221-22, 247. The Forest Service, however, has not amended the CNF Forest Plan to incorporate the New Guidelines. The Forest Service is therefore violating NFMA by either (1) implementing a de facto amendment of the northern goshawk standards and guidelines for the CNF Forest Plan.
without compliance with the NFMA procedures for Forest Plan amendments or (2) failing to properly amend the CNF Forest Plan before implementing the New Goshawk Guidelines, without public notice, and in violation of NFMA. See Oregon Natural Resources Council v. Forsgren, 252 F.Supp.2d 1088, 1096-97 (D. Or. 2003).

Whether the issue is framed in terms of a failure to act to properly amend the CNF Forest Plan before implementing the New Goshawk Guidelines, or improperly making a de facto amendment to the Plan without complying with NFMA’s public participation requirements, the Center seeks the same relief: the Forest Service must withdraw the Jack Smith project until it complies with NFMA regarding the significant changes to the northern goshawk standards and guidelines in the CNF Forest Plan. Oregon Natural Resources Council, 252 F.Supp.2d at 1099.

As with the Revised Lynx Conservation Strategy and mapping direction at issue in Oregon Natural Resources Council, the New Goshawk Guidelines “are substantial additions to the Forest Plan with regard to [goshawk] conservation efforts.” Id. at 1101. “Whether based on a theory of a de facto amendment or a failure to act to amend, . . . the public involvement required by NFMA is warranted as to [this] timber sale.” Id. The Forest Service must not implement any portions of the New Goshawk Guidelines as part of the Jack Smith project unless the agency first formally amends the CNF Plan to properly incorporate the new Guidelines. Id.

II. The Forest Service Violated NEPA by Developing and Implementing the New Goshawk Guidelines Without Preparing an EA or EIS

NEPA requires federal agencies to prepare an EIS for any major federal action which may significant impact the quality of the environment. 42 U.S.C. § 4332(2)(C). The agency may first prepare an EA to determine whether an EIS is required. 40 C.F.R. § 1501.4. The Forest Service’s New Goshawk Guidelines for Region 3 make significant changes to the standards and guidelines for managing and protecting northern goshawks across the region, and yet the Forest Service failed to prepare either an EA or EIS for the Guidelines, in violation of NEPA.

The significance of the changes made by the New Goshawk Guidelines are summarized by the Arizona Department of Game and Fish:

All previous FS-GFFP planning projects have planned canopy cover reduction levels at the stand level. In this PA, the FS is proposing target canopy cover ranges at the group level as opposed to the stand level . . . The Department finds that this change has the potential to significantly reduce the amount of forest cover within treated areas . . . Under this proposal, overall canopy cover in this management zone could be reduced to as little as 10% canopy cover if measured across the stand . . . By changing the canopy cover targets from the stand level to the group level, the Department is concerned that the FS may not be meeting the habitat requirements for [14 of the goshawk’s prey species], and also may not be meeting the habitat requirements for the northern goshawk per the 1996 Forest Plan Amendment.
By significantly changing the way the Forest Service measures canopy cover and vegetation classes, the New Goshawk Guidelines may clearly lead to a significant increase in the harvest of trees across the Region, including as part of the Jack Smith project. This may cause significant environmental impacts to numerous wildlife species across the entire Region, including the northern goshawk, as well as result in adverse impacts to recreation and other uses. The New Goshawk Guidelines are therefore a major federal action that may significantly impact the quality of the environment, thereby requiring an EIS, 42 U.S.C. § 4332(2)(C), or at least the preparation of an EA to determine whether an EIS is required, 40 C.F.R. § 1501.4. See Oregon Natural Resources Council, 252 F.Supp.2d at 1105 (holding that the Forest Service’s revision of regional mapping direction for lynx required the agency to prepare at least an EA under NEPA). Because the Jack Smith project relies on and implements the New Goshawk Guidelines, the project must be withdrawn until the Forest Service first complies with NEPA for the New Guidelines.

III. The Jack Smith Project Violates NFMA Because the Forest Service Fails to Demonstrate Compliance with CNF Forest Plan Standards and Guidelines for Northern Goshawks

Pursuant to NFMA, “the Forest Service must demonstrate that a site-specific project would be consistent with the land and resource management plan of the entire forest.” Neighbors of Cuddy Mountain v. U.S. Forest Service, 137 F.3d 1372, 1377 (9th Cir. 1998), citing 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e). In 1996, the Forest Service amended all Forest Plan in the Southwest Region, including the CNF Plan, to provide additional standards and guidelines for northern goshawks. The Forest Service has failed to demonstrate that the Jack Smith project will comply with the CNF Plan’s mandatory standards and guidelines for the northern goshawk.

Appendix C to the 1996 Record of Decision for the northern goshawk plan amendments sets forth the mandatory standards and guidelines for ecosystem management within Northern goshawk habitats, and these standards and guidelines have been incorporated into the CNF Plan. See CNF Plan at 65-7 through 65-11. These standards and guidelines apply to all forested lands that are outside the protected areas for the Mexican Spotted Owl. CNF Plan at 65-7. The standards and guidelines for northern goshawks include, but are not limited to:

(1) The Forest Service must survey the management analysis area prior to any habitat modifying activities, including a ½ mile beyond the proposed project boundary. The Forest Service must use the R3 survey protocol in order to get complete coverage of the management analysis area, and must complete at least one year of surveys.

(2) The Forest Service must establish and delineate on a map, a post-fledgling family area that includes 6 nesting areas per pair of nesting goshawks for known nest sites, old nest sites, areas where there is historic data of past nest sites, and where there have been
repeated sightings. A post-fledgling family area (PFA) must be approximately 600 acres in size, and must include the nest sites and habitat most likely to be used by the fledglings during their early development. The 6 identified nest sites should each be approximately 30 acres in size, requiring a minimum total of 180 acres of nest areas within each PFA.

(3) The Forest Service must manage for uneven-age stand conditions for live trees and retain live reserve trees, snags, downed logs, and woody debris levels;

(4) The Forest Service must manage for old age trees such that as much old forest structure as possible is sustained over time across the landscape;

(5) The Forest Service must sustain a mosaic of vegetation densities, age classes and species composition across the landscape;

(6) The Forest Service must provide foods and cover for goshawk prey;

(7) The Forest Service must limit human activity in nesting areas and near PFAs during the breeding season, which extends from March 1 to September 30;

(8) The Forest Service must manage the ground surface layer to maintain satisfactory soil conditions i.e., minimize soil compaction and maintain hydrologic and nutrient cycles;

(9) The required habitat structures, such as tree size, snags, dead and down material, etc., are to be evaluated at (a) the ecosystem management area level, (b) the mid-scale such as drainage, and (c) the small scale of site.

(10) For areas outside of PFAs, the required distribution of vegetation structural stages is 10% VSS1, 10% VSS2, 20% VSS3, 20% VSS4, 20% VSS5, and 20% VSS6. (Actual percentages may vary + or – up to 3%).

(11) Snags are to be 18 inches or larger dbh and 30 feet or larger in height, downed logs are to be 12 inches in diameter and at least 8 feet long, and woody debris must be 3 inches or larger on the forest floor.

(12) For areas outside PFAs, canopy cover for Ponderosa pine forest is to average 40+% for VSS4, 5, and 6.

(13) Within PFAs, the canopy cover for Ponderosa pine forest is to average 50+% for VSS4, 5, and 6.

(14) Within nesting areas, the area must contain only mature to old forest (VSS5 and 6) having a canopy cover between 50-70% with mid-aged VSS6 trees 200-300 years old.

(15) Road densities are to be managed at the lowest level possible, and where timber harvesting is prescribed to achieve desired forest conditions, the Forest Service is to use small, skid trails in lieu of roads.
The Jack Smith Draft EA fails to demonstrate that the proposed project will comply with these numerous mandatory requirements from the CNF Plan, in violation of NFMA. *Neighbors of Cuddy Mountain*, 137 F.3d at 1377, citing 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e). Moreover, the EA fails to provide the public with the hard data and objective analysis that is necessary to independently determine and calculate whether the project will in fact be consistent with these requirements. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998) (holding that NEPA requires the public to receive the underlying environmental data from which the Forest Service experts derive their opinions and conclusions). As it stands, there is no way for the public to determine compliance with the numerous, mandatory northern goshawk standards and guidelines, and therefore the Forest Service has not demonstrated compliance with these standards as required by NFMA.

Moreover, what information is provided to the public indicates that the Jack Smith project will not comply with the northern goshawk standards and guidelines. For instance, even though habitat is to be evaluated at (1) the ecosystem management area level, (2) the mid-scale or project area level, and (3) at the stand level, CNF Plan, p. 65-9, the Forest Service is instead considering only the “group size” for assessing canopy cover and other requirements, which can apparently be as small as 2 “clumps” of two trees (or .05 acres). This is not only unsupported by the available science, but is also directly contrary to and in violation of the goshawk standards and guidelines. *See* Jack Smith Draft EA, p. 222 (Arizona Dept of Game and Fish comments, stating that by changing the canopy cover targets from the stand level to the group level, “the FS may not be meeting the habitat requirements for [14 of the goshawk’s prey species], and also may not be meeting the habitat requirements for the northern goshawk per the 1996 Forest Plan Amendment.”).

In fact, even the Forest Service’s New Goshawk Guidelines acknowledge that the guideline regarding “management scale” requires northern goshawk information to be gathered and discussed at the ecosystem management area level, mid-scale (drainage or project area) and small scale (site/stand), and that the “[c]ollection of this basis data at these three scale levels is essential.” New Goshawk Guidelines, p. 2. The Jack Smith Draft EA, however, arbitrarily fails to gather, analyze and discuss goshawk information at these three different levels.

The Jack Smith Draft EA also indicates that the project is not in compliance with additional mandatory standards and guidelines for the northern goshawk. Jack Smith Draft EA, pp. 14, 122 (acknowledging that existing VSS distributions fail to meet Forest Plan standards, and that VSS is lacking in the VSS 1, 2, 5, and 6 stages); *id.*, pp. 124, 131 (acknowledging that past logging has reduced snag densities to below Forest Plan recommendations, and that Jack Smith project will further reduce remaining snags).

The failure of the Jack Smith EA to demonstrate compliance with all applicable goshawk standards and guidelines violates NFMA. *Neighbors of Cuddy Mountain*, 137 F.3d at 1377; 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e).
IV. The Jack Smith Project Violates NFMA Because the Forest Service Fails to Demonstrate Compliance with CNF Forest Plan Standards and Guidelines for Old Growth

In addition to specific requirements for northern goshawks, the 1996 Forest Plan Amendment for the Southwest Region also includes mandatory standards for old growth habitat. Each national forest, including the CNF, must allocate no less than 20 percent of each forested “ecosystem management area” to old growth habitat. CNF Plan at 70-1. In order to properly determine old growth habitat, the Forest Service must refer to a specific table included in the both the 1996 Plan Amendment and CNF Plan, which sets forth the detailed, minimum numeric criteria for various forest types, including the size, age, and number of live and dead trees, down trees, and canopy cover. CNF Plan at 70-2. Forested sites must meet or exceed these numeric structural attributes in order to be considered old growth habitat. CNF Plan at 70-1.

In addition, the CNF Plan requires the Forest Service to analyze old growth habitat at multiple scales – (1) the ecosystem management area; (2) one scale above the ecosystem management area; and (3) one scale below the ecosystem management area. CNF Plan at 70-1; see also New Goshawk Guidelines, p. 11 (“all forest plans require analysis of old growth at multiple scales”). The amount of old growth that can be provided and maintained must be evaluated at the ecosystem management level and be based on forest type, site capability, and disturbance regimes. CNF Plan at 70-1.

For the Jack Smith project, the Forest Service acknowledges that it is not meeting the old growth requirements, and yet seeks to log additional large, old-growth trees, in violation of NFMA. First, the Forest Service admits that past logging removed the majority of old trees. Jack Smith Draft EA, p. 11. Second, in looking at the remaining old growth in the project area, the Forest Service acknowledges that some of the designated “existing” old growth may not meet the minimum requirements of the Forest Plan. Id., p. 249 (stating that “[w]e don’t have intensive measurements on all of the old-growth stands allocated and even those that we have classified “existing’ old-growth could be deficient in one or more of the listed criteria.”). Third, in calculating the amount of old growth, the Forest Service looks to two “10 Ks” instead of the relevant “ecosystem management area,” as required by the Forest Plan. Id., pp. 18, 27. Fourth, the Forest Service admits that within each “10 K”, there is only 7% existing old growth in the Jack Smith 10K, and 1.5% existing old growth in the Elden 10K (and again, it is unknown how much of this “existing” old growth meets the Forest Plan minimum requirements for old growth). Fifth, in allocating “future” old growth, the Forest Service still does allocate enough habitat to meet the minimum requirements, with an additional 5.7% designated for the Jack Smith 10K and an additional 5.4% designated for the Elden 10K. Id., pp. 18, 51. Therefore, to even come close to meeting the 20% standard, the Forest Service would need to designate an additional 958 acres in the Jack Smith 10K and another 1762 acres in the Elden 10K. Id., p. 18. Sixth, the Forest Service fails to consider its old growth analysis at multiple scales, including one scale above and one scale below the “ecosystem management area,” as required by the Plan CNF Plan, p. 70-1.

Because the Forest Service is far from meeting the mandatory standards and guidelines for old growth habitat within the project area, the agency cannot log any additional large, old growth trees in the project area until it comes into compliance. See Neighbors of Cuddy
Mountain v. U.S. Forest Service, 137 F.3d 1372, 1377 (9th Cir. 1998) (stating that to prove a timber sale would be consistent with Forest Plan old growth standard, the Forest Service must show that after the sale, the minimum requirements would be met within each affected area); Lands Council v. Vaught, 198 F.Supp.2d 1211, 1224 (E.D. Wash. 2002) (“Plaintiffs claim that even if the Project does not log old growth, compliance with the [Forest Plan’s] old growth standards must be demonstrated to ensure that the mature trees logged under the Project are not needed to fill any shortfall in the required old growth acreage. . . . The Court concurs with Plaintiffs’ interpretation of the requirement that projects be consistent with land and resource management plans.”); see also New Goshawk Guidelines, p. 8 (recognizing that Forest Service cannot “thin” large trees in an attempt to “promote faster growth” unless it is already in compliance with the 20% old growth requirement within VSS 4-6 classes). For Jack Smith, however, even though the project area is out of compliance with the minimum old growth standards and requirements, the Forest Service claims that it is not even possible to know how many large trees over 16 inches that will be cut. Jack Smith Draft EA, p. 83. The Jack Smith project is therefore in violation of the CNF Plan and NFMA. Neighbors of Cuddy Mountain, 137 F.3d at 1377; 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e).

Because the Forest Service is so far out of compliance with the minimum old growth standards, it also cannot demonstrate that it is maintaining the viability of northern goshawks and other old growth dependent species, as required by NFMA. Additionally, the Forest Service cannot claim, without any supporting scientific analysis or data, that logging additional large trees, as it proposes for this project, will somehow improve the remaining habitat for these old growth-dependent species. As in Ecology Center v. Austin, 430 F.3d 1057, 1064 (9th Cir. 2005), “the Forest Service’s conclusion that treating old growth forest is beneficial to dependent species is predicated on an unverified hypothesis.” The Forest Service must also plainly disclose the scientific uncertainty concerning its proposed logging of large trees to somehow improve the remaining old growth habitat and species. Ecology Center, 430 F.3d at 1065. The agency cannot simply treat its prediction that logging these large trees will benefit old growth dependent species as a fact instead of an untested and debated hypothesis.” Id.

In sum, the Forest Service must analyze and disclose how many acres within the affected “ecosystem management areas” actually meet the minimum numeric criteria for old growth habitat that are set forth in the CNF Plan, must assess the existing and potential impacts to old growth habitat at the required multiple scales, must allocate no less than 20 percent of each forested ecosystem management area to old growth as depicted in the Forest Plan, and must not log any of the remaining large trees within the project area until it meets these mandatory requirements.

V. Because the Jack Smith Project Fails to Meet Forest Plan Requirements for Old Growth, the Project also Violates the Healthy Forest Restoration Act

The Forest Service is implementing the Jack Smith project pursuant to the Healthy Forest Restoration Act (“HFRA”). In implementing a project pursuant to the HFRA, the Forest Service is required to “fully maintain, or contribute toward the restoration of, the structure and composition of old growth stands according to the pre-fire suppression old growth conditions characteristic of the forest type, taking into account the contribution of the stand to landscape fire
adaptation and watershed health, and retaining the large trees contributing to old growth structure.” 16 U.S.C. § 6512(e)(2). To meet this requirement in the Southwest, the Forest Service must fully implement the management direction set forth for old growth within the 1996 Forest Plan Amendment, which has been incorporated into the CNF Plan. Id., at § 6512(e)(3)(A).

As set forth above, the Jack Smith project will not comply with the old growth standards and guidelines found within the CNF Plan, and the project therefore also fails to comply with the HFRA, 16 U.S.C. § 6512(e).

VI. The Forest Service Violated NEPA by Failing to Prepare an EIS for the Jack Smith Project

“NEPA imposes a procedural requirement that an agency must contemplate the environmental impacts of its actions.” Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1149 (9th Cir. 1998). NEPA requires federal agencies “to prepare a detailed EIS for all ‘major Federal actions significantly affecting the quality of the human environment.’” Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1211-12 (9th Cir. 1998), citing 42 U.S.C. § 4332(2)(C). This “ensures 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).

Congress directed NEPA to apply “to the fullest extent possible,” which means as liberal an interpretation as possible to accommodate the application of NEPA. Jones v. Gordon, 792 F.2d 821, 826 (9th Cir. 1986); 42 U.S.C. § 4332. A plaintiff does not need to demonstrate that a proposed action will in fact have a significant impact on the environment. Idaho Sporting Congress, 137 F.3d at 1150. The standard is instead whether substantial questions have been raised as to whether the proposed action may cause a significant effect on some environmental factor. Id. at 1149-50. If substantial questions are raised whether the proposed action may have a significant effect upon the environment, an EIS must be prepared. Id.

If an agency decides not to prepare an EIS, it must supply a “convincing statement of reasons” to explain why the project’s impacts will be insignificant. Blue Mountains Biodiversity Project, 161 F.3d at 1212. “The statement of reasons is critical to determining whether the agency took a ‘hard look’ at the potential environmental impact of a project.” Id.

In considering whether an EIS is required for a proposed action, the CEQ regulations direct agencies to consider ten “significance factors.” 40 C.F.R. § 1508.27(b); Blue Mountains Biodiversity Project, 161 F.2d at 1212. “[Any] of these factors may be sufficient to require preparation of an EIS in appropriate circumstances.” National Parks and Conservation Assoc. v. Babbitt, 241 F.3d 722, 731 (9th Cir. 2001). The NEPA significance factors demonstrate that the Forest Service must prepare an EIS to analyze the environmental impacts of the Jack Smith project.
A. The Environmental Effects of the Jack Smith Project Are Highly Controversial

“Agencies must prepare environmental impacts statements whenever a federal action is ‘controversial.’” National Parks and Conservation Assoc., 241 F.3d at 736; 40 C.F.R. § 1508.27(4). “Controversial” refers to “a substantial dispute about the size, nature, or effect of the major Federal action rather than the existence of opposition to a use. Blue Mountains Biodiversity Project, 161 F.3d at 1212. For the Jack Smith project, the potential environmental effects of the significant revision of the standards and guidelines for the northern goshawk are highly controversial. While the Forest Service claims it is merely “clarifying” past standards and guidelines, the Center, Forest Guardians, and the Arizona Department of Game and Fish recognize that the New Goshawk Guidelines will result in significant impacts to goshawks and other species by allowing substantially more logging within goshawk habitat. See Jack Smith EA, p. 222 (Arizona Dept. of Game and Fish comments) (“The Department finds that this change has the potential to significantly reduce the amount of forest cover within treated areas . . . By changing the canopy cover targets from the stand level to the group level, the Department is concerned that the FS may not be meeting the habitat requirements for [14 of the goshawk’s prey species], and also may not be meeting the habitat requirements for the northern goshawk per the 1996 Forest Plan Amendment.”).

The substantial difference of opinion regarding the potential impacts of the implementation of the New Goshawk Guidelines, as demonstrated between the Forest Service and Arizona Department of Fish and Game, “is precisely the type of ‘controversial’ action for which an EIS must be prepared.” Blue Mountains Biodiversity Project, 161 F.3d at 1212.

B. The Effects Are Highly Uncertain and Involve Unknown Risks

“A project may have significant environmental impacts where its effects are ‘highly uncertain or involve unique or unknown risks.’” Blue Mountains Biodiversity Project, 161 F.3d at 1213, quoting 40 C.F.R. § 1508.27(b)(5). The Jack Smith project is the first Forest Service project to explicitly implement the New Goshawk Guidelines, which constitute a significant revision of the Regional standards and guidelines for the northern goshawk. While the drastic changes made by the New Goshawk Guidelines is anticipated to be significant, see Jack Smith EA, p. 222, the overall impacts on the northern goshawk and other species is highly uncertain and unknown.

The Forest Service’s claim that the Jack Smith logging project will result in trees growing into larger diameter classes at a faster rate, as compared to taking no action in the project area, is also highly uncertain. Jack Smith EA, p. 125. As in Ecology Center v. Austin, the Forest Service fails to provide scientific support for its theory, and fails to disclose the uncertainty and risks associated with the project. 430 F.3d at 1064-65 (stating that “the Forest Service’s conclusion that treating old-growth forest is beneficial to dependent species is predicated on an unverified hypothesis,” and that the EIS “treats the prediction that treatment will benefit old-growth dependent species as a fact instead of an untested and debated hypothesis.”).
C. The Jack Smith Project Will Establish a Precedent for Future Actions With Significant Effects

The Forest Service must consider the degree to which the Jack Smith project “may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.” 40 C.F.R. § 1508.27(b)(6). Again, the Jack Smith project is the first Forest Service project to explicitly implement the New Goshawk Guidelines, and may therefore establish a precedent for future actions that will similarly rely on the New Guidelines, thereby resulting in significant effects and representing a decision in principle concerning future considerations. 40 C.F.R. § 1508.27(b)(6). The Forest Service intends to implement the New Goshawk Guidelines throughout the entire Southwest Region, and the Jack Smith project would set important precedent for the future implementation of the Guidelines across the Region.

D. The Jack Smith Project is Related to Other Actions with Cumulatively Significant Impacts

To comply with NEPA, the Forest Service must adequately consider the cumulative impacts of all past, present, and reasonably foreseeable projects within and near the Jack Smith project area. 40 C.F.R. § 1508.27(b)(7); see also 40 C.F.R. § 1508.7 (“Cumulative impact” defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future action,” and recognizing that cumulative actions “can result from individually minor but collectively significant actions taking place over a period of time.”); 40 C.F.R. § 1508.25(a)(2) (in considering the proper scope for the Jack Smith analysis, the Forest Service must consider “cumulative actions,” which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same analysis). If several actions may have a cumulative environmental effect, the environmental consequences must be addressed and disclosed within a single EIS. Blue Mountains Biodiversity Project, 161 F.3d at 1214.

The Jack Smith EA makes reference to other projects near the project area, but fails to adequately address the overall, cumulative impacts of these projects combined with the Jack Smith project. For instance, the EA states that the Forest Service and Greater Flagstaff Forest Partnership have worked on 6 projects on the CNF, totaling over 80,000 acres. Jack Smith Draft EA, p. 2. The EA also acknowledges that there are two projects located adjacent to the Jack Smith project area, Eastside and Fort Valley. Id., p. 86. The EA, however, provides only general, conclusory statements regarding the cumulative impacts of the past, present, and reasonably foreseeable projects near the Jack Smith area, and fails to provide the detailed, quantified information required by NEPA. Neighbors of Cuddy Mountain, 137 F.3d at 1379 (“In accord with NEPA, the Forest Service must ‘consider’ cumulative impacts. 40 C.F.R. § 1508.25(c). To ‘consider’ cumulative effects, some quantified or detailed information is required. . . General statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided”).
The Jack Smith Project “Threatens” Violations of NFMA

The Forest Service must also consider “[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” 40 C.F.R. § 1508.27(b)(10). As demonstrated above, the Jack Smith project at the very least “threatens” violations of the CNF Plan standards and guidelines for northern goshawks and old growth, which would constitute a violation of NFMA (as well as the HFRA). Neighbors of Cuddy Mountain, 137 F.3d at 1377, citing 16 U.S.C. § 1604(i); 36 C.F.R. § 219.10(e). The likely violations of the CNF Plan, NFMA, and the HFRA again indicate that an EIS must be prepared before the Jack Smith project is implemented. 40 C.F.R. § 1508.27(b)(10).

As shown, numerous of the NEPA “significance” factors demonstrate the need for an EIS for the Jack Smith project. The Forest Service has failed to take the required “hard look” and provide a “convincing statement of reasons” to explain why the impacts of the Jack Smith project are insignificant. National Parks, 241 F.3d at 730; Blue Mountains, 161 F.3d at 1216. The failure to prepare an EIS for the logging project is therefore unreasonable.

The Forest Service Violated NEPA and the HFRA by Failing to Fully Analyze a Reasonable Alternative Proposed During the Scoping Process

The alternatives section is described as the “heart” of a NEPA analysis, allowing the agency to sharply define the issues and provide a clear basis for choice among options by the decisionmaker and the public. 40 C.F.R. § 1502.14. Agencies are therefore required to “[r]igorously explore and objectively evaluate all reasonable alternatives.” Id. at § 1502.14(a); see also 42 U.S.C. § 4332(2)(E) (agencies required to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources”).

HFRA also requires the Forest Service to include not only the proposed action and the “no action” alternative, but also an additional alternative if it is proposed during the scoping process and meets the purpose and need of the project. 16 U.S.C. § 6514(c).

In submitting comments on the Jack Smith proposal, the Center and Forest Guardians requested an alternative that does not log any trees greater than 16 inches dbh. See June 12, 2007, Comments (“We call on the CNF to propose a project that does not log any trees greater than 16” in diameter in this area where ‘the vast majority’ of large trees and old growth habitat has already been logged.”). In rejecting an alternative with a 16 inch diameter limit, the Forest Service states that the Center and Forest Guardians provided “no reasons for the cap other than that they ‘categorically oppose’ logging large trees in the name of hazard reduction.” Jack Smith Draft EA, p. 33.

First, the Center and Forest Guardians provided numerous reasons in their comments for this proposed alternative. As discussed in these objections and our earlier comments, the Forest Service admits that most of the large trees in this area have already been logged, the Forest Service has not accurately determined the amount of remaining old growth and old growth trees, and the agency cannot demonstrate compliance with its mandatory standards and guidelines for
old growth habitat and old growth dependent wildlife species. It is therefore more than reasonable, and even legally required, for the Forest Service to develop an alternative for its Jack Smith proposal that avoids the logging of additional large, old growth trees. The Forest Service refusal to do so violates NEPA. 40 C.F.R. § 1502.14; see also 42 U.S.C. § 4332(2)(E)

Second, the Forest Service’s response as to why it rejected the Center and Forest Guardian’s requested alternative neglects to address whether or not this alternative would meet the purpose and need of the proposed Jack Smith project (which it would), in violation of HFRA. 16 U.S.C. § 6514(c).

VIII. The Forest Service Violated HFRA’s Requirements Regarding Large Tree Retention

HFRA requires the Forest Service to focus authorized projects on small diameter trees, and to maximize the retention of large trees. 16 U.S.C. § 6512(f). The Jack Smith proposal fails to adequately demonstrate that the project is focused on small diameter trees, as required by HFRA. Moreover, the project fails to maximize the retention of large trees, as the Forest Service cannot even estimate within the EA as to how many large trees will be logged as part of this project. See Jack Smith Draft EA, p. 83 (stating that its not possible to identify the number of trees over 16 inches dbh that would be cut as part of this project). By authorizing an undisclosed amount of logging of large, old growth trees within a project area where the Forest Service already admits that past logging has removed the majority of the old forest trees, and where the Forest Service is already in noncompliance with mandatory old growth standards and guidelines, the Forest Service has clearly failed to comply with HFRA’s mandatory direction to maximize the retention of the large trees within authorized projects such as Jack Smith. 16 U.S.C. § 6512(f).

IX. The Jack Smith Project Does Not Fit Within the HFRA Authorized Projects

HFRA limits the areas and types of projects for which the Forest Service is authorized to proceed under the statute’s special provisions, and not all of the Jack Smith project fits within the limits of the statute. 16 U.S.C. § 6512.

As we set forth in our comments, the Community Wildfire Protection Plan (CWPP) for Flagstaff and Surrounding Communities was prepared with a paramount concern for fire safety for communities. It calls for the maximum conceivable protection from fire and admits to including all but “several small clusters of houses” into the “urban” zone across three-quarters of a million acres. In fact, with few exceptions nearly every acre of private land in the 769,476 acre analysis area is considered a “community.” This leads to a situation where 82,275 acres of “community” land is home to just 75,000 people with 55,000 of them in Flagstaff alone.

This area of “communities” is then buffered with a WUI of 280,655 acres, 215,166 on the Coconino National Forest alone. That amounts to 336 square miles of buffer on the National Forest for a nearby population of 75,000 people. The wildlife, rivers and landscape of this area, however, will suffer from an over-reaching proposal to treat hundreds of thousands of acres of National Forest in an impossible attempt to fireproof the land.
An overly cautious fire prevention rationale is driving much of the proposed project. The cover memo to the project admits that the 11,827 acres of treatment are “in and around the Wildland Urban Interface.” The proposed action notes that the project area “has little actual private land interface with only approximately ½ miles of boundary associated with residences.” Hazardous fuels reduction projects implemented under the HFRA, however, are supposed to be designed to protect communities by treating the WUI. This project is instead proposing treating areas, not only to protect communities, but to protect the WUI itself: “much of the project location is situated in area crucial for fire hazard reduction to protect WUI areas.”

The CNF has therefore inappropriately created a new type of treatment area altogether, using its limited fuels reduction resources to protect the area containing homes and structures. In fact, this treatment outside the WUI represents the majority of the proposed treatment area and there appears to be no described limit as to how far such treatment could extend in the future. The proposed action indicates that many areas that are set for logging in the name of hazard reduction are more than one mile from the CWPP’s already extremely cautious WUI, sometimes more than two miles away.

There is no legitimate justification for fuels reduction treatments in areas where a long and cautious process has determined such areas to be outside of the actual areas of concern. It is not credible to claim that backcountry logging more than three miles from the nearest home is about protecting communities from fire, and it is difficult to believe that on the 1.8 million acres of the Coconino National Forest, these areas outside the WUI are priorities for treatment.

Significantly, we do not believe that the CNF has authority to use the HFRA to log these non-WUI areas under the expedited rules and procedures. 16 U.S.C. § 6512(a). Attachment 4 says, “The CWPP WUI covers a majority of the project area. See Figure 2, page 6 of the Proposed Action.” But a quick look at Figure 2 clearly shows that the majority of lands within the project area are outside the WUI as defined by CWPP. Further there are lands that meet none of the other requirements of HFRA that are nonetheless slated for logging.

The Forest Service is further amiss for not providing the public with a clear description of Condition Class, fire regimes or proximity to municipal water systems or watersheds. This makes determination of meeting the HFRA requirements impossible for members of the public and confusing even for the decision-maker. See 16 U.S.C. § 6512(a).

For these reasons we request the Forest Service to restrict the project’s fuels reduction treatments to areas actually and properly defined as WUI.

SUGGESTED REMEDIES TO RESOLVE THIS OBJECTION

To resolve this objection, the Forest Service must commit to not logging any trees in the project area that are 16 inches dbh or greater, suspend any further implementation of the New Goshawk Guidelines pending compliance with NEPA and NFMA, comply with all mandatory standards and guidelines in the CNF Plan regarding northern goshawks and old growth, and limit the proposed logging to a properly defined WUI.
**Conclusion**

In summary, we would not object to reasonable logging, with diameter size limits, within truly overstocked stands in the WUI. Likewise we are not opposed to the proposed prescribed burns, meadow enhancement or the proposed actions to regenerate aspen. We do oppose, however, the proposed commercial logging of trees greater than 16 inches dbh. Additionally, we oppose the implementation of the New Goshawk Guidelines without any NEPA or NFMA compliance, and oppose the implementation of a project that fails to comply with mandatory Forest Plan standards and guidelines for northern goshawks and old growth. Overall, due to the issues set forth above, we believe the record is clear that the Forest Service must prepare an EIS that fully demonstrates compliance with all applicable Forest Plan standards and guidelines before implementing this project.

Sincerely,

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