

NOTICE OF OBJECTION

Final Environmental Assessment, Draft Decision, Finding of No Significant Impact for the Agassiz Chairlift Replacement Project

Coconino National Forest

Responsible Officials: Laura Jo West, Forest Supervisor

Cal Joyner, Regional Forester

Please take notice that the undersigned parties object to the Final Environmental Assessment, Draft Decision, Finding of No Significant Impact for the Agassiz Chairlift Replacement Project, since the agency action is arbitrary and capricious, an abuse of agency discretion, and does not comply with the statutes and regulations, as required by law.

The objectors have previously filed written objections (copies of which are submitted herewith) and have been in contact with the Coconino National Forest service staff about the proposed project. This notice of objection is based on the prior written objections that the objectors have provided to the agency. This objection is also based on new evidence, including a site visit that demonstrated that there will be direct and significant impacts to the endangered San Francisco Peaks ragwort (*Senecio Franciscanus*), and photographic evidence is provided in this objection.

This objection is based on a number of regulatory and factual issues, which are explained in detail below. In summary, the objections are based on the following reasons:

1. This project will directly and indirectly adversely impact the environment, wildlife, and the endangered San Francisco Peaks ragwort.
 - a. The information in the EA is incorrect and ragwort plants exist within the proposed construction areas, closer to the construction areas than stated in the EA, and in close proximity to access points to the proposed construction site. The agency violated its legal duty by its failure to factually investigate the current status of the ragwort or other species specifically on the site. For example, there is no current mapping of the existing ragwort plants on the site, and instead the agency made a baseless conclusion that is not supported by any known facts.
 - b. The EA is based on limited information or surveys of the existing ragwort plants on the site, despite the fact that it is a simple task to conduct a current and complete survey that maps the actual locations of the ragwort. The agency shirked its legal duty and failed to collect factual evidence and instead made baseless assumptions with no supporting facts.
 - c. The EA is based on inaccurate, outdated, and limited information on the status of the population status of the ragwort. For example, the agency has not said how many ragworts currently exist on the site. Again, the agency failed to gather actual facts, and simply jumped to conclusions.

- d. The agency failed to properly account for cumulative impacts to the ragwort.
 - e. The EA was dismissive of climate change impacts to the ragwort, which would contribute to cumulate impacts.
 - f. The EA was not based on actual information on past impacts to the environment, wildlife, or the ragwort caused by past components of the projects on the site. Past projects were expected to impact the ragwort, and no data has been collected to determine the past impacts caused by the Snowbowl activities. Without factual data, the agency could not evaluate cumulative impacts, and violated its legal duty.
 - g. The agency did not fully conduct a cumulative impacts analysis on future impacts. Instead, the agency ignored future impacts and claimed that any future actions are not approved, and therefore ignored any known factual information about the desire of the contractor to expand operations.
 - h. The agency intentionally withheld documents relevant to potential future impacts to the site, and therefore prevented any interested parties from evaluating the information for cumulative impacts. The agency clearly ignored reasonably projected impacts and failed to conduct a cumulative impacts analysis.
 - i. The agency was dismissive of impacts to the habitat of the Mexican spotted owl. The agency based its conclusion on assumptions rather than actual, documented facts and therefore abused its discretion.
2. The agency failed to provide the objectors with meaningful notice or opportunity to be heard regarding any mitigation plans, including a future SWPPP, in violation of due process, the Administrative Procedure Act, NEPA, 42 U.S.C. 4321, the Endangered Species Act, and 40 CFR sec. 1508. The agency failed to provide adequate or concrete mitigation measures. Throughout the EA, the agency claimed that it would come up with mitigation plans in the event there were issues, such as discovery of ragworts in the construction area. The agency stated that a SWPPP would be developed to mitigate ground disturbance, but one was not provided in advance of the agency's decision. The agency admitted adverse cultural impacts in the past, and references a draft mitigation agreement that was not signed, and otherwise has states no mitigation measures for cultural impacts. While monitoring is mentioned in the EA, there is no specific monitoring plan that can be reviewed for adequacy. The agency cannot simply approve a project and claim that it will provide some sort of mitigation measures in the future. The actual, specific, written mitigation measures must be disclosed in advance of the agency decision so that the adequacy of the measures can be evaluated prior to approval. The agency has violated its legal duty and abused its discretion.
3. The agency failed to properly assess the scope, intensity, and significance of the project. The agency claims that there is no significant impact that would be caused by the project. This conclusion is ill-based due to the inadequate and missing information about the actual project. There will be both direct and indirect impacts due to the construction activities. The project is clearly an expansion of the operations

of the chair lift. The expansion is not only of the acreage impacted by construction and installation of physical features, but is also a significant increase in the intensity of use due to the high-speed chair lift system that is replacing a slower system. The agency abused its discretion when it repeatedly concluded that there was no increase of capacity, yet the purpose of the project is to install a new, different chair lift system that will increase capacity.

4. The agency should not have allowed an expanded capacity lift system. Minimization and avoidance of impacts demands that the chair lift be repaired or replaced in its existing location, without an increase in capacity. The new system is clearly designed to increase capacity, and potentially violate the existing permit conditions in hopes that they will not be caught. Even if they are found in violation, there is a lack of punitive or preventive measures or any meaningful accountability. The true reason for this expansion is to lay the groundwork for future expansion, which is likely noted in the secret, undisclosed plans that the agency has taken great measures to hide from the public.
5. The agency did not properly consider the input of the indigenous people regarding the cultural impacts caused by this project.

This Project violates the Endangered Species Act, NEPA and 40 CFR section 1508

The petitioners objected to the project on the basis of the impacts to wildlife, trees, soil, air, water and sensitive plants (August 2019 objection), and specifically identified the San Francisco Peaks ragwort (*Senecio Franciscanus*) (September 2019 objection), which is on the Arizona State Protected List, Arizona Native Plant law, Arizona Revised Statute, Regulation NO. R3-1-144, and is on the US Forest Service Sensitive Plant List. (Page 12, San Francisco Groundsel Recovery Plan, 1987), as well as the Endangered Species Act, and the Lacey Act. All known populations are on the Coconino National Forest which is administered by the U.S. Forest Service. (Federal Register / Vol. 48, No. 226/Tuesday, November 22, 1983).

Section 7(a) of the Act, as amended requires Federal Agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered or Threatened. Federal Agencies are required under Section 7(a)(4) to confer with the Service on any action that is likely to jeopardize proposed species or result in destruction or adverse modification of its Critical Habitat.

The endangered San Francisco Peaks ragwort is present on the affected site, and will be impacted by construction, erosion, and human traffic. This is the only habitat for this endangered species and there simply cannot be any further loss of habitat. There are several locations which will adversely impact the endangered ragwort.

This project proposes the removal and replacement of the retaining wall at the top terminal that is in alpine tundra habitat, which is habitat of the San Francisco Peaks ragwort. There will be disturbance and loss of ragworts and ragwort habitat.

An additional 70 feet clearance in the lift corridor is proposed for the infrastructure required to install and operate the Gondola/telemix system. In August 2019, the agency published updated

information that the nearest ragworts are much closer to the edge of the area that is proposed to be disturbed. The agency initially stated that the closest ragworts were **60 feet** away, but after publication of the notice to USFWS and the public, changed that information and now states that the endangered ragworts are as close as **40 feet** away from the construction site. This information was not given to the USFWS before they commented. Based on a recent site inspection, ragworts were found within and in close proximity to the construction site, and not 40 feet away. It is clear that the construction will destroy ragwort habitat, and there will be no new habitat available, resulting in a net loss for a species that grows nowhere else in the world.

The length of the chair lift corridor is being increased to 6,419 feet, rather than the 6,112 feet, which is an additional linear impact of 307 feet. This disclosure was made after the proposal was sent for comment to USFWS. Without a map of the known ragworts on the entire site, this expansion of the impacted area can reasonably be expected to adversely impact the endangered ragwort, warranting a reconsideration and reversal of approval.

There are inadequate mitigation measures to prevent additional impacts to ragwort habitat. Conservation measures provided to species listed as Endangered or Threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection and prohibitions against certain practices. (Federal Register / Vol. 48, No. 226/ Tuesday, November 22, 1983). Management of this area to reduce disturbance of the talus slopes is necessary to protect the species. (Federal Register/Vol. 48 No. 226/Tuesday, November 22, 1983). A comprehensive and ongoing monitoring is a critical element in determining the present status of the *San Francisco Peaks* Groundsel, (Page 22, San Francisco Groundsel Recovery Plan 1987). The Agassiz Chairlift replacement project does not reduce the disturbance of the talus slopes rather it destroys the talus slopes and critical habitat of the San Francisco Ragwort. "Further, the project area has zero impact zone accounted for. To have zero impact zone on a talus slope that is steep with very loose cinder and rocks is not a reality. We object to the purported 40 feet distance to the existing ragworts on the site, since the ragworts are much closer and within the impact zone, and especially considering no impact zone should be mandated for this project in a steep talus slope. This oversight of having a zero impact zone by the agency disregards the regulatory duty to properly manage and maintain critical habitat for the San Francisco ragwort and is an abuse of discretion.

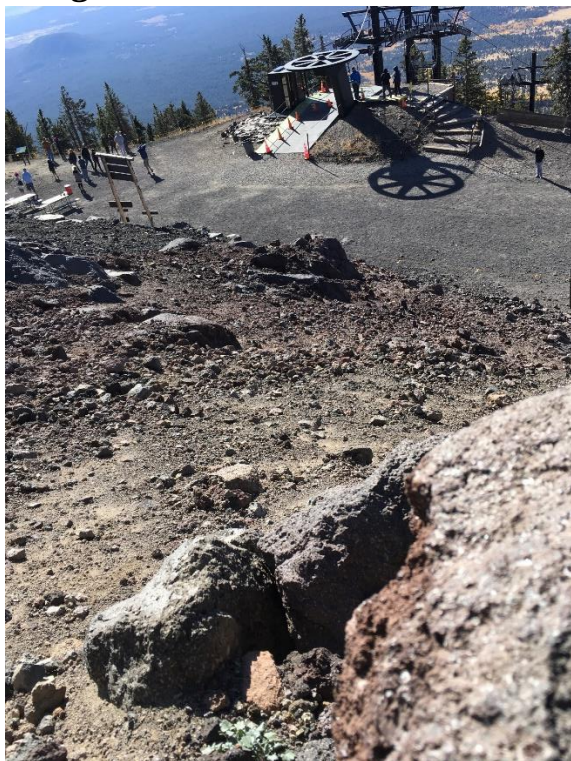
The 1987 San Francisco Groundsel Recovery Plan – US Fish and Wildlife Service, Albuquerque, New Mexico, is **32 years old**. There is no factual information that this dated recovery plan has actually been implemented or has any modicum of progress. There is no specific plan of action by this agency to assure that this plan, or any other reasonable measure of protection of the existing population of ragworts and the habitat will occur. It is imperative that a current and comprehensive study of the ragwort and its habitat, with detailed mapping, on the site be conducted in order to determine the current status of the *San Francisco Peaks Ragwort*, in order to adequately address impacts of the Agassiz Chairlift Replacement, and future Arizona Snowbowl expansion projects. Notably, there were no ragwort surveys for the 2005 Final Environmental Impact Statement for Arizona Snowbowl, demonstrating that inadequate monitoring and study of this species has been conducted by the agency across time. There was a

survey conducted in 2012, which is now over 7 years old and does not show the current status of the species. A current study needs to be comprehensive and completed prior to consideration of any new construction activities, including the Agassiz Chairlift or any other projects or activities.

While the objectors raised issues with erosion of the construction site, the agency was dismissive of this issue and states that “the project area does not contain any water features to facilitate the transport or accumulation of eroded soil materials.” (paragraph 3.1 Oct. 15, 2019 response to comments). This statement is nonsensical. The flow or rainwater or snowmelt can facilitate the erosion, especially on the 4.10 acres of construction site where vegetation is removed. This statement demonstrates the arbitrary, capricious, and unscientific nature of the agency action being challenged here.

The agency also states that due to the land disturbance, it “would necessitate development and implementation of a SWPPP to minimize non-point source pollution associated with construction activities.” Notably, the agency acknowledges that there is no existing SWPPP, and one would need to be developed at some uncertain date in the future after project approval. Without a specific mitigation plan related to erosions and pollution, this project could destroy the ragworts and their habitat. The agency is clearly violating its regulatory mandate to evaluate project, including any mitigation measures such as erosion and pollution control, prior to project approval. The objectors have had no meaningful notice or opportunity to be heard regarding any mitigation plans, including a future SWPPP, in violation of due process, the Administrative Procedure Act, the Endangered Species Act, and 40 CFR sec. 1508.

Image credit: Shawn Mulford 2019



The agency violated section 1508.27(9), which requires the agency to consider “the degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.”

Notably, while objectors brought up climate change (page 2, August 2019 objection), the agency dismissed this information and did not consider it relevant. This information is clearly relevant since global warming will limit the range of the San Francisco ragwort. New plant species will move into the ragwort niche, causing increased competition for space. There is little room for the ragwort to move to avoid this increased plant competition, from either invasive or native species. The ragwort will become more critically endangered from habitat loss due to the construction activities and expanded chair lift footprint and capacity. Together with climate change, the agency must take immediate action to prevent further habitat loss.

The agency was also incorrect about the location of existing ragwort plants. Plants were in the proposed construction area and also much closer than the 40 feet away that the agency assumed, and there should be a zero impact zone and buffer. A site visit and photographs confirmed that the agency acted on erroneous information when it concluded that the San Francisco ragwort plants would not be in or near the construction area. Their decision was based on false information, warranting reversal of the decision.

This project will cause adverse cumulative impacts.

40 CFR sec. 1508.7 prohibits adverse cumulative impacts, and the agency failed to conduct a true cumulative impacts analysis at all levels.

“Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 CFR sec. 1508.7.

Despite a proper FOIA request, the agency has failed to produce the documents that it possesses that would articulate **future** cumulative impacts. Instead, the agency withheld important documents that would demonstrate future impacts that would be cumulative in nature. However, the operator of Snowbowl issued a press release in June 2019 (attached to this petition) outlining its future plans for the site, including increased capacity, expanded parking, expanded facilities, and expanded year-round activities, which implicates adverse impacts to many more areas of the site beyond the skiing areas. The increased capacity stated in the press release is consistent with the capacity of the high-speed chair lift that is under scrutiny here. Thus while the agency claims there will be no expanded capacity, the clear intent of the operator of the facility is to increase capacity, and the proposed lift system is consistent with the numbers stated in the press release about the planned future operations of the facility. It is arbitrary and capricious for the agency to ignore these well-known public facts in its possession and pretend that that this piecemeal approach can avoid a cumulative impacts analysis.

40 CFR 1508.8 defines effects to be synonymous with impacts, and includes future effects. Effects include:

“(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” 40 CFR 1508.8.

Future effects must be taken into consideration, yet the future proposed plans have been concealed from Petitioners despite objections on these grounds and proper FOIA requests.

The agency states that it cannot contemplate the future cumulative effects for various reasons, one being that the 2019 Master Development Plan is still under discussion, and has not yet been approved. The agency, in its October 15, 2019 response, paragraph 7.15, states that future proposals that have been formulated and documented, are “not considered a reasonably foreseeable action for further analysis” for the reason that “the Coconino National Forest has not accepted an updated MDP for review through the NEPA process.” This statement alone is sufficient reason to reverse the agency decision. The regulation does not state that a future plan needs to be under a formal legal process to be considered for cumulative impacts analysis. There are clearly plans in the works since the agency withheld documents from a FOIA request. These documents would further confirm reasonably foreseeable future impacts, yet the agency is hiding behind its application of an exemption to keep the public in the dark and prevent a true cumulative impacts review here. Coconino National Forest is going forward with a project yet cannot determine what the cumulative effects might be even though the agency has knowledge of all the other components involved in the build out of Arizona Snowbowl Resort. It is clear that there will be **combined cumulative effects** on the cultural resources, the environment, wildlife, soils, water and air, relative to this project, and other proposed future projects. The agency cannot simply hide behind a FOIA exemption and then ignore the mandatory regulatory requirement that cumulative impacts be properly evaluated. The agency clearly is ignoring future cumulative impacts, as well as current cumulative impacts that will be caused by the increase in significance and intensity of the construction activities and increase chair lift rate, capacity, and use. This intentional piecemeal approach used by the agency to avoid its regulatory duty is in violation of the law and reversal of the agency decision is warranted.

Future impacts are clearly contemplated and inherently foreseeable. These future impacts are demonstrated through a press release by the contractor, noted above:

“Arizona Snowbowl Shares Vision for Next Chapter, Press Release, June 10, 2019:

A third-party analysis completed by SE Group, a leading mountain resort consulting firm, determined the comfortable carrying capacity at Snowbowl is currently 3,870 visitors per day.....” Said Manager J. R. Murry “We, too, want our guest to go home with fond memories of their time on the mountain. In order to achieve this, we are planning for a capacity of 4,500 people to provide a great experience on even the busiest holidays.”

“As result, Mountain Capital Partners, the Snowbowl Management group is conceptualizing new facilities and infrastructure within the resort’s boundaries, increasing space for guest services (including food and beverage, ticketing, rentals, lessons, retail) on mountain plus additional space within the base area, adding parking for cars and buses and a small medical clinic in the winter.”

“Activities now common at other mountain resorts and conceptualized at Snowbowl include: mountain biking, mountain coaster, alpine slide, zip-line tours, expanded disc golf, a climbing wall and outdoor concerts.”

This information clearly demonstrates the intention to increase the intensity of use of the site and cause significant impacts beyond the existing impacts. This information also demonstrates future impacts, which should have been included in a cumulative impacts analysis, but which was admittedly not done by the agency here, requiring reversal of the agency decision.

Despite this publicly available press release about future plans, and despite the fact that the agency is hiding documents from public view under an asserted FOIA exemption, Coconino National Forest Supervisor, Laura West stated in the April 9, 2018 scoping letter for this Project “**The existing capacity of the Agassiz is not proposed to be increased at this time, and would be similar to that of the existing chairlift with the addition of gondola cabins.**” In addition, the July 2019 EA states that future activities are “likely to include expansion of service areas” (page 32), yet the agency failed to analyze this expected expansion. This is an abuse of agency discretion.

The use of the qualifying phrase in the West letter “at this time” demonstrates that the agency is trying to straddle the line of ignoring known future impacts in order to circumvent proper regulatory review, yet have plausible deniability in the future when the future expansion plans are revealed. The statement that the two systems are similar are likewise obfuscatory: these two systems are not similar since the proposed system needs a wider corridor, has different carrying cars, and has triple the speed of the existing system. This illogical assessment of “similarity” is not a fact, but rather, is a conclusion that is not supported by the objective facts. This conclusion of “similarity” defies the admitted fact that the new gondola cabins will clearly increase the number of passengers that can access the site, and will increase the rate at which the passengers access the site. This new lift system will triple the rate of passenger delivery, significantly increasing intensity of use, which is the true reason for this project. For this reason alone, the

project should be rejected. The agency circumvented mandatory regulatory reviews by pretending that the new proposed lift system would not be of a greater intensity. This convenient conclusion defies logic and common sense.

The cumulative impacts analysis must take into consideration the **past** impacts, including the past impacts that have occurred to the ragwort due to previously approved activities at Snowbowl. The ecosystems associated with this area are naturally oligotrophic, and the nutrient inputs historically low on a loading per unit area per unit time. Snowbowl operations have significantly disrupted this nutrient loading pattern, with secondary effluent, high in nitrogen and phosphorus, being used to produce snow. In the EA there are no calculations or considerations given related to the potential impact of nutrient loading, even though throughout the United States excessive nutrient loading has altered and impaired both surface waters and associated soils and sediments, and has resulted in significant environmental and economic damage. Nutrients from this heavy loading accumulate and may be temporarily sequestered, only to become biologically available at some future date. These stored nutrients are called legacy nutrients, and will result in serious vegetative shifts as a result of dramatic changes in selective pressures. Vegetation adapted to low nutrient conditions, such as the San Francisco Peaks ragwort, will fail to compete with plants accustomed to high nutrient levels. The increase in the nutrient load due to past, present, and ongoing activity by Snowbowl, including the use of effluent in snowmaking, must be scientifically evaluated in order to comply with the regulatory requirement of a cumulative impact analysis. This includes the impacts caused by snowmaking since the endangered ragwort needs a low-nutrient environment to survive. This was not done here and the agency simply dismissed any efforts by objectors to explain the regulatory relevance of past impacts to the endangered species and its habitat (see page 2 August 2019 objection). In response to the issues raised about snowmaking, the agency stated: “The proposed project does not include any changes to the making of artificial snow at Arizona Snowbowl. This comment is outside of the scope of the project.” This admission by the agency that it did not consider the past impacts of the project at all warrants reversal of the agency decision. The regulations require that past impacts be evaluated, including the impacts that have occurred after prior approvals. Past cumulative impacts must be evaluated in accordance with the sound policy of scientifically considering the impacts that have already occurred after past approvals, which would provide factual data to determine if predicted and unpredicted impacts have occurred, and to what extent.

The agency has not conducted a scientific, factual analysis of the impacts of using reclaimed water on a fragile alpine environment that is habitat for the endangered ragwort that exists nowhere else in the world. The agency could have conducted a population count of the endangered ragworts before and after past construction activities, but has not done so and no population numbers have been provided. The agency could have conducted soil testing to determine if the soils have changed since past impacts, but has not done so. The agency could have tested the run-off water from the snowmaking to determine if pollutants or nutrients are flowing onto ragwort habitat or otherwise endangering human and environmental health, but has not done so. Instead, the agency dismisses the objectors’ concerns and claims that such information is outside the scope of this project, completely ignoring the requirements of a cumulative impacts analysis. For this reason, the agency decision must be reversed.

The proposed mitigation will not be effective or sufficient pursuant to 40 CFR § 1508.20

The agency failed to provide adequate mitigation measures, to which the objectors complained about the lack of details (page 3 August 2019 objection). The July 2019 EA states that “historical access routes” will be used (paragraph 3.4.4). The objectors raised issues related to the access routes for construction equipment, to which the agency late responded in October 2019 that “the route would be restricted to previously disturbed ski trails” but later states that “the potential route to move equipment and supplies to the top terminal may vary based on recent weather and site conditions.” (Paragraph 1.0 Agency response Oct. 15, 2019). This is a change and expansion of impact area from the mysterious “historical access route” to “ski trails” in general. The agency does not clearly specify the areas that will be impacted by construction access activities, and thus there can be impacts to areas of concern, including ragwort habitat, as well as the plants themselves. The agency appears to believe that using ski trails for heavy construction equipment will not cause any adverse impacts that are not already caused by skiing. This is disingenuous. Skiing occurs on top of snow, and not directly on soil and the hibernating plants. Skiers are much lighter in weight than construction equipment. These plain facts were ignored by the agency and they failed to conduct proper analysis of the direct impacts caused by construction access, as well as cumulative impacts of the construction access activities. While there would clearly be a necessity to access the site for any construction activities, the agency has failed to demonstrate the specific alternatives to access, and the reasons for selecting one trail or the other, and instead includes all the potential ski trails. Without specific selection of access roads, there cannot be a minimization and avoidance analysis. In addition, the agency has no specific mitigation plans to protect the site from impacts caused by the use of the access routes. The agency has no specific plans for monitoring the access routes, did not provide data on the presence of the ragwort, or any other protected species, on the alternative ski trails that could be used for access routes. The agency did not provide a clear map of the approved access routes. Instead, it appears that the entire ski area can be used for driving construction equipment across the site. The dereliction of duty by the agency warrants reversal of the decision.

Throughout the EA, the agency claimed that it would come up with mitigation plans in the event there were issues, such as discovery of ragworts in the construction area or erosion control. Instead of providing a true mitigation plan that could be evaluated for sufficiency, the agency made various statements that amount to a regulatory “trust me.” For example, the EA section 2.5 states that “if any occurrence of any Region 3 sensitive plants are encountered within the project footprint prior to or during project implementation, a Forest Service botanist will be notified to derive suitable mitigation measures to avoid or minimize impacts as appropriate.” This statement demonstrates that there have been inadequate surveys to identify the known locations of the protected species on the site, including all of the ski trails that could be used as access routes. Instead, the agency plans to wait to be notified by some unknown endangered species expert who merely needs to be “briefed” and who happens to be operating construction equipment to stop and notify said unknown botanist. Every existing ragwort on the construction

site and all potential access routes should be mapped and clearly identified, and specific mitigation measures should already exist for protection of known and unknown ragwort locations, rather than contradictorily stating that they were “not found” (Paragraph 1.2 Agency response Oct. 15, 2019). This statement contradicts the 2012 survey that identified approximately 1,100 ragwort plants that could be affected on the site (USDA FS 2012). This statement also contradicts the 2017 survey that located 6 ragwort plants on the site (4 of which were also found in 2012), as well as 11 newly-detected plants near the Agassiz lift (which was clearly pointed out by objectors in the September 30, 2019 supplemental objection). Clearly mapping the known population of ragworts is necessary and the agency should not hide behind misleading and contradictory statements that the ragworts were “not found” when ragworts are clearly on the site, as admitted by the agency. Instead of actually dealing with the protection of the ragwort, the agency states that it might come up with a plan later, which is the essence of abuse of discretion.

Despite the regulatory requirement for mitigation measures, the agency plans to potentially deal with mitigation later, rather than as a part of the mandatory regulatory review. The agency states “The Construction Implementation Plan for the Proposed Action would be developed after the EA is submitted and the Decision is made.” (Paragraph 1.3 Agency Response Oct. 15, 2019). It is clear from the detail and comprehensive Press Report, that the site operator has detailed plans for the site. Specific site construction plans should have been submitted as part of the proposal and no agency action should have occurred until these plans were produced to the agency and available to the public. The agency has no factual basis upon which to make a decision without the construction plans, which is a classic example of arbitrary and capricious agency action. The agency is providing a blanket approval to a general idea, rather than a specific permit request. For this reason alone, the agency decision must be reversed as an abuse of discretion.

The agency admitted adverse cultural impacts in the past, and references a draft mitigation agreement that was not signed, and otherwise has states no mitigation measures for cultural impacts. While monitoring is mentioned in the EA, there is no specific monitoring plan that can be reviewed for adequacy. The agency cannot simply approve a project and claim that it will provide some sort of mitigation measures in the future. The actual, specific, written mitigation measures must be disclosed in advance of the agency decision so that the adequacy of the measures can be evaluated prior to approval. The agency has violated its legal duty and abused its discretion.

The agency improperly made a finding of no significant impact under 40 CFR 1508.13.

This proposed project is not simply for repair of an existing structure, it is for the complete replacement of the existing structure with an entirely new lift system with an expanded corridor. This is a significant impact and goes beyond the scope of the permit in place which prohibits construction without an amendment to the master plan (see paragraph I.G of the permit) or on any identified schedule as required by the permit (see paragraph II.B). The agency has not implemented a new master plan and refused to provide documents to objector Shannon Larsen, even though she submitted a proper FOIA request. This documentation is attached hereto as exhibits.

With regard to the finding of no significant impact as it relates to the endangered ragwort, the agency did not adequately consider identifiable factual information upon which to base its conclusion, as further described above. The agency assumed that the ragwort was not present at or near the construction site, and relayed that information to the US Fish and Wildlife Service. However, the facts are that the endangered ragwort is present at and in very close proximity to the construction site. The existence of actual plants demonstrates that the construction site is habitat for the endangered ragwort. Any agency recommendation, such as that of USFWS, or conclusion is misplaced, and the agency violated 40 CFR 1508.13 in concluding that there will be no significant impact. The facts demonstrate that this specific project will significantly impact the endangered population of ragwort that exists at this site. The Endangered Species Act, 16 U.S.C. sec. 1538, requires that the agency protect the ragwort, and the agency is in violation here and the proposed activities constitute the destruction, removal, and takings of the endangered ragworts.

The Agency did not Comply with 40 CFR sec. 1508.25 and did not properly address the scope of the project.

The agency viewed this project as narrowly as possible and did not consider the full scope of the project, the future impacts, the cumulative impacts, and reasonable alternatives.

The agency approved a larger, faster lift system that can increase the number of people using the site at the same time. While the agency claims that there is not an increase, this defies logic. The agency did not consider a simple replacement of any defective parts of the existing system. The agency did not consider keeping the impacts to the same footprint. The agency did not consider replacement of the same system without increasing the passenger rate. The agency did not consider adding handicap accessible vehicles to the existing system. Instead, the agency simply considered a larger, faster system that can handle more people per hour.

The agency did not implement reasonable measures to prevent an increase in impact based on use. There are simply no effective means of preventing additional impacts to the site once the new system is in place. It is inherently reasonable to expect an increase in passenger use, and thus an increase in impacts to the site. No reasonable business would spend more money for a faster, larger lift system if they did not expect an increase in passenger use and thus an increase in revenue. The design of the new system is clearly to increase passenger use on an hourly, daily, and seasonal basis, yet the agency ignores this clear fact and claims there will be no new impacts.

The Agency Did Not Properly Assess the Significance and Intensity of this project as required under 40 CFR sec. § 1508.27

The agency did not properly review the significance of this project, especially at the local level. Significance includes intensity. This project clearly calls for a more intense rate of passenger delivery, and this increase in intensity is significant. Section 1508.27(B)(3) requires (3) “Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas” to be evaluated. This was not properly done. The affected mountain is culturally significant and

sacred. An increase in intensity of use impacts the sacred nature of the site. The increase passenger use will adversely impact the environment, including the endangered San Francisco Peaks ragwort.

The proposed lift can be replaced with the same existing system, and remain within the original lift corridor of 30 feet, rather than doubling and destroying another 30 feet or more of natural areas which cause erosion and disturbance or loss of habitat of many species, including the ragwort. Since the agency claims that there should not be an increase in up-hill lift capacity with the new gondola chair lift system, there is no valid reason to replace the current chair lift system with the high-speed gondola/telemix lift chair system and disturb areas unnecessarily. However, this project is connected to a larger project to increase visitation both in the winter and summer months, including expansion of hourly visitation rates, thus increasing adverse impacts.

The agency states that the gondola/telemix Agassiz chair lift replacement will not increase up-hill lift capacity. This statement is being made in order to avoid doing a full Environmental Impact Statement. The agency repeatedly states that the summer recreational activities will increase on the site and will use the lift system. The gondola/telemix is capable of increasing capacity to 3,400 people per hour. This new system increases capacity to nearly 3 times the current approved rate of 1,200p/h. While the agency acknowledges the increased lift capacity, and also acknowledges an intent to increase summer activities utilizing the lift, yet attempts to inartfully use smoke and mirrors to claim that there surely will be no increase in capacity, even though an increase in capacity is the true and clear intent of this project. It is unlawful for the agency to break up a project to avoid conducting a thorough, comprehensive and transparent Environmental Impact Statement. This is precisely why there are regulations mandating a thorough intensity analysis as well as a cumulative impacts analysis.

According to the EA there are long lines waiting to use the lift. This reference to the “long lines” reveals the true purpose of this new type of lift system: to increase the hourly rate and avoid the wait. In an effort to dodge the fact that this new lift system will cause increased adverse impacts, the Arizona Snowbowl and the US Forest Service state that the new lift will not increase capacity or go beyond the 1,200 p/h, despite the fact that it is designed to have a much higher rate, hence the reference to the “long lines.” If there is no intended increase in the rate and hence capacity and intensity, then there is no need to switch to a faster lift system. The truth of the matter is that this new, high-speed lift system is specifically designed to increase the intensity and significance of usage and impacts.

If the special use permit is being amended by replacing the existing Agassiz chairlift lift, with the new gondola/telemix system, then at some point in the future what prevents the special use permit from being amended to increase up-hill lift capacity in order to accommodate increased visitation to eliminate long lines? There is no specific plan to restrict the new lift system to comply with the permit limits. In essence, the agency is simply saying “trust me” rather than preparing a meaningful and measurable mitigation plan to force compliance with the permit and prevent the full use of the capacity of the system. Again this tactic of avoiding a true cumulative impact study and Environmental Impact Statement does not protect the public interest, does not accurately protect the natural environment, is not transparent to Aboriginal Indigenous Peoples,

Nations and Tribes, and is a deliberate action that undermines appropriate rules, regulations, policies, ordinances, and laws that have been established to protect our natural lands, plants, wildlife and rights of Aboriginal Indigenous Peoples.

The US Department of Agriculture, Forest Service – Coconino National Forest – Land and Resource Management: Arizona Snowbowl Upgrade Proposed Action states:

“The 1979 EIS and the current Special Use Permit provide approvals for a total of 206 acres of skiing terrain at the Snowbowl, it also approved a ski comfortable carrying capacity (CCS) of 2,825 skiers. The improvements detailed within this proposal would not change the ski area’s comfortable capacity from the previously approved figure of 2,825 skiers.”

Arizona Snowbowl Upgrade Proposed Action, September 2002 – Project elements being proposed for site-specific review and approval include:

Installation of snowmaking infrastructure to support approximately 203.5 acres of season long snow coverage, realignment and/or lengthening of the sunset, hart Prairie, and Aspen lifts, Installation of a new chairlift and four surface lifts, development of approximately 66.5 acres of new skiing terrain, development of a snow play/tubing area, surface lifts, parking, and guest service facilities, night lighting on portions of the lower mountain, the creation of a halfpipe, and improvement of service facilities and resort infrastructure, summer trails.

Approximately 42 acres of tree thinning would occur within the Agassiz and Sunset Areas.

These are past and existing impacts to the site, which must be taken into consideration when evaluating the degradation of the environment and the risk to the endangered ragwort. The regulations require the agency to consider the controversy nature of this project. This project is highly controversial.

Section 1508.27(6) requires the agency to consider “the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.” The agency has turned a blind eye to future and cumulative impacts and did not properly assess the project. The agency concealed future plans by failing to produce relevant documents pursuant to FOIA, yet it is required to consider future plans, but failed to release documents related to proposed future plans. This project is clearly about the future plans to impact the site, which is why there is a larger, faster lift system proposed here.

The agency violated section 1508.27(7), which requires them to consider “whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.”

As described above, cumulative impacts were dismissed; future impacts were dismissed. The agency did what this regulation clearly prohibits: breaking a project down to component parts. Thus the agency violated this regulation.

The agency violated section 1508.27(8), which requires the agency to consider “the degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.” Notably, National Register eligibility is not the only standard: this regulation requires consideration of loss or destruction of significant scientific, cultural, or historical resources. The agency responded by stating that there were no cultural resources eligible for listing, or that the proposed project “is not considered to impose new or additional effects to the qualities that contribute to the significance of the San Francisco Peaks TCP, as the chairlift replacement will not increase the current effects of the existing ski area.” (4.3 Oct. 15, 2019 Response). The agencies belief that this project is not significant in any way and will not cause any impacts whatsoever is the basis for its conclusion.

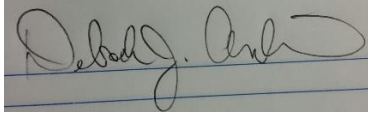
The Indigenous Nations, Tribes and Peoples have been very clear that Arizona Snowbowl expansion activities greatly and adversely affect the Sanctity of the San Francisco Peaks, and their wellbeing, and the wellbeing of future generations, as well as the wellbeing of all Life on the Sacred Mountain. The Forest Service has previously acknowledged that new developments at Snowbowl, such as the chairlift construction from the 2005 EIS, and ROD and Forest Plan Amendment No. 21 (USDA Forest Service 2005a, USDA Forest Service 2005b), **have resulted in adverse effects on cultural resources.** (Page 24, Arizona Snowbowl Agassiz Replacement Environmental Assessment, October 2019).

The agency has turned a blind eye to the scope, significance, intensity, increase in capacity, and adverse impacts to this project, despite the continued objections based on cultural significance and indigenous rights and lack of agreement by all affected tribes. An expanded capacity ski lift on a sacred mountain is destruction of significant cultural resources. An expanded capacity ski lift and construction activities on sensitive environmental ecosystem that is the sole home of the endangered San Francisco ragwort will destroy significant scientific resources in violation of the law. This is a classic “death by a thousand cuts” and demands a cumulative impacts analysis based on fact, not assumptions.

WHEREFORE, for these reasons, we object to the agency action at issue here, and seek an administrative hearing, with the right to obtain full discovery (including all relevant documents, including future proposals), a right to present evidence, a right to cross-examine witnesses, and a right to a fair and impartial hearing, or alternatively ask that the agency reverse its decision and deny the project permit.

Responses should be made to counsel for objectors, Deborah Andrews, whose information is listed below. Lead objector is Nicole Horseherder, of To Nizhoni Ani.

Respectfully submitted,



/s/ Deborah J. Andrews

Deborah J. Andrews, Esq., Ph.D.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Counsel for Objectors

Nicole Horseherder
To Nizhoni Ani

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EXHIBITS



Shannon Larsen Nov 25, 2019, 4:50 PM

to

From: Daniel, Alisha - FS <alisha.daniel@usda.gov>
Sent: Monday, November 25, 2019 12:44 PM
To: Shannon Larsen <ancienttrees@hotmail.com>
Cc: Lawrence, Melanie A -FS <melanie.lawrence@usda.gov>
Subject: Requester Notice, 2019-FS-R3-04275-F Shannon

REQUESTER LETTER RE SUBMITTER NOTICE

November 25, 2019

Delivered via AND ELECTRONIC MAIL

Shannon Larsen

Ancient Trees

ancienttrees@hotmail.com

Re: FOIA Case No. **2019-FS-R3-04275-F**

Notice to Requester

Dear Ms. Larsen:

This email is to advise you of further action taken on your Freedom of Information (FOIA) request to the Coconino National Forest.

In processing the above-referenced request, the We found that responsive records submitted by Arizona Snowbowl Resort may contain information that FOIA Exemption 4 prohibits from release as confidential business information.

Executive Order 12600 and the USDA FOIA regulation 7 C.F.R. § 1.12 require that USDA provide pre-disclosure notification to the submitter of business information whenever confidential commercial information has been requested under the FOIA. The business submitter has 15 business days within which to provide us with a statement of objection to disclosure. If this office decides to disclose the records over the objection of the submitter, we must notify the submitter in writing of the disclosure and provide 10 business days for the submitter to respond before we release the responsive records. This 10 day timeframe allows Arizona Snowbowl Resort to initiate legal action to prevent disclosure of the records.

Upon receipt of the above-referenced information, the records will be processed in accordance with the FOIA and mailed to you upon completion.

If you have any questions regarding this notice, please contact Alisha Daniel via telephone at 505-842-3172 or via email at alisha.daniel@usda.gov.

We appreciate the opportunity to assist you in this matter.

Sincerely,

Alisha

Alisha Daniel
Government Information Specialist

Forest Service

Southwestern Region

p: 505-842-3172
alishadaniel@usda.gov

333 Broadway Blvd., S.E.,
Albuquerque, NM 87102
www.fs.fed.us

**Caring for the land and serving
people**

From: Daniel, Alisha - FS <alisha.daniel@usda.gov>
Sent: Thursday, November 14, 2019 9:25 AM
To: Shannon Larsen <ancienttrees@hotmail.com>
Cc: Lawrence, Melanie A -FS <melanie.lawrence@usda.gov>
Subject: Interim Response 2019-FS-R3-04275-F

Good morning Ms. Larsen,

Attached is an interim release for your FOIA 2019-FS-R3-04275-F. Once I am able to determine if the Snowbowl Resort considers the operating plans to be confidential documents or not, I will be able to complete your request. Please let me know if you would like the hard copy letter and your records to be sent to you in the mail. I will provide them promptly at your request.

If you have any questions or concerns related to this request, please let me know.

Thank you,

Alisha

Alisha Daniel
Government Information Specialist

Forest Service

Southwestern Region

p: 505-842-3172
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people**

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