March 22, 2020

Derek Padilla, District Ranger
Dolores Ranger District
29211 Hwy 184
Dolores, CO 81321
Via email: derek.padilla@usda.gov
Via web portal: https://www.fs.usda.gov/project/?project=57671

Re: Comments on Salter Vegetation Management Project, Project #57671

Dear Ranger Padilla:

On behalf of the Center for Biological Diversity (the Center), and its more than one million members and online activists, thank you for the opportunity to provide these comments on the Salter Vegetation Management Project Scoping Package. The Center is a 501(c)(3) nonprofit organization based in Tucson, Arizona, with offices across the country including in Crested Butte and Denver, Colorado. The Center is dedicated to protecting and restoring imperiled species and natural ecosystems. The Center uses science, policy, and law to advocate for the conservation and recovery of species on the brink of extinction and the habitats they need to survive. The Center, as it has for decades, continues to actively advocate for increased protections for species and their habitats across Colorado.

I. THE LONE PINE PROJECT

The Scoping Package states that the project's purpose and need includes:

- The need to improve resilience or maintain the resistance of forest ecosystems in an effort to increase protection against epidemic insect and disease outbreaks.
- The need to increase the structural diversity of the ponderosa pine forest represented across the landscape.
- The need to provide economic support to local communities by providing timber products to dependent local industries in a sustainable manner.[1]

The Scoping Package further asserts that action is needed to address the fact that "the current and desired conditions shows that the condition of the ponderosa pine cover type found within the

[1] San Juan National Forest, Salter Vegetation Management Project Scoping Package (Feb. 2020) at 3 (hereafter "Salter Scoping Package").

Salter Vegetation Management project area is different from the desired conditions associated with that vegetative cover type in the SJNF LRMP."[2]

The project will involve 35,000 acres of treatments in areas of the San Juan National Forest near Dolores in an ecosystem mostly typified by ponderosa pine stands. The Scoping Package states that

> forest conditions in the proposed treatment blocks reflect an even-age structure comprised of densely spaced, over-stocked medium and large pine trees in a single structural layer. Smaller trees, saplings, and seedling are infrequent or lacking entirely. Due to the overstocked conditions, these stands have closed canopies with few clumps and individual large trees present.[3]

II. ANY ANALYSIS MUST CONTAIN THE NECESSARY SITE-SPECIFIC DETAIL TO COMPLY WITH NEPA.

A. NEPA Requires the Forest Service to Produce a Spatially and Temporally Specific Analysis for Project-Level Decisions.

NEPA is "'our basic national charter for protection of the environment.'"[4] In enacting NEPA, Congress recognized the "profound impact" of human activities, including "resource exploitation," on the environment and declared a national policy "to create and maintain conditions under which man and nature can exist in productive harmony."[5]

The statute has two fundamental two goals: "(1) to ensure that the agency will have detailed information on significant environmental impacts when it makes decisions; and (2) to guarantee that this information will be available to a larger audience."[6] "NEPA promotes its sweeping commitment to 'prevent or eliminate damage to the environment and biosphere' by focusing Government and public attention on the environmental effects of proposed agency action."[7] Stated more directly, NEPA's "'action-forcing' procedures ... require the [Forest Service] to take

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[2] Salter Scoping Package at 3.

[3] Salter Scoping Package at 1-2.

[4] *Center for Biological Diversity v. United States Forest Serv*., 349 F.3d 1157, 1166 (9th Cir. 2003) (quoting 40 C.F.R. § 1500.1).

[5] 42 U.S.C. § 4331(a).

[6] *Envtl. Prot. Info. Ctr. v. Blackwell*, 389 F. Supp. 2d 1174, 1184 (N.D. Cal. 2004) (quoting *Neighbors of Cuddy Mt. v. Alexander*, 303 F.3d 1059, 1063 (9th Cir. 2002)); *see also Earth Island v. United States Forest Serv.*, 351 F.3d 1291, 1300 (9th Cir. 2003) ("NEPA requires that a federal agency 'consider every significant aspect of the environmental impact of a proposed action ... [and] inform the public that it has indeed considered environmental concerns in its decision-making process.'").

[7] *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989) (quoting 42 U.S.C. § 4321).

a 'hard look' at environmental consequences"[8] *before* the agency approves an action. "By so focusing agency attention, NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct."[9] To ensure that the agency has taken the required "hard look," courts hold that the agency must utilize "public comment and the best available scientific information."[10]

NEPA's review obligations are more stringent and detailed at the project level, or "implementation stage," given the nature of "individual site specific projects."[11] "[G]eneral 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."[12]

Analyzing and disclosing site-specific impacts is critical because where (and when and how) activities occur on a landscape strongly determines that nature of the impact. As the Tenth Circuit Court of Appeals has explained, the actual "location of development greatly influences the likelihood and extent of habitat preservation. Disturbances on the same total surface area may produce wildly different impacts on plants and wildlife depending on the amount of contiguous habitat between them."[13] The Court used the example of "building a dirt road along the edge of an ecosystem" and "building a four-lane highway straight down the middle" to explain how those activities may have similar types of impacts, but the extent of those impacts – in particular on habitat disturbance – is different.[14] Indeed, "location, not merely total surface disturbance,

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[8] *Metcalf v. Daley*, 214 F.3d 1135, 1141 (9th Cir. 2000) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989)).

[9] *Marsh*, 490 U.S. at 371 (citation omitted).

[10] *Biodiversity Cons. Alliance v. Jiron*, 762 F.3d 1036, 1086 (10th Cir. 2014) (internal citation omitted).

[11] *Ecology Ctr., Inc. v. United States Forest Serv*., 192 F.3d 922, 923 n.2 (9th Cir. 1999); *see also Friends of Yosemite Valley v. Norton*, 348 F.3d 789, 800-01 (9th Cir. 2003); *New Mexico ex rel Richardson v. Bureau of Land Management*, 565 F.3d 683, 718-19 (10th Cir. 2009) (requiring site-specific NEPA analysis when no future NEPA process would occur); *Colo. Envtl. Coal. v. Ofc. of Legacy Mgmt*., 819 F. Supp. 2d 1193, 1209-10 (D. Colo. 2011) (requiring site-specific NEPA analysis even when future NEPA would occur because "environmental impacts were reasonably foreseeable").

[12] *Or. Natural Res. Council Fund v. Brong*, 492 F.3d 1120, 1134 (9th Cir. 2007) (citation omitted); *see also Or. Natural Res. Council Fund v. Goodman*, 505 F.3d 884, 892 (9th Cir. 2007) (holding the Forest Service's failure to discuss the importance of maintaining a biological corridor violated NEPA, explaining that "[m]erely disclosing the existence of a biological corridor is inadequate" and that the agency must "meaningfully substantiate [its] finding").

[13] *New Mexico ex rel Richardson*, 565 F.3d at 706.

[14] *Id*. at 707.

affects habitat fragmentation,"[15] and therefore location data is critical to the site-specific analysis NEPA requires.

The District Court for the District of Alaska recently set aside the Prince of Wales timber sale because it failed to contain site-specific locations for roads and treatments. In its March 11, 2020 decision, the District Court explains the approach the Forest Service took in the Prince of Wales EIS, describing that the document "analyzed" four alternatives, but that:

> the alternatives do not provide the specific locations or configurations of harvest or roadbuilding within the LSTA [Logging System Transportation Analysis]. Instead, the Project EIS provides that "site-specific locations and methods" for activities such as timber harvest "will be determined during implementation" over the 15-year lifespan of the Project. It explains that siting decisions and the parameters of actual timber sales will be determined pursuant to an Implementation Plan …. However, the EIS makes clear that these subsequent, site-specific decisions will not be subject to additional NEPA review. The Forest Service terms this approach "condition-based analysis."[16]

The Prince of Wales EIS made assumptions "[i]n order to capture the 'maximum effects' of the Project."[17] It also identified larger areas within which smaller areas of logging would later be identified, and approved the construction of 164 miles of road, but "the Project EIS does not include a determination—or even an estimate—of when and where the harvest activities or road construction authorized by each alternative will actually occur."[18]

The Court found the Forest Service's approach violated the law and specifically contradicted Ninth Circuit precedent, *City of Tenakee Springs v. Block*, 778 F.2d 1402 (9th 1995), which set aside the Forest Service's decision to authorize pre-roading in the Kadashan Watershed, without specifically evaluating where and when on approximately 750,000 acres of land on Baranof and Chichagof Islands it intended to authorize logging to occur. The district court evaluating the Prince of Wales project found that the Forest Service's condition-based analysis was equivalent to the deficient analysis set aside in *City of Tenakee Springs,* holding that:

> the Circuit's reasoning [in *Tenakee Springs*] is still binding precedent: NEPA requires that environmental analysis be specific enough to ensure informed decisionmaking and meaningful public participation. The Project EIS's omission

[15] *Id*.

[16] *See Southeast Alaska Conservation Council v. U.S. Forest Serv.*, 2020 U.S. Dist. LEXIS 43499, Case No. 1:19-cv-00006-SLG (D. Alaska Mar. 11, 2020) at *8 (citations omitted), attached as Ex. 1.

[17] *Id*. at *7.

[18] *Id*. at *19.

> of the actual location of proposed timber harvest and road construction within the Project Area falls short of that mandate.[19]

The District of Alaska's decision demonstrates that condition-based management as implemented by the Forest Service cannot comply with law.

NEPA further mandates that the agency provide the public "'the underlying environmental data' from which the Forest Service develop[ed] its opinions and arrive[d] at its decisions."[20] "The agency must explain the conclusions it has drawn from its chosen methodology, and the reasons it considered the underlying evidence to be reliable."[21] In the end, "vague and conclusory statements, without any supporting data, do not constitute a 'hard look' at the environmental consequences of the action as required by NEPA."[22]

CEQ's regulations establish specific ways agencies must analyze proposed actions, including project-level decisions, including a detailed discussion of direct, indirect, and cumulative impacts and their significance; and an analysis of reasonable alternatives to the proposed action. Such analysis is required for both environmental assessments (EAs) and EISs.

The Salter Project is a project-level decision. As a result, any NEPA analysis must include the detailed information and analysis that NEPA and the CEQ regulations require – including identifying the ***when, where*****,** and ***how*** of road construction and of specific treatments by stand – because the Forest Service is unlikely to undertake any further NEPA analysis beyond the proposed EA.

The Scoping Package does not contain the required detail. For example, the Scoping Package identifies but does not map the "primary haul routes."[23] The Scoping Package notes that roads closed for 20-30 years may be reopened and reconstructed to facilitate the project but does not identify the location or length of each.[24] The Scoping Package states that temporary road construction may be required but again provides no detail on length and location.[25] The Forest Service has concluded that temporary roads can have many of the same environmental impacts as constructing permanent roads. Further the Scoping Package indicates that the Forest Service will not disclose the location of landings until after the Forest Service has approved the project,[26] violating NEPA's mandate that agencies take a hard look at environmental impacts before the die

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[19] *Id*. at *19 (emphasis added).

[20] *WildEarth Guardians v. Mont. Snowmobile Ass'n*, 790 F.3d 920, 925 (9th Cir. 2015).

[21] *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1075 (9th Cir. 2011) (citation omitted).

[22] *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 973 (9th Cir. 2006).

[23] Salter Scoping Package at 4.

[24] *Id*.

[25] *Id*.

[26] *Id*. at 5.

is cast. We urge the Forest Service to comply with the law by disclosing this information in any subsequently prepared NEPA document.

B. The Forest Service Must Disclose the Baseline Conditions of the Project Area.

Any EA or EIS must "succinctly describe the environment of the area(s) to be affected or created by the alternative under consideration."[27] NEPA also requires the action agency to set an appropriate baseline detailing the nature and extent of the resources in the area: "The concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process."[28] "Without establishing ... baseline conditions ... there is simply no way to determine what effect [an action] will have on the environment and, consequently, no way to comply with NEPA."[29]

Without baseline data, neither the public nor the agency can understand the effects of the proposed action or craft and analyze alternatives and mitigation measures to protect these values. As such, the Forest Service must identify the environmental baseline and affected environment, as well as the scope of impacts and where those impacts are most likely to be felt.

We urge the Forest Service in any subsequently prepared NEPA document to include baseline, site-specific information about the project area and the treatment areas within the project, so that the public can better understand and appreciate the values at issue and how the proposed action and alternatives may impact those values. We strongly urge the Forest Service to include:

- the ***common stand exam data*** for stands within the project area, including but not limited to the diameter of ponderosa pine, estimated age, degree of impact from beetles, etc. (We note that while the project proposes to "remove infested bark beetle trees, and dead trees," the Scoping Package contains no information about the extent of beetle kill in the area, or the density of snags.)[30] The Forest Service has common stand exam data already, as the Scoping Package reports:

  > A comparison based on common stand exams and field observations between the current and desired conditions shows that the condition of the ponderosa pine cover type found within the Salter Vegetation Management project area is different from the desired conditions associated with that vegetative cover type in the SJNF LRMP.[31]

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[27] 40 C.F.R. § 1502.15.

[28] *See* Council on Environmental Quality, *Considering Cumulative Effects under the National Environmental Policy Act* (Jan. 1997) at 41, available at https://ceq.doe.gov/publications/cumulative_effects.html (last viewed Mar. 22, 2020).

[29] *Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988).

[30] Salter Scoping Package at 3.

[31] Salter Scoping Package at 3.

Common stand exam data would be instrumental in helping the public understand the impacts of the proposed action. Although the San Juan National Forest provided some of this information for the Lone Pine Project only belatedly to the interested public, it greatly assisted some of those who objected to the project in reaching agreement with the Forest Service on that proposal. By providing this information earlier and as part of the NEPA process, the Forest Service would increase transparency and could help avoid future conflicts.

- ***maps*** displaying key values, including management area boundaries, vegetation cover, watersheds, prior fire history, wetland/riparian areas, and important habitat for wildlife.

- ***site-specific information*** about each treatment area. For example, the Scoping Package states that "[t]he Boggy Draw block attracts the highest visitor use and contains substantial values at risk."[32] Any subsequently prepared NEPA document must describe those "substantial values," so that the impacts of logging, burning and road construction to those values can be disclosed, and so that mitigation measures or design features to protect those values can be adopted.

We specifically request that the Forest Service address Colorado Parks and Wildlife (CPW) data concerning the status of elk population in the area. CPW's analysis of recent post-hunt data (from 2018) showed that the elk population in data analysis unit E-24 "is decreasing" and "is now *below our population management objective*."[33] Unit E-24 includes the Salter project area. CPW's Brad Weinmeister, who provided the data, stated: "We really don't know what is causing" a lack of recruitment to the elk population "and [we] currently have a research project to try to get some answers."[34] Mr. Weinmeister provided the following graph depicting elk population in data analysis unit E-24, showing a generally downward trend since 2004.

[32] Salter Scoping Package at 2.

[33] Email of B. Weinmeister, CPW to B. Magee, DNR (Oct. 8, 2019) (emphasis added), attached as Ex. 2.

[34] *Id*.

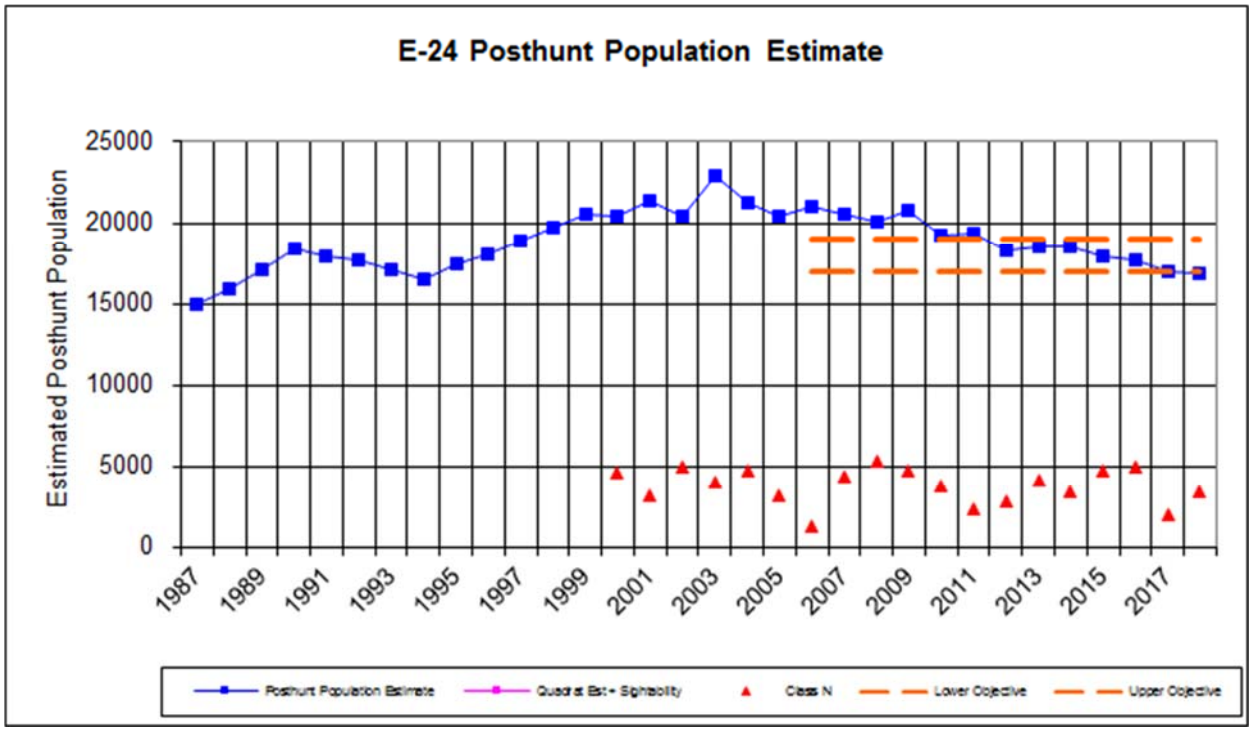

Figure 1. Table from email of B. Weinmeister, attached as Ex. 2.

This downward trend for elk population in the project area is important because the Salter project may further harm elk by displacing animals during the project's duration. Any subsequently prepared NEPA document should acknowledge, address, and ameliorate this downward trend.

C. The Forest Service Should Disclose Basic Information About the Alternatives and Their Impacts.

The Scoping Package fails to disclose basic information about the proposal that must be contained in any subsequently prepared NEPA document. For example, any NEPA document should disclose:

- The ***duration*** of the project (2 years? 10? 20?)

- The ***location*** of key features to be approved by the proposed action, including maintained, reconstructed, and temporary roads proposed for use; landings; burn piles; skid trails; etc.

- The total ***acreage*** of various treatments. The map provided in the Scoping Package identifies areas where three types of treatments will occur (commercial thinning, plantation thinning, and single tree selection), but fails to disclose the area of those treatments. In addition, the Scoping Package identifies five different treatments (pre-commercial thinning, commercial thinning, brush thinning, plantation thinning, and single tree selection), two of which (pre-commercial thinning and brush thinning)

which are not mapped.[35] The Scoping Package also states that the agency is proposing "tree-cutting, tree planting, and activity fuel burning" within the project area, but it fails to disclose where, when, and to what extent each of those actions will occur, stating only vaguely that "[a] range of treatments may occur throughout the project area."[36]

- The project's ***socio-economic impacts***. The project's purpose includes responding to the "need to provide economic support to local communities by providing timber products to dependent local industries in a sustainable manner."[37] Because supporting local industry is a project goal, any subsequently prepared NEPA document must contain projections and quantifications of the likely board-feet the project will make available to local mills, and the economic impact of the project. The Forest Service has or can generate detailed stand data for the project area, so it would seem to be a relatively straightforward analysis. We note that many other Forest Service project-level analyses estimate board-feet likely to be harvested and project economic impacts.

- The ***science*** supporting the prescriptions in each alternative. For example, the Scoping Package states that logging would be aimed at "reducing the presence of dwarf mistletoe."[38] Dwarf mistletoe is endemic in many western conifer forests, and we are aware of little, if any, scientific evidence supporting the logging of trees infested with dwarf mistletoe for restoration.

- Whether the Forest Service intends to adopt any prescriptions specifically related to ***aspen***. The Scoping Package states: "The project area also supports small patches of quaking aspen with conifer developing in the understory. Conifer encroachment creates shade and usurps water and nutritional resources, ultimately reducing the vigor of the quaking aspen communities."[39] This would appear to indicate that the Forest Service believes that there may be a need to address conifer "encroachment." But the proposed action does not appear to contain any prescriptions addressing this issue. We do not suggest that any such prescription is necessary; we are simply puzzled by the agency's identifying "encroachment" as an issue that it apparently concludes it need not address.

- The indirect impacts of ***road construction and maintenance***, which will encourage illegal use on temporary roads, even after "closure," and more legal use on roads that are improved for the project. The Forest Service must disclose the degree to which past closures have been effective at preventing illegal use off road.

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[35] Salter Scoping Package at 4, 8.

[36] Salter Scoping Package at 3.

[37] Salter Scoping Package at 3.

[38] Salter Scoping Package at 3.

[39] Salter Scoping Package at 2.

- The impacts of ***artificial water developments***. The Scoping Package states: "Wildlife water providers (i.e., guzzler[s]) will be installed within the project area under this decision."[40] Any subsequently-prepared NEPA document must address: how these developments address the project's purpose and need, which is focused on the "resilience" and "structural diversity" of the forest (issues that appear unrelated to the construction of guzzlers); the purpose, location, number, and design of these developments; what species they intend to benefit; any scientific studies addressing the efficacy and impacts of such developments; whether they will require maintenance by motor vehicles; how they may impact the distribution of wildlife; whether they will make water available to livestock or will be designed to prevent such use; what natural water these structures are meant to replace; and whether they will benefit exotic species less adapted to drier conditions than endemic wildlife, or extend the range of native species. As a general matter, we believe that the use of artificial water must be supported by scientific studies and localized research. We request that the Forest Service analyze at least one action alternative that does not approve the use of artificial water developments.

- Why the Forest Service is adopting ***different prescriptions*** from those recently approved in the Lone Pine project. *See* Table 1, below. We understand that there may be differences in the two project areas (elevation, aspect, precipitation, logging and fire history, etc.), and differences in the projects' purposes, that may have influenced the Forest Service's prescriptions. To help us understand the differences, we request that any subsequently prepared NEPA document address each of the questions in the right-hand column of the table below.

[40] Salter Scoping Package at 5.

TABLE 1. Comparison of Prescriptions in Lone Pine Decision and Salter Scoping Package

Treatment/ Value	Lone Pine	Salter	Questions
Commercial thinning prescription	"Trees in all size classes **over 10 inches dbh may be harvested during commercial thinning**, with emphasis placed on retaining the healthiest green trees in the groups…. The target basal area in these areas **will be 60 square feet per acre,** but basal area will likely vary between **60 to 80 square feet per acre.**" Lone Pine Decision Notice at 5.	"Silviculture thinning with enhancement objectives in mixed stocking ponderosa pine with a variable residual square feet of tree stem **basal area of 50 -70 (BA) per acre depending upon stand condition**." Salter Scoping Package at 4.	Lone Pine = 60-80 BA/acre with target of 60. Salter = 50-70 BA/acre with mo target Why the difference?
Pre-commercial thin	"Pre-commercial thinning will be used as a follow-up treatment after single tree selection where there is an overabundance of trees smaller than **10 inches dbh.** The intent of this treatment is to improve growth rates and vigor of the remaining trees, thus improving overall stand resilience. The trees removed during pre-commercial thinning after single tree selection **will be in the 4-10 inch dbh range**." Lone Pine Decision Notice at 5.	"Thinning of ponderosa pine (Less than **5 inches diameter**) to spacing specifications." Salter Scoping Package at 4.	Lone Pine = log trees less than 10" DBH. Salter = log trees less than 5" DBH. Why the difference?
Brush thinning	"Oak thinning may be used where pine regeneration is inhibited by dense Gambel oak to create openings where pine may be more likely to regenerate. Oak thinning will be accomplished thru hand thinning and piling, fuel-wood cutting and removal, or mechanical mastication. Oak thinning may also occur where existing regeneration or seed trees are at risk of being damaged by fire (prescribed burning or wildfires). In these areas, either hand thinning or mechanical mastication may be used, depending on the extent of the area in need of treatment." Lone Pine Decision Notice at 7.	"Thinning of understory brush species (Less than 6 inches Diameter at Root Collar), mainly Gambel oak to create openings for seedling recruitment and reduce ladder fuel effects on residual trees." Salter Scoping Package at 4.	Salter has no limits on mechanical treatment; Lone Pine does. Why the difference? And why a size limit in Salter, but not in Lone Pine?

Treatment/ Value	Lone Pine	Salter	Questions
Plantation Thinning	"**Trees in the 4-10 inch dbh size class will be thinned** based on tree form or spacing, as described above. Desired spacing for trees in this size class is from 10 to 15 feet apart, but this will be adjusted on a stand by stand basis and will take into account the location of overstory trees in the final spacing requirements. **A limited amount of commercial thinning of trees 10 inches or larger may also occur** in plantation areas to improve site conditions." Lone Pine Decision Notice at 5.	"Thinning of planted trees to a spacing specification and thinning of intermixed naturally occurring trees **according to the Commercial Thinning prescription**." Salter Scoping Package at 4.	Salter prescription has no DBH limit, but a target of 50 - 70 BA per acre, and no spacing direction. Lone Pine has DBH guidance and desired spacing guidance. Why the difference?
Single-Tree Selection	"Individual trees representing all size classes **above 10 inches dbh** may be harvested to promote the growth of remaining trees and to provide space for regeneration, thereby maintaining or moving the stand toward a multi-age, heterogeneous structure." Lone Pine Decision Notice at at 5. "In single tree selection units the goal is to leave a stand average **basal area of 55 square feet per acre**." Lone Pine Decision Notice at 6. "[A]ll trees over 26 inches in diameter will be retained unless they show evidence of active bark beetle infestation, in which case they will be harvested. Trees in the 21 – 24 inch size class will be retained unless they show evidence of active beetle infestation or severe defects." Lone Pine Decision Notice at 6.	"Silviculture thinning with regenerative objectives in contiguous stands of ponderosa pine with a **variable residual square feet of tree stem basal area of 50 -70 (BA) per acre** depending upon stand condition." Salter Scoping Package at 4.	Salter has a BA target that is potentially higher than that in Lone Pine. Why the difference? Salter has no DBH guidance for protecting some large trees, while Lone Pine does. Why the difference?
Large Tree Emphasis/ Commercial Thin Prescription.	"All trees larger than 20" DBH would be retained. **All size classes will be managed up to 20" DBH with the goal of leaving a mix of residual trees smaller than 20" DBH**. Basal area (BA) ranges **would vary from 60 to 80 sq/ft per acre with a target BA of 70 sq/ft per acre**." Lone Pine Decision Notice at 7.	None identified.	Why no prescription/large tree protection for Salter?
Large Tree current conditions		"The forest conditions in the proposed treatment blocks reflect an even-age structure comprised of densely spaced, over-stocked medium and large pine trees in a single structural layer…." Salter Scoping Package at 1.	Salter has "large trees" but no protection for them, unlike the large tree enhancement prescription in Lone Pine. Why?

D. The Forest Service Should Disclose Meaningful Information about Cumulative Effects.

Any subsequently prepared NEPA document must disclose not only the direct and indirect impacts but also the cumulative impacts of the project when taken together with the impacts of other reasonable foreseeable actions. The Forest Service must disclose the location of nearby projects, whether they overlap with the Slater project area, and what the impacts of those projects might be.

For example, any subsequently prepared NEPA document must disclose the impacts of the Salter project when taken together with:

- The nearby Lone Pine project;
- Past, present, and reasonably foreseeable livestock grazing in the area;
- Past, present, and reasonably foreseeable recreational activity, including off-road vehicle travel and hunting;
- Past logging, fire, and fire suppression, including the disturbance (fire) history of each unit;
- Past, present and predicted beetle activity;
- Climate change, including the ongoing drought in the Four Corners area; and
- Private and state land development within and adjacent to the project, including any efforts (or lack thereof) by private landowners to reduce fuels near homes and structures.

Any NEPA document must do more than merely list other projects and assert that impacts will not rise to the level of significance. The NEPA document must analyze and discuss where the other projects have or will occur, disclose the kinds of impacts they may have, and analyze how they may interact and accumulate with those of the Salter Project.

III. ANY NEPA DOCUMENT MUST ANALYZE A RANGE OF REASONABLE ALTERNATIVES.

In taking the "hard look" at impacts that NEPA requires, an EA must "study, develop, and describe" reasonable alternatives to the proposed action.[41] The Tenth Circuit explains that this mandate extends to EAs as well as EISs. "A properly-drafted EA must include a discussion of appropriate alternatives to the proposed project."[42] This alternatives analysis "is at the heart of

[41] 42 U.S.C. § 4332(2)(C) & (E); 40 C.F.R. § 1508.9(b) (an EA "[s]hall include brief discussions ... of alternatives").

[42] *Davis v. Mineta*, 302 F.3d 1104, 1120 (10th Cir. 2002) (granting injunction where EA failed to consider reasonable alternatives).

the NEPA process, and is 'operative even if the agency finds no significant environmental impact.'"[43] Reasonable alternatives must be analyzed for an EA even where a FONSI is issued because "nonsignificant impact does not equal no impact. Thus, if an even less harmful alternative is feasible, it ought to be considered."[44] When an agency considers reasonable alternatives, it "ensures that it has considered all possible approaches to, and potential environmental impacts of, a particular project; as a result, NEPA ensures that the most intelligent, optimally beneficial decision will ultimately be made."[45]

In determining whether an alternative is "reasonable," and thus requires detailed analysis, courts look to two guideposts: "First, when considering agency actions taken pursuant to a statute, an alternative is reasonable only if it falls within the agency's statutory mandate. Second, reasonableness is judged with reference to an agency's objectives for a particular project."[46] Any alternative that is unreasonably excluded will invalidate the NEPA analysis. "The existence of a viable but unexamined alternative renders an alternatives analysis, and the EA which relies upon it, inadequate."[47] The agency's obligation to consider reasonable alternatives applies to citizen-proposed alternatives.[48] Courts require that an agency adequately and explicitly explain in the EA any decision to eliminate an alternative from further study.[49]

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[43] *Diné Citizens Against Ruining Our Env't v. Klein*, 747 F. Supp. 2d 1234, 1254 (D. Colo. 2010) (quoting *Greater Yellowstone Coal. v. Flowers*, 359 F.3d 1257, 1277 (10th Cir. 2004)). *See also W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013) (in preparing EA, "an agency must still give full and meaningful consideration to all reasonable alternatives" (emphasis added) (internal quotation and citation omitted)); 40 C.F.R. § 1502.14 (describing alternatives analysis as the "heart of the environmental impact statement").

[44] *Ayers v. Espy*, 873 F. Supp. 455, 473 (D. Colo. 1994) (internal citation omitted).

[45] *Wilderness Soc'y v. Wisely*, 524 F. Supp. 2d 1285, 1309 (D. Colo. 2007) (quotations & citation omitted).

[46] *Diné Citizens Against Ruining Our Env't*, 747 F. Supp. 2d at 1255 (quoting *New Mexico ex rel. Richardson*, 565 F.3d at 709).

[47] *Id.* at 1256.

[48] *See Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217-19 (9th Cir. 2008) (finding EA deficient, in part, for failing to evaluate a specific proposal submitted by petitioner); *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1171 (10th Cir. 1999) (agency's "[h]ard look" analysis should utilize "*public comment* and the best available scientific information") (emphasis added).

[49] *See Wilderness Soc'y*, 524 F. Supp. 2d at 1309 (holding EA for agency decision to offer oil and gas leases violated NEPA because it failed to discuss the reasons for eliminating a "no surface occupancy" alternative); *Ayers*, 873 F. Supp. at 468, 473.

Agencies cannot "define the project so narrowly that it foreclosed a reasonable consideration of alternatives."[50]

A. The Forest Service Must Analyze the No Action Alternative.

NEPA mandates that agencies consider the alternative of no action.[51] The comparison between the action alternatives and the "no action" alternative enables the agency and the public to understand the difference between allowing the status quo to continue and taking the proposed action(s). To facilitate this review, EAs and EISs generally contain sections disclosing the environmental consequences of each alternative, including no action, to a variety of impacted resources. The San Juan National Forest took this approach in a 2014 vegetation management project draft EA for the Fosset Gulch/Northern HDs Ecosystem Restoration Project, and for the recently approved Lone Pine Vegetation Management Project.[52]

We urge the Forest Service in any subsequently prepared NEPA document to include a concise description of the no action alternative, and a clear and direct comparison of the impacts of each alternative by resource. This will permit the public to better understand the proposed action and other alternatives.

B. The Forest Service Should Analyze an Alternative to Protect Old or Large Trees.

Large and old ponderosa pine trees are relatively rare now in the Southwest compared to the period before European settlement because they were heavily logged over the last 150 years. They are likely rare the Salter project area. Large, old ponderosa serve valuable ecosystem functions, have outsize value for wildlife, are more fire resistant, serve as important storehouses of genetic diversity, and store significant amounts of carbon.[53] If the Forest Service seeks to ensure resilience, ensure age class diversity, and reduce high-severity fire risk, as the Salter project's purpose and need statement indicates, it must preserve large and old trees.

As a result, numerous scientific studies, collaboratives, and Forest Service decisions have emphasized the need to protect large and old ponderosa pine trees in order to achieve both

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[50] *Davis v. Mineta*, 302 F.3d 1104, 1119 (10th Cir. 2002), citing *Colo. Envlt. Coalition v. Dombeck*, 185 F.3d 1162, 1174-75 (10th Cir. 1999); *Simmons v. United States Army Corps of Eng'rs*, 120 F.3d 664, 669 (7th Cir. 1997).

[51] 40 C.F.R. § 1502.14.

[52] *See* San Juan National Forest, Lone Pine Vegetation Management Plan, Final Environmental Assessment (Aug. 2019) ("Lone Pine Final EA") available at http://www.fs.usda.gov/nfs/11558/www/nepa/110005_FSPLT3_4779541.pdf (available in Forest Service files); San Juan National Forest, Fosset Gulch/Northern HDs Ecosystem Restoration Project, Draft Environmental Assessment (June 2014) at 18-51, available at https://www.fs.usda.gov/nfs/11558/www/nepa/97260_FSPLT3_1658988.pdf (last viewed Mar. 22, 2020) (available in Forest Service files).

[53] *See, e.g.*, Four Forest Restoration Initiative, Old Growth Protection & Large Tree Retention Strategy (Sep. 13, 2011) at 3-4 (citing numerous studies), attached as Ex. 3.

ecological restoration and greater resilience to catastrophic events such as wildfire and insect infestations. These decisions have often set an upper limit for the size of trees that can be logged for forest management.

For example, the Four Forest Restoration Initiative, a collaborative guided by science and working to improve management on forests in northern Arizona, has adopted an "Old Growth Protection & Large Tree Retention Strategy."[54] As part of that strategy, "the 4FRI Collaborative has agreed that the 4FRI effort should implement large tree retention and old growth protection strategies that are . . . are based upon a 16" diameter threshold that limits the cutting of trees larger than 16" to circumstances and criteria set forth in pre-defined exception categories."[55] A similar collaborative in New Mexico agreed that "[i]t is generally advisable to maintain ponderosa pines larger than 41 cm (16 inches) diameter at breast height (dbh) and other trees with old-growth morphology regardless of size (e.g. yellow-barked ponderosa pine or any species with large drooping limbs, twisted trunks or flattened tops)."[56]

The pre-eminent peer-reviewed study on the issue concludes:

> Large and old trees, especially those established before ecosystem disruption by Euro-American settlement, are rare, important, and difficult to replace. Their size and structural complexity provide critical wildlife habitat by contributing crown cover, influencing understory vegetation patterns, and providing future snags. Ecological restoration should protect the largest and oldest trees from cutting and crown fires, focusing treatments on excess numbers of small young trees. Given widespread agreement on this point, *it is generally advisable to retain ponderosa trees larger than 41 cm (16 inches) dbh and all trees with old-growth morphology regardless of size (i.e., yellow bark, large drooping limbs, twisted trunks, flattened tops)*. Despite the heterogeneity of forest site and stand conditions in the Southwest, cutting of larger trees will seldom be ecologically warranted as ''restoration'' treatments at this time due to their relative scarcity. Following this guideline would significantly reduce hazards of stand-replacing fires in most cases and also favor the development of future old-growth forest conditions (Moir and Dieterich 1988, Harrington and Sackett 1992).[57]

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[54] *Id*.

[55] *Id*. at 7.

[56] U.S. Forest Service *et al.*, New Mexico Forest Restoration Principles (May 2006), attached as Ex. 4, available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5207898.pdf (last viewed Mar. 22, 2020).

[57] Allen *et al*., Ecological Restoration of Southwestern Ponderosa Pine Ecosystems: A Broad Perspective, Ecological Applications, 12(5) (2002) at 1425, attached as Ex. 5.

This article notes that managing ponderosa pine forests for ecological restoration can also help to increase forest resilience.[58]

For the San Juan National Forest, including the Salter area, the Forest Service and other stakeholders joined to establish the Ponderosa Pine Partnership (PPP) in the early 1990s. The Partnership developed "An Ecological Prescription for the San Juan Pine Zone," including this prescription: "Retain large trees. Any trees 20 inches or larger in diameter should be retained. In stands with smaller trees, the largest trees should be retained."[59] The San Juan National Forest developed and partially implemented two projects under the PPP, including the Guard Station and Ferris East timber sales. Both of these timber sales included diameter limits. The Guard Station Decision Notice prohibited the logging of trees over 16 inches DBH; the Ferris East Decision notice barred logging of ponderosa over 20 inches DBH.[60] Each of the sales was designed to meet goals that included forest restoration, supplying the needs of the local wood products industry, and reducing the risk of catastrophic wildfire.[61]

We therefore request that the Forest Service consider an alternative that will: retain large trees, either larger than 16" DBH or 20" DBH, and any old trees, as determined by their size, appearance and morphology. The size of the cap may depend on the results of stand exam data. To the extent that the CSE data show few if any trees 20" DBH or larger, the Forest Service should consider a smaller diameter cap to protect the largest trees that remain.

We note that the Forest Service must consider such an alternative reasonable because the San Juan National Forest actually adopted a diameter cap over a portion of the Lone Pine project in a decision issued two months ago. There, the "large tree emphasis/commercial thin" prescription for units covering about a third of the project area stated: "All trees larger than 20" DBH would be retained. All size classes will be managed up to 20" DBH with the goal of leaving a mix of residual trees smaller than 20" DBH."[62]

Despite this recent decision, the Salter Scoping Package fails to address at all diameter limits or any other protection for large, old trees, and Forest Service staff stated in a public meeting last week that diameter limits would not be part of the proposed action. We are disappointed that San

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[58] *Id*. at 1429. (emphasis added). *See also* P.F. Hessburg, et al., *Restoring fire-prone Inland Pacific landscapes: seven core principles*, Landscape Ecology (2015) Vol. 30, 1805-1835, at 1820-23("Widely distributed large, old trees provide a critical backbone to dry pine and dry to mesic mixed-conifer forest landscapes"), attached as Ex. 6.

[59] D. Lynch, Forest Restoration in Southwestern Ponderosa Pine, Journal of Forestry (Aug. 2000) at 17, attached as Ex. 7.

[60] San Juan National Forest, Guard Station Timber Sale, Decision Notice (May 1996) at 3 ("Cut no trees greater than 16" diameter breast height (DBH)"), attached as Ex. 8; San Juan National Forest, Ferris East Timber Sale, Decision Notice (Feb. 1998) at 3 ("No ponderosa pine in excess of 20 inches in diameter at breast height (DBH) will be harvested."), attached as Ex. 9.

[61] *Id*.

[62] Forest Service, Lone Pine Vegetation Management Project, Final Decision Notice & Finding of No Significant Impact (Jan. 2020) at 7 ("Lone Pine Final Decision").

Juan National Forest officials appear resistant to consider such an alternative weeks after having adopted one. We hope the Forest Service understands from the resolution of the Lone Pine objection process that there is strong science and strong public sentiment supporting the protection of old and large trees.

Further, the alleged "protections" for large and old trees that we understand the Salter project drafters may propose are inconsistent and largely illusory. Forest Service staff indicated that, for the Salter project, the agency would reject diameter limits previously endorsed in favor of a sliding scale that provides only limited protection for some trees, as the agency did over much of the Lone Pine project outside of the "large tree emphasis" prescription units. The Lone Pine Final Decision Notice and FONSI contain a *narrative* description of a prescription covering much of that project area that states:

> In the largest size classes, all trees over 26 inches in diameter will be retained unless they show evidence of active bark beetle infestation, in which case they will be harvested. Trees in the 21 – 24 inch size class will be retained unless they show evidence of active beetle infestation or severe defects.[63]

This narrative is followed in by a *bulleted* description of size classes that will be retained:

- 19.1" to 21.0" dbh Trees (20" diameter class) – leave approximately 50%
- 21.1" to 25.9" dbh Trees (22" and 25. 9" diameter class) - leave approximately 75% (remove trees from this size class only if defective or they show evidence of active bark beetle infestations as nearly half of the stands don't have enough trees to warrant any removal in this class)
- 26.0" dbh trees and up will only be cut if they show evidence of active bark beetle infestation.[64]

As an initial matter, the narrative and bulleted descriptions in the Lone Pine prescription (from which the Salter proposed action may borrow) conflict in at least two respects, making it difficult to determine the prescription's precise definition. First, the *narrative* description provides no limit on logging of trees between 24 and 26 inches, describing only the 21 – 24 inch diameter class and the 26 inch class. Second, the *narrative* description states that "[t]rees in the 21 – 24 inch size class will be retained unless they show evidence of . . . *severe* defects."[65] The *bulleted* description permits logging of trees 21.1" to 25.9" "if defective," without reference to "severe" defects. If the Forest Service intends to adopt this approach for the Salter project, it must, at a minimum, provide for a consistent definition so that the public, the decision-maker, and those in the field implementing any decision can understand precisely what the agency intends to adopt.

[63] Lone Pine Final Decision at 6.

[64] Lone Pine Final Decision at 6.

[65] Lone Pine Final Decision at 6 (emphasis added).

Even if the agency proposes a consistent description for the Salter project, there are at least two problems with the sliding scale approach the Forest Service adopted in the Lone Pine decision.

First, for the Lone Pine decision, the agency provided no rational basis – and no scientific analysis – supporting its proposed prescriptions which provides a sliding-scale of protection (or lack thereof) for large and old trees. At Lone Pine, the Forest Service alleged that "[t]he proposed treatment prescriptions used for the Lone Pine project were established for the site specific conditions that are currently seen in the analysis area."[66] But the Lone Pine Final EA provided no data or further explanation for why it established its sliding scale prescriptions, or how those relate to "site specific conditions." The Final EA cited no scientific studies, nor provided examples of any other National Forest adopting a similar approach. It would be arbitrary and capricious for the Salter Project to adopt similar prescriptions, or to reject diameter caps/old tree protections as unreasonable, based on this supposedly "protective" prescription.

Second, the Forest Service failed to provide any *scientific basis* for rejecting a 16" or 20" diameter cap at Lone Pine. The Ponderosa Pine Partnership (PPP) working with Prof. William H. Romme, a respected professor of landscape ecology and forestry at Colorado State University, specifically developed the "Ecological Prescription for the *San Juan* Pine Zone" as part of the Ponderosa Pine Partnership, which includes the very forest stands at issue at Salter.[67] Thus, this prescription was developed for this site-specific project area. Should the Forest Service reject an alternative based on the PPP's previously-adopted, scientifically-supported, diameter restrictions developed specifically for this Forest, that would violates NEPA's mandate that the agency consider all reasonable alternatives.

The Forest Service must analyze in detail a proposed alternative if it fits within the purpose and need, at least partially, and is not duplicative of other alternatives under consideration. Protecting large, old trees of 16 inches DBH or 20 inches DBH or greater would, *at a minimum*, partially meet the project purpose and need, because it would: increase forest resiliency; promote recovery of forest vegetation; reduce the risk of high severity wildfires; and provide timber products to dependent local industries, albeit likely at a lower volume than that made available with no cap or a sliding scale diameter prescription. This is exactly the kind of trade-off that NEPA demands agencies explore, one that puts in sharp relief the competing values of forest protection and commercial gain. Thus, a 16" DBH or 20" DBH cap, and protection for other old trees, by at least partially meeting the Salter project's purpose and need, is a reasonable alternative that the Forest Service should analyze in full in any subsequently prepared NEPA document.

We note that the sliding-scale prescriptions adopted in Lone Pine and apparently likely to be proposed for Salter are not particularly protective of larger, older trees. While the Lone Pine prescription stated that the agency should leave 75% of trees between 21 and 26 inches, it also permits the Forest Service to "remove trees from this size class only if defective or they show evidence of active bark beetle infestations."[68] The definition of defective – those trees that have "many of the following characteristics: severely overtopped/suppressed, a mistletoe rating ≥3,

[66] Lone Pine Final EA, Appendix D at 13.

[67] D. Lynch, Forest Restoration in Southwestern Ponderosa Pine (Ex. 7) at 17.

[68] Lone Pine Final Decision at 6.

major physical defects, dead/damaged terminal leader, are expected to die within 10 years or not respond to release, are beetle infested, and/or have extremely limited crown or very poor vigor"[69] – contained in the Lone Pine prescriptions was so vague as to provide the Forest Service with broad discretion to conclude that most trees in the identified size class are "defective" and thus exempt from protection.

We hope that the Forest Service understands that its preferred course of action is not, and cannot be, the *only* way it can achieve benefits for the landscape consistent with the project's purpose and need. If the agency truly concludes that there is one way and one way only to achieve its purpose, it has, by definition, illegally constrained the purpose and need. As federal courts have concluded: "One obvious way for an agency to slip past the structures of NEPA is to contrive a purpose so slender as to define competing 'reasonable alternatives' out of consideration (and even out of existence). The federal courts cannot condone an agency's frustration of Congressional will."[70]

C. The Forest Service Must Address Other Reasonable Alternatives.

We propose that the Forest Service consider an alternative that combines some or all of the following elements:

- Limit logging to those areas close to communities, homes, and structures. According to the Scoping Package, "[t]he Montezuma Community Wildfire Protection Plan identifies the entire project area as Wildland Urban Interface, as does the San Juan National Forest Land and Resource Management Plan (SJNF LRMP)."[71] However, Forest Service research has long concluded that the most effective treatments for protecting structures is to treat the area within 40 meters or less of that structure.[72]

- Bar logging and/or road construction within sensitive watersheds or on sensitive soils.

- Adopt measures to protect recreation, including adopting a design feature to avoid scheduling logging, burning, and other associated activates between September 1 and November 15 to avoid conflicts with hunters when practicable.

We also request that the Forest Service specifically address adopting each of these proposed measures as mitigation, and evaluate their effectiveness, as required by NEPA.

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[69] Lone Pine Final Decision at 6.

[70] *Simmons v. United States Army Corps of Eng'rs*, 120 F.3d 664, 669 (7th Cir. 1997).

[71] Salter Scoping Package at 2.

[72] J. Cohen & B. Butler, Modeling Potential Structure Ignitions from Flame Radiation Exposure with Implications for Wildland/Urban Interface Fire Management, 13th Fire and Forest Meteorology Conference (1998), available at https://www.fs.fed.us/rm/pubs_other/rmrs_1998_cohen_j001.pdf (last viewed Mar. 22, 2020).

IV. THE FOREST SERVICE MUST ACCOUNT FOR THE IMPACT OF FORESEEABLE CHANGES TO THE FOREST WITHIN THE PROJECT AREA.

Any environmental analysis the Forest Service prepares must include information "of high quality" and must include "[a]ccurate scientific analysis."[73]

Forests within the project area may undergo significant changes in both the next few years and in the next few decades due to two drivers: insect infestations and climate change. Any subsequently-prepared NEPA document should accurately address these potental impacts by including the new, relevant, expert information in any subsequently prepared NEPA document.

First, the Forest Service should account for the potential for insect infestations within the project area. The ongoing roundhead pine beetle infestation is impacting the forest near or within the project area, and those impacts should be addressed and assessed.

Second, in 2017, Forest Service Rocky Mountain Region staff and researchers presented results from bioclimate models concluding that ponderosa pine would likely be lost from much of the Salter project area in the 2056-65 time period, which may call into question the purpose and need and prescriptions proposed for the project.[74] We understand that some have questioned the models' assumptions. However, there appears to be little doubt that temperatures will rise, and that conditions will become dryer, in the project area, stressing plant and wildlife communities.

Failure to address this best available science would violate NEPA.

V. THE FOREST SERVICE SHOULD CONSIDER PREPARING AN ENVIRONMENTAL IMPACT STATEMENT ON THE SALTER PROJECT.

A. Agencies Must Prepare EISs When Impacts 'May' Be Significant.

NEPA requires federal agencies to prepare a full environmental impact statement (EIS) before undertaking "major Federal actions significantly affecting the quality of the human environment."[75] As the Tenth Circuit has explained, "[i]f the agency determines that its proposed action *may* 'significantly affect' the environment, the agency must prepare a detailed statement

[73] 40 C.F.R. § 1500.1(b).

[74] J. Worrall *et al*., Projected Impacts of Climate Change on Forests of the Dolores Watershed, presentation to the Dolores Watershed Resilient Forest Collaborative (2017) at slides 29, 39 & 52 (showing results of bioclimate models predicting the likely persistence of various forest types, which characterize ponderosa pine as "lost" for the project area), attached as Ex. 10, and available at http://dwrfcollaborative.org/wp/wp-content/uploads/2018/06/projected-impacts-of-climate-change-on-forests-of-the-dolores-watershed.pdf (last viewed Mar. 21, 2019). Other forest types will suffer in the area as well. *See id*. at slide 33 (showing Gambel oak "threatened").

[75] 42 U.S.C. § 4332(C).

on the environmental impact of the proposed action in the form of an EIS."[76] The Ninth Circuit agrees.

> We have held that an EIS *must* be prepared if 'substantial questions are raised as to whether a project ... *may* cause significant degradation to some human environmental factor.' To trigger this requirement a 'plaintiff need not show that significant effects *will in fact occur*,' [but instead] raising 'substantial questions whether a project may have a significant effect' is sufficient.[77]

If an agency "decides not to prepare an EIS, 'it must put forth a convincing statement of reasons' that explains why the project will impact the environment no more than insignificantly. This account proves crucial to evaluating whether the [agency] took the requisite 'hard look.'"[78]

"Significance" under NEPA requires consideration of the action's context and intensity.[79] An agency must analyze the significance of the action in several contexts, including short- and long-term effects within the setting of the proposed action (including site-specific, local impacts).[80] Intensity refers to the severity of the impact and requires consideration of ten identified factors that may generally lead to a significance determination, including: (1) whether the action is likely to be highly controversial; (2) whether the effects on the environment are highly uncertain or involve unique or unknown risks; and (3) whether the action may have cumulative significant impacts.[81] With respect to the degree to which the environmental effects are likely to be highly controversial, the word "controversial" refers to situations where "'substantial dispute exists as to the size, nature, or *effect* of the major federal action.'"[82]

Here, despite the vagueness of the proposal at this early stage, it appears that the Salter project may have significant impacts, triggering the Forest Service's duty to prepare an EIS.

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[76] *Airport Neighbors Alliance v. U.S.,* 90 F.3d 426, 429 (10th Cir. 1996) (citation omitted) (emphasis added).

[77] *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149-50 (9th Cir. 1998) (citations omitted) (emphasis original). *See also Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 864-65 (9th Cir. 2005) ("To trigger this [EIS] requirement a plaintiff need not show that significlant effects will in fact occur, but raising substantial questions whether a project may have a significant effect is sufficient." (internal quotations, citations, and alterations omitted)).

[78] *Ocean Advoc.*, 402 F.3d at 864.

[79] 40 C.F.R. § 1508.27.

[80] *Id.* § 1508.27(a).

[81] *Id.* § 1508.27(b)(4)-(5), (7)

[82] *Town of Cave Creek v. FAA,* 325 F.3d 320, 331 (D.C. Cir. 2003) (quoting *North American Wild Sheep v. U.S. Department of Agriculture*, 681 F.2d 1172, 1182 (9th Cir. 1982)) (emphasis in original). *See also Middle Rio Grande Conservancy Dist. v. Norton*, 294 F.3d 1220, 1229 (10th Cir. 2002) (same); *Town of Superior v. U.S. Fish and Wildlife Serv.*, 913 F. Supp. 2d 1087, 1120 (D. Colo. 2012) (same).

B. The Lone Pine Project May Have Significant Impacts.

The scale of the project itself may be significant. The Salter project will likely require tens of miles of new, temporary road construction on top of road maintenance and the reopening of many more miles of "close" roads. These impacts and the large scale of logging and burning – proposed for over a 50-square-mile area – support a conclusion of significance.

The impacts of this project are "highly uncertain" because, as discussed above, the project itself – its duration, the location of specific impacts such as roads or logging treatments, the precise nature of treatments themselves – is poorly defined.

Because there is a potential for the proposal to have significant impacts, we recommend that the Forest Service prepare an EIS for the project area.

CONCLUSION.

Thank you for this opportunity to comment. If you have any questions about this letter, please contact me at the number or email below.

If the Forest Service issues any draft NEPA document for comment during the coronavirus pandemic, we request that the agency provide the public with additional time to respond, given the disruptions the pandemic is causing and is likely to continue to cause.

Sincerely,

Edward B. Zukoski, Senior Attorney
Center for Biological Diversity
1536 Wynkoop Street, Suite 421
Denver, CO 80202
(cell) (303) 641-3149
tzukoski@biologicaldiversity.org

cc: David Casey, San Juan National Forest, djcasey@fs.fed.us
Travis Bruch, San Juan National Forest, tbruch@fs.fed.us

TABLE OF EXHIBITS