

December 9, 2024

Sent via electronic mail to holdencanyonconnectorroad@cbp.dhs.gov. Submitted electronically via web portal at: <https://cara.fs2c.usda.gov/Public//CommentInput?Project=64326>.

U.S. Customs and Border Protection
U.S. Border Patrol Headquarters
Program Management Office Directorate
1300 Pennsylvania Ave. 6.5E Mail Stop 1039
Washington, DC 20229-1100
Attn: Michelle Barnes

Re: Comments on Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for Proposed Holden Canyon Connector Road

To whom it may concern,

The Center for Biological Diversity submits the following comments on U.S. Customs and Border Protection's (CBP) and Forest Service's (USFS) proposed Holden Canyon Connector Road Project as described in the November 2024 *Draft Environmental Assessment, Holden Canyon Connector Road Project, Tucson Sector* and CBP *Draft Finding of No Significant Impact for the Holden Canyon Connector Road Project, Coronado National Forest, Nogales Ranger District*.

The Draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) fail to meet the National Environmental Policy Act's (NEPA) standards for thorough and accurate environmental review. The impacts of the Proposed Action are insufficiently disclosed and inadequately analyzed, falling short of NEPA's requirement for agencies to take a "hard look" at potential environmental consequences.

The EA presents factually incorrect information about the presence of endangered species—even failing to acknowledge the recent presence of an endangered ocelot near the project area—and downplays impacts to wildlife. It erroneously asserts that the Proposed Action will have minimal effects on ESA-listed species and their designated critical habitats, even while acknowledging a clear likelihood of harm to species like the Chiricahua leopard frog.

The agencies have neglected to provide essential information, thereby obstructing stakeholders from offering well-informed input. The EA also fails to analyze cumulative impacts, including those arising from past, present, and foreseeable CBP and USFS activities in the area, such as cattle grazing and border wall construction. Without this analysis, the EA does not adequately assess the combined pressures these projects exert on the environment and wildlife in the region.

Additionally, the EA significantly overstates the purported benefits of proposed road decommissioning which the EA alleges will somehow mitigate for the damage inflicted by new

road construction. Many road segments identified for decommissioning lie along already degraded areas adjacent to the border road and wall, offering little value for habitat connectivity or ecological recovery. Other segments identified for decommissioning are hardly roads at all, some of which have clearly not been operable for years or even decades — information CBP and USFS have not shared with (or even seem to be hiding from) the public. As such, the purported “beneficial” impacts of road decommissioning in the Proposed Action are misleading or largely false, and must be accurately disclosed.

Given these deficiencies, and in light of the destructive scope of prior CBP projects in the U.S.-Mexico border region, it is imperative that CBP and USFS abandon the flawed EA and FONSI. Instead, the agencies must prepare a comprehensive Environmental Impact Statement (EIS) to thoroughly assess the cumulative and site-specific effects of the Proposed Action, alongside other stressors such as border infrastructure projects, grazing, mining, and wildfire risks.

Such measure is necessary to fully explore the foreseeable effects, with an emphasis on the cumulative effects of recently completed, ongoing, and reasonably foreseeable projects including the construction of border barrier infrastructure, cattle grazing, mining, wildfires and other CBP initiated projects that constitute existing stressors to wildlife and the environment in the project area.

If an EIS is not pursued, the agencies should select the No Action Alternative, which avoids further road construction and spares critical wildlands and wildlife from additional harm. This is the only alternative consistent with NEPA’s mandate to minimize environmental damage while ensuring informed public participation.

Finally, CBP and USFS have failed to meet their obligations for public outreach under NEPA. No public meetings, hearings, or information sessions were held, either in person or online, leaving affected communities, including Tribal Nations and majority-minority populations, excluded from meaningful engagement. To remedy this, CBP and USFS must host public meetings in areas directly impacted by the project including Arivaca, Sasabe, and the Tohono O’odham Nation, and ensure stakeholders have access to detailed and accurate and updated project maps.

I. CBP and USFS Failed to Conduct Adequate NEPA Review of the Holden Canyon Connector Road Project

A. The Purpose and Need Statement is inadequate and misleading.

The Purpose and Need statement in the EA is incomplete and misleading, and fails to meet NEPA’s requirement for a clear and accurate definition of the purpose of the action and the problem it seeks to address. The stated purpose of the Proposed Action is to “improve mobility and accessibility for USBP agents responding to and seeking to prevent illegal cross-border traffic, address emergencies involving public health and safety, and prevent or minimize environmental damage arising from occurrence of and response to CBV illegal entry on public lands” (EA at 7). The stated need is “to support CBP in meeting its mission objectives of

providing border security, ensuring the highest probability of apprehending illegal entries, thus preventing terrorists and terrorist weapons from entering the U.S.; detecting, apprehending, and deterring smugglers of humans, drugs, and other contraband; and enhancing agents' response time" (EA at 7).

This statement has numerous critical flaws. First, it contains unsubstantiated claims about the purported benefits of road construction. It provides no evidence or rationale to support how the proposed road would achieve its stated goals, such as "preventing or minimizing environmental damage" or "preventing terrorists and terrorist weapons from entering the U.S." It fails to assess whether alternative measures, such as aerial surveillance, sensor systems, or patrol adjustments, could achieve the same objectives with less environmental harm. As detailed in Section III(B), there is substantial evidence suggesting that Proposed Action could increase rather than decrease illicit cross-border activities, such as smuggling. This lack of justification and/or analysis renders the Purpose and Need statement speculative and insufficient.

Additionally, the Purpose and Need statement does not substantiate its claim that the project would "prevent or minimize environmental damage arising from occurrence of and response to CBV [cross-border violator] illegal entry on public lands." The EA fails to provide any documentation about the current condition of public lands in the Project Area being affected by CBV activity, or any evidence that CBV activities are causing significant environmental harm. In contrast, the significant and well-documented environmental damage that would result from road construction is wholly unaddressed in the Purpose and Need statement.

The Purpose and Need also introduces an ambiguous "need" for recreational and emergency access but fails to demonstrate any specific or quantified deficiencies in existing access. Additionally, it misrepresents the role of road decommissioning, which is not directly connected to the Proposed Action. By significantly inflating and misrepresenting the environmental benefits of road decommissioning, the Purpose and Need statement further undermines the credibility of the EA.

Due to these significant deficiencies, the EA does not provide a legally sufficient analysis of the Purpose and Need for the Proposed Action. The statement—and the EA as a whole—fails to meet NEPA's requirements for rigorous, evidence-based evaluation and public transparency. Accordingly, CBP and USFS must abandon the current EA or supplement it with a comprehensive and accurate analysis via an EIS. If such analysis is not undertaken, the agencies must select the No Action Alternative to avoid further harm to public lands and wildlife.

B. The EA misrepresents and overstates the alleged benefits of road decommissioning and lumps two unrelated projects together to skew impact analysis of Proposed Action.

CBP and USFS seek to convey a positive benefit of the isolated road restoration projects in the EA that would offset the environmental damage caused by the Proposed Action; however, the road decommissioning project is unrelated to the road construction project, and should be analyzed and undertaken separately. By analyzing both the road decommissioning and the new road construction in the EA, CBP and USFS have conflated two unrelated actions to falsely portray the Proposed Action as environmentally neutral or beneficial. This is misleading and

seeks to obfuscate the clearly negative impacts of road construction by suggesting that some environmental benefit (though one that is clearly not an equivalent to the negative impacts from construction) would occur from the decommissioning. This skews the analysis and renders it inadequate.

Conflating both the decommissioning and the new road construction into one action is especially misleading when it comes to the EA's analysis of vegetation/biotic communities and invasive species, as there are vast differences in looking at vegetative communities in a previously disturbed area (where road decommissioning is occurring) and a completely undisturbed area (where new construction will occur).

The EA admits that the road decommissioning project has nothing to do with the Purpose and Need of the Proposed Action in the "alternatives considered but eliminated from further analysis" section. It states:

"CBP and USFS considered an alternative of only decommissioning roads and revegetating decommissioned road disturbance areas. However, this alternative would not meet the purpose and need to improve mobility and accessibility for USBP agents responding to and seeking to prevent illegal cross-border traffic, address emergencies involving human health and safety, and prevent or minimize environmental damage arising from occurrence of and response to CBV illegal entry on public lands in the Holden Canyon and Warsaw Canyon areas.... Therefore, this alternative was eliminated from consideration." (EA at 18)

As noted here in the EA, the road decommissioning is an unrelated action that does not address the Purpose and Need of the project. Therefore, CBP and USFS must separately analyze the impacts of road construction without using decommissioning to obscure the overwhelmingly negative environmental effects of the Proposed Action.

1. The EA overstates environmental benefits of road decommissioning. Many segments of roads scheduled for decommissioning are hardly present and not actively used. The effort to "offset" the impact of new road construction is inadequate.

The EA fails to accurately assess the alleged benefits of planned road decommissioning. It states, "The Proposed Action also includes the decommissioning of approximately 3.57 miles of unimproved road segments that are no longer needed for patrol or access to **offset the construction** of approximately 3.75 miles of new road" (EA at 27) (emphasis added).

The EA does not provide data to support how the decommissioning of these old road segments could possibly "offset" the construction of an entirely new roadway and fails to adequately assess the current condition of the road segments that would be decommissioned. This violates NEPA's requirement to establish accurate baseline environmental conditions to assess the impacts of the Proposed Action (40 C.F.R. § 1502.16(a) (2024)). See also Forest Service Handbook 1909.15, Ch 15.2b (agency must "establish a baseline for assessing future events"). Without such data, the EA lacks a necessary foundation for its conclusions.

CBP and USFS have severely misrepresented the data regarding the condition of the 18 road segments proposed for decommissioning. A simple site visit quickly proves that most of the road segments scheduled for decommissioning are roads that are hardly present, completely unutilized, and in some cases, roads that clearly haven't been used in decades. NEPA mandates that agencies rely on high-quality scientific and technical data when assessing environmental conditions (40 C.F.R. § 1500.1(b) (2024); see also *Native Ecosystems Council v. Erickson*, 330 F. Supp. 3d 1218, 1238 n. 7 (D. Mont. 2018); *W. Org. of Res. Councils v. United States BLM*, 2018 U.S. Dist. LEXIS 49635, CV 16-21-GF-BMM (D. Mont Mar. 26, 2018) (accurate scientific analysis proves essential to implementing NEPA). The failure to incorporate accurate, on-the-ground data about the road segments undermines the EA's analysis and does not satisfy NEPA's requirement for informed decision-making. It is also arbitrary and capricious in its own right.

On-the-ground evaluation reveals that some road segments, such as "Segment 364" and "Segment 602" (presented in Figures 1 and 3 below) are virtually unrecognizable as roads and have not seen use in years or even decades. Yet these are some of the road segments that the Proposed Action would decommission to "offset" the construction of a new road through an entirely undisturbed area. This segment, listed as "Segment 364" in the Final Biological Resources Survey Report, is clearly not in need of any sort of "decommissioning." In fact, by eliminating well-established vegetation, displacing wildlife, disturbing soil and promoting soil erosion, the decommissioning activities of the Proposed Action would increase negative environmental impacts rather than being "beneficial" as the EA and FONSI allege.



Figure 1: The almost nonexistent “road segment 364” that clearly does not need “decommissioning”

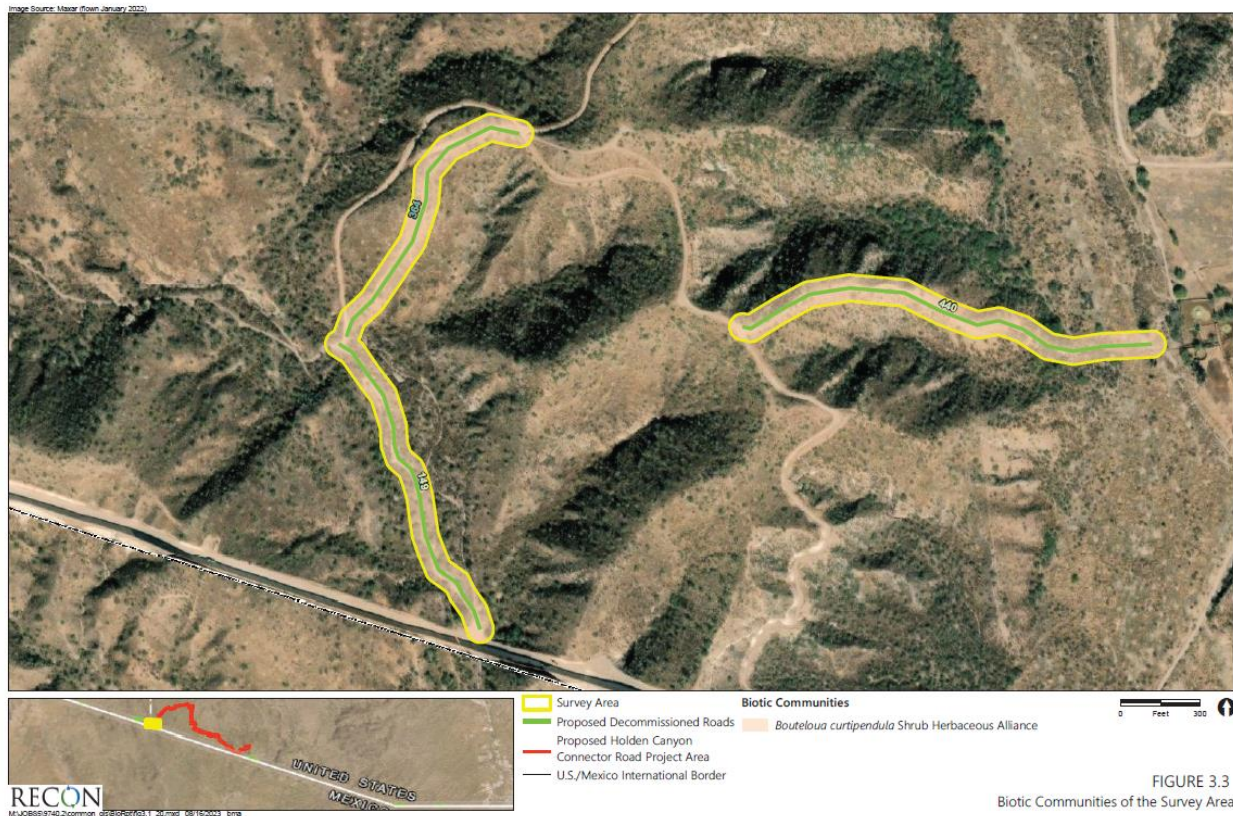


Figure 2: Final Biological Survey Report presenting “Segment 364” as if it is a real road.

The EA and Final Biological Survey report rely on aerial photographs with overlaid lines instead of on-the-ground documentation, preventing accurate assessment of the road segments’ current conditions (see Figure 2, above for the inadequate EA analysis). It is impossible for the public to analyze the existing footprint and condition of the road segments without better documentation.

The EA states “Decommissioning of roads would result in long-term minor beneficial impacts due **to reduced travel, reduced fossil fuel combustion, and reduced dust emissions**, offsetting a portion of the impacts from the proposed new road segment emissions.” (EA at 27) (emphasis added). The EA’s failure to account for the existing conditions and lack of use of the proposed road segments for decommissioning is absurd and misleading and fails NEPA’s mandate for a rigorous and transparent cumulative impact analysis. A simple site visit proves that many of the roads that would be decommissioned under the Proposed Action have not been used for years—or perhaps even decades—as “Segment 364” and “Segment 602” (below) demonstrate.

CBP and USFS have failed to accurately and adequately analyze the impact (or so-called benefit) of road decommissioning, which is impossible to do unless the agencies take the ‘hard look’ necessary to understand the current conditions of each road segment. Worse, by falsely implying that these road segments are currently used, CBP and USFS’s analysis, taken together with omission of site-specific information, seems designed to actually mislead the public that both agencies serve. As demonstrated in the photograph of “Segment 364,” (Figure 1) and the

photograph of “Segment 602” (Figure 3, below), the Proposed Action’s road decommissioning component may result in additional environmental harm, rather than the purported benefits claimed in the EA.



Figure 3: almost nonexistent “road segment 602”

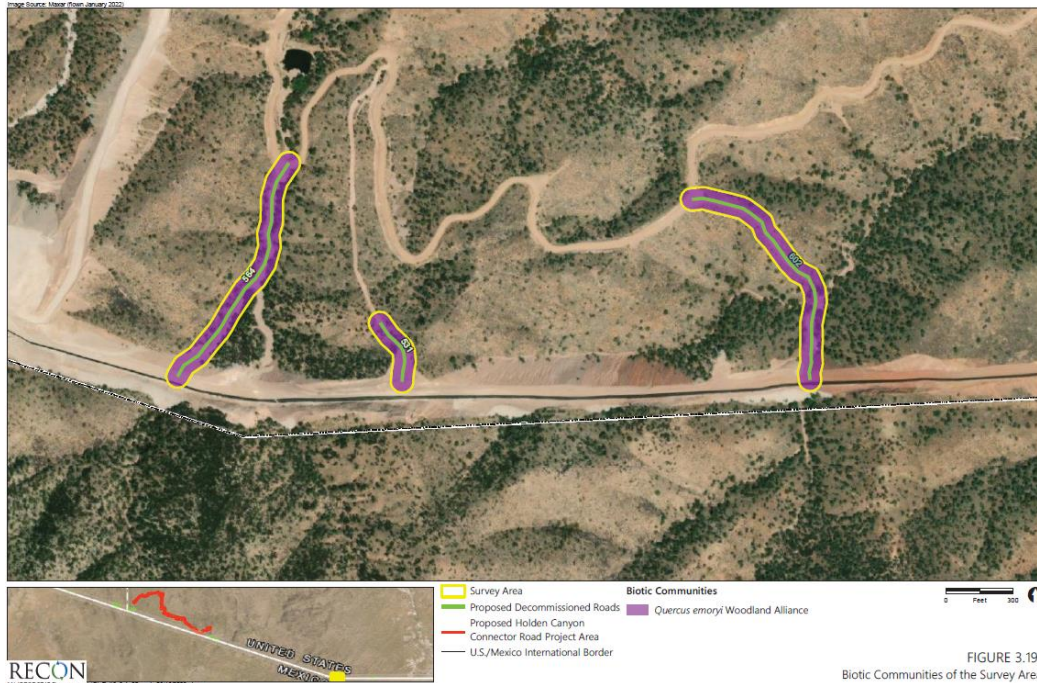


Figure 4: Final Biological Survey Report presenting “Segment 602” as if it is a real road

Additionally, other road segments (see segments 253, 421, 509, 565) that would be decommissioned under the Proposed Action are along the existing border road and border wall, where decommissioning offers negligible opportunities for restoring habitat connectivity or reducing fragmentation, and little environmental benefit. Many of these road segments — especially those along the border road and wall — are in already-degraded areas where invasive species proliferate, and as such, the “benefit” of decommissioning roads within areas that are already choked with invasive species does not “offset” the destruction of undisturbed habitat where native species are still dominant (which the EA misrepresents as areas already degraded by invasives — see more information on this in discussion of the EA’s failure to analyze impacts to invasive species in Section G, below).

C. CBP and USFS failed to analyze a Reasonable Range of Alternatives

NEPA requires federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action.” 42 U.S.C. § 4332(2)(H) (2023); and CBP and USFS must “[r]igorously explore and objectively evaluate reasonable alternatives.” 40 C.F.R. § 1502.14(a) (2024). See also 42 U.S.C. § 4332(2)(C)(iii) (2023) (EIS must analyze “a reasonable range of alternatives to the proposed agency action”); id. § 4332(2)(F) (agencies must “study, develop, and describe technically and economically feasible alternatives”). “[C]onsideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process.” *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228–29 (9th Cir. 1988); see also *Citizens for a Better Henderson v. Hodel*, 768 F.2d 1051, 1057 (9th Cir. 1985) (an EIS must consider “every” reasonable alternative).

The EA fails to meet NEPA requirements to analyze a reasonable range of alternatives. BP and USFS have arbitrarily narrowed the scope of alternatives, excluding other viable actions from analysis. The EA identifies only two alternatives for detailed analysis: the "No Action" and "Proposed Action" alternatives, without considering other possible alternatives to the Proposed Action. Other alternatives, such as alternative alignments or the road decommissioning and revegetation option, were eliminated from analysis without proper consideration.

Crucially, the EA does not evaluate alternatives that would meet the purpose and need for the project without constructing a new road. Other reasonable measures—such as using remote monitoring systems, drones, increased personnel, or establishing operational outposts in each canyon—could fulfill the stated objectives of improving border security and accessibility without the environmental harm associated with road construction. These alternatives could mitigate, reduce, and avoid environmental impacts while fulfilling the stated purpose and need to “improve mobility and accessibility for USBP agents responding to and seeking to prevent illegal cross-border traffic, address emergencies involving public health and safety, and prevent or minimize environmental damage arising from occurrence of and response to CBV illegal entry on public lands” (EA at 7).

By focusing solely on road construction and failing to consider other alternatives, the alternatives analysis appears tailored to justify a predetermined solution, in direct contravention of NEPA’s requirement for an unbiased and comprehensive alternatives analysis. The agencies’ dismissal of hybrid solutions that could include limited road construction with decommissioning and restoration of greater stretches of habitat to balance environmental and operational objectives. Many of these issues were raised in scoping comments, but they were not sufficiently analyzed before dismissal.

NEPA requires that the EA explore these reasonable alternatives in detail. The following alternatives should be fully analyzed.

The EA Must Consider These Reasonable Alternatives in Detail:

- *technology-driven alternative:*

This alternative would enhance border security, response times, and safety, which would accomplish the purpose and need without the construction of the connector road. It could include the construction of additional surveillance and communication towers, the use of drones, and other technology.

- *Selective north-south road improvement alternative:*

This alternative would enhance border security, response times, and safety, which would accomplish the purpose and need, by upgrading and improving the existing north-south roads in Holden Canyon and Warsaw Canyon to allow increased response time from Arivaca that would meet the Purpose and Need without constructing the connector road.

- Enhanced coordination with ranchers, conservation entities, and other federal agencies alternative:

This alternative would focus on improving coordination and communication with ranchers, conservation entities, federal agencies and other entities operating in the area to address emergencies and improve response times, without the need for a new road.

- Alternative that only considers road construction without decommissioning

This alternative would evaluate the construction of the road on its own merits, excluding the decommissioning of other roads, to provide a clearer picture of the potential environmental and operational harm caused by construction alone.

D. CBP and USFS failed to fully analyze direct, indirect, and cumulative impacts of the Proposed Action.

Under NEPA, USFS must fully disclose “any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented.” 42 U.S.C. § 4332(2)(C)(ii). USFS must review the impacts from all “past, present, and reasonably foreseeable future actions.” These are the “cumulative effect/impacts” under NEPA. See Forest Service Handbook 1909.15, Ch. 15 & 15.1. To comply with NEPA, CBP and USFS must consider all direct, indirect, and cumulative environmental impacts of the proposed action. 40 C.F.R. § 1508.1(i)(3); Forest Service Handbook 1909.15, Ch. 23.3. Direct effects are caused by the action and occur at the same time and place as the proposed project. § 1508.1(i)(1). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Id. § 1508.1(g)(2). Both types of impacts include “effects on natural resources and on the components, structures, and functioning of affected ecosystems,” as well as “aesthetic, historic, cultural, economic, social or health [effects].” Id. § 1508.1(i)(4). See also Ctr. for Biological Diversity, *Manasota-88, Inc. v. United States Army Corps of Eng'rs*, 941 F.3d 1288, 1293 (11th Cir. 2019). Cumulative effects are defined as: “[T]he effects 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 C.F.R. § 1508.1(i)(3); Forest Service Handbook 1909.15, Ch. 15.1. In a cumulative impact analysis, an agency must take a “hard look” at all actions — a threshold that the EA and FONSI fail to meet.

“An EA’s analysis of cumulative impacts must give a sufficiently detailed catalogue of past, present, and future projects, and provide adequate analysis about how these projects, and differences between the projects, are thought to have impacted the environment. . . . Without such information, neither the courts nor the public . . . can be assured that the [agency] provided the hard look that it is required to provide.” *Te-Moak Tribe of Western Shoshone v. U.S. Dept. of Interior*, 608 F.3d 592, 603 (9th Cir. 2010) (rejecting EA for mineral exploration that had failed to include detailed analysis of impacts from nearby proposed mining operations).

A cumulative impact analysis must provide a “useful analysis” that includes a detailed and quantified evaluation of cumulative impacts to allow for informed decision-making and public disclosure. *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1066 (9th Cir. 2002); *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 361 F.3d 1108, 1118 (9th Cir. 2004). The NEPA requirement to analyze cumulative impacts prevents agencies from undertaking a piecemeal review of environmental impacts. *Earth Island Institute v. U.S. Forest Serv.*, 351 F.3d 1291, 1306–07 (9th Cir. 2003).

The NEPA obligation to consider cumulative impacts extends to all “past,” “present,” and “reasonably foreseeable” future projects. *Blue Mountains*, 161 F.3d at 1214–15; *Kern*, 284 F.3d at 1076; *Hall v. Norton*, 266 F.3d 969, 978 (9th Cir. 2001) (finding cumulative analysis on land exchange for one development failed to consider impacts from other developments potentially subject to land exchanges); *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 971–74 (9th Cir. 2006) (requiring “mine-specific . . . cumulative data,” a “quantified assessment of their [other projects] combined environmental impacts,” and “objective quantification of the impacts” from other existing and proposed mining operations in the region). “If there is ‘essential’ information at the plan- or site-specific development and production stage, [the agency] will be required to perform the analysis . . .” *Native Village of Point Hope v. Jewell*, 740 F.3d 489, 499 (9th Cir. 2014).

In this case, CBP and USFS have failed to fully consider the cumulative impacts from all past, present, and reasonably foreseeable future projects in the region. It appears that CBP and USFS have misinterpreted their duties to address these impacts.

The Supreme Court has determined that when several proposals that have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together. (*Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)). And that an agency is required to evaluate the “[c]umulative impact” of its action, which is defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” See *U.S. Dept of Transp. v. Public Citizen*, 541 U.S. 752, 769 (2004).

In accordance with NEPA, CBP and USFS must “consider” cumulative impacts. *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998)). “To ‘consider’ cumulative effects, some quantified or detailed information is required.” (*Neighbors of Cuddy Mountain*, 137 F.3d at 1379). “Without such information, neither the courts nor the public, in reviewing the [agency’s] decisions, can be assured that the [agency] provided the hard look that it is required to provide.” *Id.* “General statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” *Id.* at 1380.

As such, CBP and USFS must consider the cumulative effects of the Proposed Action in relation to other past, present and reasonably foreseeable projects including but not limited to past, ongoing and future border infrastructure projects, border stabilization and remediation projects, the continued authorization of grazing allotments that routinely destroy endangered

species habitat, mining and mining exploration projects, energy development, road construction and maintenance, utility infrastructure development, urbanization and residential expansion, habitat fragmentation and loss, binational conservation challenges, invasive species spread, increased human presence from hunting and recreational activities and climate change.

E. CBP and USFS failed to consider the cumulative impacts from all past, present and future actions, including impacts to habitat for rare, threatened and endangered species in the region.

1. *Jaguar (Panthera onca)*

NEPA mandates that federal agencies use high-quality, accurate scientific analysis to inform decisions and consider the cumulative impacts of proposed actions. The EA section on jaguars and jaguar critical habitat fails to meet these requirements in several instances.

The EA section on jaguars lacks a rigorous scientific review. It does not adequately incorporate or review the best available science regarding jaguar behavior, habitat needs, or sensitivity to habitat fragmentation and human activity.

The reliance on older studies (e.g., McCain and Childs 2008) without integrating more recent research and species-specific conservation data (e.g., critical habitat connectivity needs and prey species dynamics) is a major oversight. For example, the EA does not consider updated models of jaguar connectivity in the U.S.-Mexico borderlands that emphasize the importance of unfragmented travel corridors for recovery. CBP and USFS must include more recent studies and models addressing jaguar ecology, critical habitat, and connectivity in the borderlands. For instance, in our scoping comments the Center pointed to several important studies on jaguars and roads that should have been considered and analyzed for the EA so that the public could comment in a substantive and informed way. In our October 20, 2023 scoping comments to CBP and USFS concerning the Holden Canyon project the Center provided a brief review of the scientific studies concerning jaguars and roads. Included in our submission were copies of each of these studies. CBP and USFS failed to address these studies or any additional studies in a review of the best available science. Please refer back to our scoping comments and attachments. It is the responsibility of CBP and USFS to collect and analyze the best available science and present it to the public for review, not vice versa. The agencies have neglected to provide essential information, in violation of NEPA, thereby obstructing stakeholders from offering well-informed input.

The EA does not adequately analyze the cumulative impacts of the Proposed Action in relation to jaguars. It fails to evaluate the Proposed Action in the context of other ongoing or planned border infrastructure, road construction, and human activity within the critical habitat unit directly impacted by the project and fails to evaluate impacts to other jaguar critical habitat units. NEPA requires a thorough examination of how these combined activities may impair the species' recovery or diminish critical habitat functionality over time. This omission of a review of other specific projects is particularly concerning given the increase in human access and potential for future activities facilitated by the new road. CBP and USFS must analyze the combined impacts of this project alongside other federal and state activities to address and analyze other past, present, and reasonable foreseeable actions that could impact jaguars in the

region including but not limited to mining operations, exploratory drilling, utility infrastructure development, urbanization and residential expansion, habitat fragmentation and loss, binational conservation challenges, reduced connectivity for cross-border populations due to border walls, invasive species spread, increased human presence from hunting and recreational activities, hydrological impacts and watershed modifications that impact habitat, the compounding vulnerability created by climate change, predator management practices, impacts from hunting, including hound hunting, and behavioral disruption by noise and light pollution.

Projects that could compound with other ongoing or future activities affecting jaguar recovery include but are not limited to the Chiricahua Access Project, the Hermosa mine project and the Sunnyside and Flux Canyon exploratory drilling projects in the Patagonia Mountains east of Nogales, dog pack hunting for bobcats and mountain lions in areas where jaguars could be present, as well as other road building projects, border wall construction projects and border stabilization projects at Mariposa Canyon, impacts to northern jaguar breeding populations in Mexico, including from the train project in Imuris, Mexico, cattle grazing permits and increased motorized vehicle access in jaguar habitat. All of this must be analyzed to remedy significant shortcomings in the EA.

The assessment of habitat disturbance (14.6 acres of vegetation removal and road construction) as “negligible” underestimates habitat and connectivity impacts and ignores the outsized importance of small, strategically located areas for maintaining connectivity between key mountain ranges. Even minimal road construction in critical habitat areas can have disproportionate effects by creating movement barriers and increasing edge effects. Furthermore, the assessment is made without a review of the best available science on the issue. CBP and USFS must provide a more thorough analysis of how the proposed road impacts jaguar connectivity, particularly in the context jaguar critical habitat in the Altar Valley and Atascosa Mountains and justify why the loss of 14.6 acres of habitat is considered “insignificant.”

The EA section on jaguars is overly reliant on mitigation measures. It describes proposed mitigation measures (e.g., limiting vehicle speeds and restricting nighttime activities), it does not provide data or evidence that these measures will sufficiently avoid or minimize impacts to jaguars. NEPA requires that agencies evaluate the effectiveness of mitigation strategies rather than simply asserting their adequacy. CBP and USFS must support assertions regarding mitigation effectiveness with data or case studies demonstrating that such measures have successfully avoided or minimized impacts to wide-ranging predators in similar circumstances.

The EA provides inadequate consideration of public access impacts. While the section on jaguars acknowledges that the new road will increase public access to previously restricted areas, it fails to analyze the long-term implications of increased human activity, recreation, including hunting, and potential impacts on jaguar presence and prey species. CBP and USFS must evaluate the long-term risks of increased human activity facilitated by the new road, including potential harm to jaguars and jaguar prey populations and habitat integrity.

The EA’s analysis of impacts to jaguars and their critical habitat is insufficient under NEPA. It lacks the rigorous scientific foundation, cumulative impact evaluation, and detailed consideration of long-term effects required to adequately assess the potential consequences of the proposed action.

Given the significant and irreversible harm to jaguar designated critical habitat, CBP and USFS must abandon the EA and prepare an EIS. An EIS is necessary to fully analyze the direct, indirect, and cumulative impacts of the Proposed Action on jaguar recovery; evaluate alternatives that would avoid or minimize impacts; and propose meaningful mitigation measures. By failing to address these issues, CBP and USFS are jeopardizing the recovery of the jaguar and violating their obligations under NEPA and the ESA.

2. Ocelot (*Leopardus pardalis*)

NEPA requires agencies to use the "best available scientific information" when assessing environmental impacts (40 C.F.R. § 1500.1(b) and 40 C.F.R. § 1502.23). See also 42 U.S.C. 4332(2)(D) (agencies must "ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document"). The statement that "there are no recent documented occurrences of ocelots within the Nogales Ranger District" in the EA is factually and scientifically incorrect, violates NEPA standards and currently serves to misinform the public (EA, pg. 81).

An ocelot was detected by a trail camera in the Atascosa Mountains in the Nogales Ranger District on June 12, 2024, by researchers from the Arizona Zoo. This detection constitutes "best available scientific data" under NEPA and must be incorporated into the analysis. News of the ocelot made state and national news in August, and appeared in news outlets, television and radio news broadcasts.¹ Failure to include this information renders the EA's conclusions about ocelot presence and potential impacts incomplete and inaccurate; the EA fails to provide information necessary for the public and stakeholders to make informed and substantive comments. The agencies' uninformed statements thereby obstruct stakeholders from offering well-informed input. Given widespread regional news of the Atascosa ocelot, it's hard to understand how the USFS may have had no knowledge of an ocelot in the Nogales Ranger District.

The EA therefore does not adequately analyze how the confirmed presence of an ocelot might alter the impact assessment. Specifically, the probability of encountering an ocelot during project activities is understated in the EA, given the June 2024 detection. The potential impacts of habitat disturbance, noise, and vehicle collisions must be reassessed due to this missing information. There are numerous scientific studies on ocelots and the impacts of habitat disturbance, noise and vehicle collisions. But the EA does not include reference, citation or mention of a single one. This exclusion of the best available science is, again, a violation of NEPA.

Studies that should be reviewed and presented in an EA for the public to better understand the best available science concerning potential impacts to ocelots from the project under consideration include but are not limited to the following:

- "Cats, cars, and crossings: The consequences of road networks for the conservation of an endangered felid" by AnnMarie Blackburn, Levi J. Heffelfinger, Amanda M. Veals, Michael E. Tewes, and John H. Young Jr. 2021.

This study examines the impact of road networks on the survival of endangered ocelots in South Texas, where urban development and roadways fragment their habitat. Using telemetry data (1982–2001) and collision records (1982–2020), it found that vehicle collisions account for 40% of radio-collared ocelot deaths, with low-volume roads were linked to the highest proportion of collisions, underscoring the need for targeted mitigation strategies on these road types to enhance ocelot conservation and address habitat fragmentation.

- “Influence of Roads and Landscape Features on the Spatial Ecology and Mortality of Ocelots in South Texas” by AnnMarie Blackburn. 2020.

This study investigates the impact of road networks on the endangered ocelot in South Texas, focusing on habitat fragmentation and wildlife-vehicle collisions. Analyzing 26 road mortality sites from 1984–2017, it found that roads bisecting habitats heighten vehicle collision risks. The findings aim to inform mitigation strategies to reduce fatalities.

- “Multiscale habitat relationships of a habitat specialist over time: The case of ocelots in Texas from 1982 to 2017” by Amanda Veals, Joseph Holbrook, AnnMarie Blackburn, C. Jane Anderson, Randy DeYoung, Tyler Campbell, John Young Jr., and Michael Tewes. 2022.

This study found that ocelots did not avoid roads as expected within home ranges, which is a likely mechanism for vehicle-induced mortality.

The determination that the project "may affect, but is not likely to adversely affect" ocelots triggers the requirement for consultation with the USFWS under Section 7 of the ESA. The EA indicates that such consultation was not completed before the EA and therefore was not included. The publication of the EA without critical information from USFWS, including information that would include the best available science, would better help the public understand the impacts to threatened and endangered species and make for more informed and substantive comments. As it stands the public has been left with inaccurate, misleading information about the presence of ocelots in the EA. There is little doubt that USFWS knew about the presence of an ocelot in the vicinity of the project area. The omission of this information violates NEPA and public trust.

It also appears that CBP, rather than the USFS, is or will be conducting Section 7 consultation with the USFWS regarding the potential effects of the Proposed Action on federally listed species. As stated in the EA “CBP has prepared a BA [Biological Assessment] and is conducting Section 7 consultation with the USFWS regarding the potential effects of the Proposed Action on federally listed species. CBP proposes effects determinations of “no effect” to “may affect, not likely to adversely affect” for federally listed species that may occur in the action areas” (91).

In the EA the determination that the project “may affect, but is not likely to adversely affect” ocelots and other species is therefore the opinion of CBP which is not an agency with expertise in wildlife management or threatened and endangered species recovery. It is important

for the public to understand if USFWS and USFS concur with CBP's determination. On May 27, 2024 an email was sent from staff at the Center for Biological Diversity to both CBP and the Nogales Ranger District of the Forest Service requesting a copy of the BA that, according to the EA "CBP has prepared" We received a response on December 3, 2024 stating that CBP and USFS "are currently working to finalize the Biological Assessment."

Incorporating consultation results as well as the Biological Assessment (BA) that CBP refers to but did not provide with the publication of the EA would ensure that the public and other stakeholders can comment on the project's potential effects on species and habitat during the NEPA process appropriately, as well-informed persons. The failure to provide such information violates NEPA requirements to provide the best available science. The agencies have neglected to provide essential information, thereby obstructing stakeholders from offering well-informed input.

While the EA discusses mitigation measures (e.g., restricted vehicle speeds, daytime operation), it fails to provide evidence that these measures are effective at minimizing impacts to ocelots specifically. The EA also fails to analyze foreseeable uses of these roads by the public, including members of the public driving at high speeds and day or night in ATVs, off-road motor bikes and other vehicles. The agency should provide data or case studies demonstrating the efficacy of these measures and data and the best available science on how secondary uses of the roads by the public could impact ocelots.

The EA does not address cumulative impacts on ocelots in the region and fails to address and analyze other past, present, and reasonable foreseeable actions that could impact ocelots in the region including but not limited to mining operations, exploratory drilling, utility infrastructure development, urbanization and residential expansion, habitat fragmentation and loss, binational conservation challenges, reduced connectivity for cross-border ocelot populations due to border walls, invasive species spread, increased human presence from hunting and recreational activities, hydrological impacts and watershed modifications for mining and border wall construction that impact ocelot habitat, the compounding vulnerability created by climate change, predator management practices, impacts from hunting, including hound hunting, and behavioral disruption by noise and light pollution.

Projects that could compound with other ongoing or future activities affecting ocelot recovery include but are not limited to the Hermosa mine project and the Sunnyside and Flux Canyon exploratory drilling projects in the Patagonia Mountains east of Nogales, dog pack hunting for bobcats and mountain lions in areas where ocelots could be present, as well as other road building projects, border wall construction projects and border stabilization projects at Mariposa Canyon, impacts to northern ocelot breeding populations in Mexico, including from the train project in Imuris, Mexico, cattle grazing permits and increased motorized vehicle access in ocelot habitat. All of these projects are situated in areas with a historical or current presence of ocelots and ocelot habitat. All of this must be analyzed to remedy significant shortcomings in the EA.

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ocelots specifically. The EA also fails to analyze foreseeable uses of these roads by the public, including members of the public driving at high speeds and day or night in ATVs, off-road motor bikes and other vehicles. The agency should provide data or case studies demonstrating the efficacy of these measures and data and the best available science on how secondary uses of the roads by the public could impact ocelots.

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3. Cactus Ferruginous Pygmy Owl (*Glaucidium brasilianum cactorum*)

The EA acknowledges suitable habitat in the area but dismisses potential occupancy based on a lack of documented occurrences. This approach overlooks the pygmy-owl's elusive nature, limited detection effort, and its known low population densities. NEPA requires a comprehensive analysis of existing conditions, and the lack of targeted surveys undermines this analysis. CBP and USFS must conduct surveys specifically for pygmy-owls using standardized protocols to establish whether they occur in the project area.

The EA minimizes pygmy owl habitat impacts based on the faulty assumption that impacts related to vegetation disturbance are "insignificant" due to the small area of disturbance (1.85 acres). While the impact area may be small, pygmy-owls rely on specific vegetation for breeding, cover, and foraging. Fragmentation or degradation of this habitat could significantly disrupt individual owls or habitat connectivity. This analysis fails to account for the cumulative impacts of past, present or reasonably foreseeable projects in the region, as required under NEPA. CBP and USFS must conduct cumulative impact analysis considering how habitat loss and fragmentation from this and other projects affect pygmy-owls regionally.

The EA over relies on avoidance and minimization measures based on the assumption that AMMs (daytime activity, avoidance of breeding season) sufficiently avoid or reduce impacts

to pygmy-owls. AMMs are presumed effective in the EA without detailed justification or monitoring plans. For example, daytime restriction does not address potential noise impacts on pygmy-owls roosting or foraging near the action area. The EA must consider an evidence-based discussion of AMM effectiveness and a monitoring plan to confirm their sufficiency.

The EA assumes that acoustic/auditory disturbances are “discountable” but fails to provide sufficient analysis of the pygmy-owl’s sensitivity to noise or thresholds for disturbance. CBP and USFS must analyze pygmy-owl noise tolerance, specific noise levels expected during construction, and evidence supporting the conclusion that impacts are “discountable.” The agencies have neglected to provide essential information, including the best available science, thereby obstructing stakeholders from offering well-informed input.

The EA assumes that decommissioning of 4.01 acres of road offsets the 1.85 acres of habitat disturbance for pygmy owls. Habitat “offsets” are only meaningful if the decommissioned roads are restored to conditions supporting pygmy-owls. The EA does not describe the quality of the restored habitat, restoration methods, or timelines for achieving functionality. Likewise, evidence on the ground shows that many of the road segments proposed for decommissioning have already been naturally decommissioned or not used in years or decades.

CBP and USFS must provide detailed restoration plans, including timelines, performance criteria, and long-term monitoring to ensure offsetting habitat through decommissioned road segments serves pygmy-owl needs.

4. Mexican Spotted Owl (*Strix occidentalis lucida*)

The EA section for Mexican spotted owls and their critical habitat contains several areas that violate NEPA requirements. NEPA mandates federal agencies assess the environmental impacts of proposed actions in a thorough and objective manner based on the best available information and science.

The EA does not include a discussion of cumulative impacts on Mexican spotted owls, which entails evaluating the cumulative effects of the Proposed Action when considered with other past, present, and reasonably foreseeable future actions, especially when considering other activities in the region. While there is mention of “minimal impacts” and “temporary disturbance,” there is no detailed discussion of how these impacts could combine with other projects or past disturbances to affect the owl population or critical habitat over time. This omission is a failure to comply with NEPA's cumulative impact requirements.

There is a lack of adequate consideration of potential indirect effects. NEPA requires the consideration of both direct and indirect environmental impacts. Indirect effects can include changes in land use patterns, long-term degradation of habitat, or indirect disturbances to species' populations. The EA provides a limited assessment of the indirect effects of the proposed road work and habitat disturbance. For instance, while it notes that prey species might be temporarily disturbed, it does not provide sufficient information on the potential long-term effects on prey populations and how these could indirectly affect the Mexican spotted owl. Additionally, the

document fails to address potential cumulative indirect effects of roadwork across different areas of critical habitat.

There is a lack of adequate mitigation and adaptive management analysis. NEPA requires that mitigation measures are clearly outlined for adverse environmental impacts. Additionally, adaptive management strategies should be considered where uncertainty about the effects exists. The EA does mention some mitigation measures, such as limiting construction activities during the breeding season and avoiding operations during nighttime, but these may not be sufficient given the complexity of the species' habitat and behavior. The document should provide a clearer, more detailed mitigation plan, including monitoring and adaptive management strategies, particularly in areas where uncertainty remains about how activities will impact the owl's habitat or its critical biological features. The measures outlined in Appendix B, such as noise and human disturbance controls, may be insufficient without a clear contingency plan if disturbances are greater than expected.

The EA fails to fully assess the impact on critical habitat. An EA must fully assess the potential impacts on all resources affected by the proposed action, particularly when those resources are protected under the Endangered Species Act. When evaluating critical habitat, NEPA requires a detailed analysis of how the Proposed Action affects the primary constituent elements (PCEs) that are essential for the conservation of the species. The EA provides a relatively brief and superficial assessment of potential impacts to the Mexican spotted owl's critical habitat. While the document claims "minimal impacts" and notes that most of the habitat disturbance is small (1.02 acres of critical habitat), it fails to clearly define how the Proposed Action would affect the primary biological features that are critical for the owl's survival. There is also no mention of how habitat degradation could affect the long-term recovery of the species. Furthermore, the "minimal impacts" statement should be backed by more robust analysis or modeling to justify these claims.

The EA contains unclear analysis of impacts to breeding and foraging habitat. NEPA requires that an EA evaluate not only the physical disturbance of habitat but also the potential for the action to affect species' breeding and foraging activities, particularly when these activities are essential to species recovery. While the EA mentions that the action "would not likely result in direct mortality" and that the majority of disturbance would occur in grassland biotic communities, it does not adequately address how this action might disrupt the Mexican spotted owl's critical breeding or foraging activities. For example, the impact of road decommissioning and tilling on prey species or potential disturbances to nesting sites is not fully explored.

The EA uses inadequate and unsupported claims of discountable effects. NEPA requires a thorough, well-supported analysis of the impacts of a project, and claims that effects are "discountable" need to be substantiated with clear, empirical evidence. The statement that "potential acoustic/auditory and human disturbance impacts to Mexican spotted owls would be unlikely to occur and are considered discountable" lacks the necessary data or studies to substantiate this conclusion. For example, it does not address whether the noise levels during construction would exceed thresholds known to disturb the owls, nor does it consider how the presence of humans in the habitat might disrupt owl activities or affect their use of the area.

In the EA the determination that the project “may affect, but is not likely to adversely affect” Mexican spotted owls and other species is the opinion of CBP which is not an agency with expertise in wildlife management or threatened and endangered species recovery. It is important for the public to understand if USFWS and USFS concur with CBP’s determination.

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Incorporating consultation results as well as the Biological Assessment (BA) that CBP refers to but did not provide with the publication of the EA would ensure that the public and other stakeholders can comment on the project's potential effects on species and habitat during the NEPA process appropriately, as well-informed persons. The failure to provide such information violates NEPA requirements to provide the best available science.

Given the significant and irreversible harm to Mexican spotted owl designated critical habitat, CBP and USFS must abandon the EA and prepare an EIS. An EIS is necessary to fully analyze the direct, indirect, and cumulative impacts of the Proposed Action on Mexican spotted owl recovery; evaluate alternatives that would avoid or minimize impacts; and propose meaningful mitigation measures. By failing to address these issues, CBP and USFS are jeopardizing the recovery of the Mexican spotted owl and violating their obligations under NEPA and the ESA.

5. *Yellow-billed Cuckoo (Coccyzus americanus)*

The EA fails to adequately analyze cumulative impacts to yellow-billed cuckoos. NEPA requires that an EA include an analysis of cumulative impacts, considering the incremental effects of the project combined with past, present, and reasonably foreseeable future actions. The EA fails to discuss how existing stressors in the region—including but not limited to border infrastructure, increased human activity, mining and habitat fragmentation—might compound the impacts of road-building activities on yellow-billed cuckoo populations. The absence of this analysis undermines compliance with NEPA.

The EA presents a dismissive approach to yellow-billed cuckoo habitat disruption. The conclusion that impacts on prey species, vegetation, and habitat will be “minimal” appears speculative and lacks robust scientific backing. Habitat disturbance of even small areas (e.g., the 1.81 acres mentioned) can disproportionately affect sensitive species like yellow-billed cuckoo, especially in riparian-adjacent ecosystems. The reliance on decommissioning other roads to “offset” impacts fails to quantify or substantiate how these areas will serve as functional habitat restoration for yellow-billed cuckoos, which NEPA requires for informed decision-making.

The EA lacks evidence of the effectiveness of mitigation measures for yellow-billed cuckoos. While mitigation measures, such as seasonal work restrictions, are discussed, NEPA regulations require that an agency evaluate whether mitigation is likely to be effective. The EA does not provide evidence or monitoring data to confirm that these measures will successfully

avoid or reduce impacts. The assumption that birds will “fly away from activity areas” downplays the potential for stress, disruption of breeding behavior, or abandonment of habitat during noisy operations.

The EA lacks detail on indirect and long-term effects on yellow-billed cuckoos. The EA does not sufficiently analyze indirect impacts of road construction, such as the potential for increased human traffic, edge effects, predation, and invasive species in the newly developed areas. These long-term consequences could significantly reduce the ecological integrity and cuckoo use of adjacent critical habitat units.

The EA has insufficient analysis of prey base of yellow-billed cuckoos. The assertion that no “long-term change in prey species is likely to occur” due to temporary disturbances lacks supporting data or ecological studies. Construction noise, heavy machinery, and changes in vegetation can have ripple effects on insect populations, which serve as the yellow-billed cuckoo's prey base.

In the EA the determination that the project “may affect, but is not likely to adversely affect” yellow-billed cuckoos and other species is the opinion of CBP which is not an agency with expertise in wildlife management or threatened and endangered species recovery. It is important for the public to understand if USFWS and USFS concur with CBP’s determination. On May 27, 2024 an email was sent from staff at the Center for Biological Diversity to both CBP and the Nogales Ranger District of the Forest Service requesting a copy of the BA that, according to the EA “CBP has prepared” We received a response on December 3, 2024 stating that CBP and USFS “are currently working to finalize the Biological Assessment.”

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6. Chiricahua Leopard Frog (*Rana chiricahuensis*)

The Proposed Action, especially when considered cumulatively with other agency actions in the project area, is likely to harm recovery of the endangered Chiricahua leopard frog. The EA itself admits that: “[a]ctivities related to the Proposed Action may result in an increased potential for vehicle crushing or injury to Chiricahua leopard frogs in areas within or adjacent to suitable habitat” (EA at 85). This acknowledgment alone warrants a far more rigorous analysis than the EA’s cursory finding of “may affect, but not likely to adversely affect” Chiricahua leopard frogs.

The Proposed Action cuts directly through federally designated critical habitat for the Chiricahua leopard frog (see figure 5, below). This critical habitat is already severely degraded due to existing threats, including poor management of grazing allotments by USFS. Construction, repair, and maintenance of the Holden Canyon Connector Road would further fragment habitat, reduce essential dispersal corridors, and increase the risk of vehicle-related mortality—all of which the EA fails to analyze. The EA also fails to consider the foreseeable

impacts of illicit off-road travel, a risk that will increase significantly as a direct result of the Proposed Action.

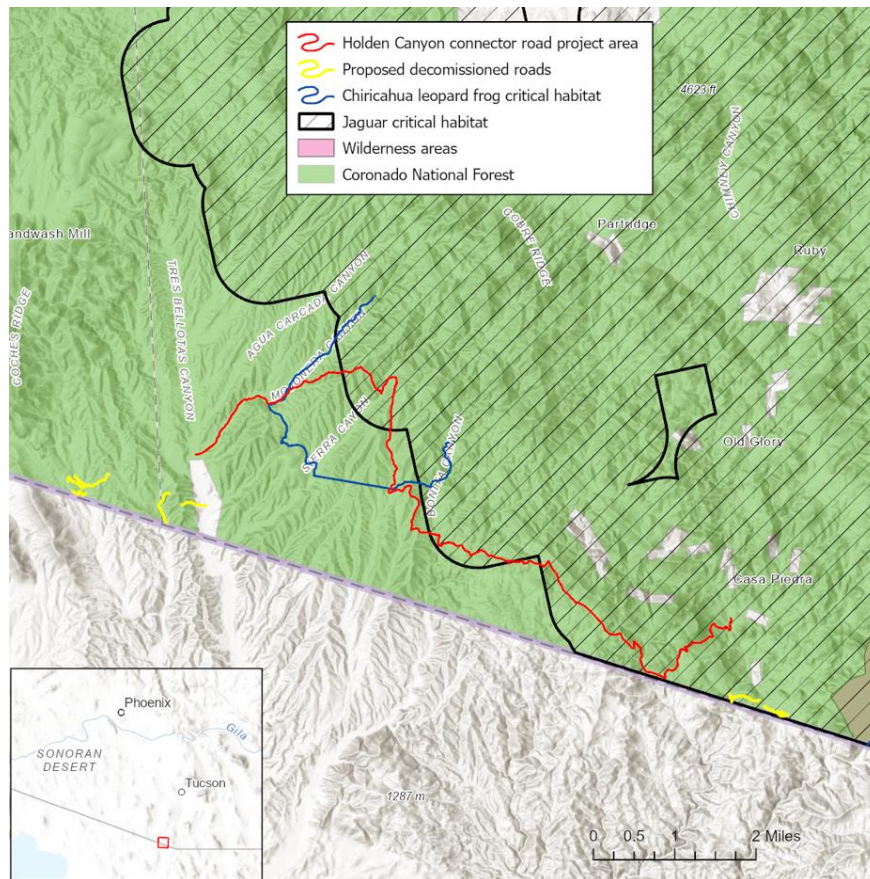


Figure 5: Chiricahua Leopard Frog Critical Habitat and Holden Canyon Connector Road. Map by Curt Bradley, Senior Scientist and GIS Specialist, Center for Biological Diversity.

NEPA requires agencies to analyze the cumulative impacts of a proposed action in conjunction with past, present, and reasonably foreseeable future actions. The EA, however, does not consider the additive and synergistic effects of habitat destruction caused by the Proposed Action combined with ongoing degradation from overgrazing, invasive species proliferation, and other harmful activities. These omissions violate NEPA’s mandate for a “hard look” at environmental consequences and undermine informed decision-making.

Due in large part to USFS mismanagement of grazing allotments, the existing condition of Chiricahua leopard frog critical habitat within the project area is already degraded and poor and does not meet the federally required standards necessary for recovery. The Proposed Action would further degrade and destroy this critical habitat, setting back the recovery of the species. CBP and USFS have failed to consider the cumulative effects of the proposed action in relation to existing agency actions that continue to harm recovery chances for the species.

Expert surveys of Chiricahua leopard frog critical habitat on the Cross-S grazing allotment within the project area provide an illustrative example of the severe degradation of

critical habitat conditions allowed by USFS management neglect. A total of six critical habitat ponds are on this allotment: Mojonera Tank, two ponds labelled as Sierra Tanks, a third called Sierra Well, Upper Turner Tank and Bonita Tank at the terminus of the Critical Habitat stream in Bonita Canyon. Based on a May 4, 2021 field review experts², Mojonera Canyon has been degraded by cattle with signs of long-term use. The surveyed stream course was significantly grazed, browsed, littered with cattle feces and exhibited numerous trails, wallows and ground disturbances. Large concentrations of cattle feces were left on significantly impacted riparian benches. Cattle sign was both old and recent, indicating a sustained presence in the area. Cattle were also observed during the same 2021 survey. Critical habitat in Bonita Canyon showed similar impacts to Mojonera Canyon and was significantly impacted by cattle. The six ponds within the Cross-S allotment all showed significant impacts from cattle use. No exclosure fences were observed at any pond in this allotment. Abundant cattle feces surrounded the shoreline of all six ponds. Vegetation in surrounding areas was diminished through grazing/browsing in the pond vicinity. A strong stench of feces permeated the air at all locations. The two ponds known as the Sierra Tanks were completely dry and cow sign appeared consistent and extensive. Waterways leading to ponds were significantly impacted by cattle. Upper Turner Tank in Alamo wash contained feces. No understory vegetation remained in the surrounding area with multiple cattle trails leading to stock pond.

Hundreds of Chiricahua Leopard Frogs were observed in Mojonera Tank with some in the immediate stream vicinity. This occupied pond was contaminated with cattle feces, showed significant grazing/browsing pressure along the shoreline, and a strong stench of cattle feces permeated the air. This pond may have been augmented with captive-bred Chiricahua Leopard Frogs. No frogs were observed elsewhere on the allotment, and they had no uncontaminated habitat option. These conditions do not support recovery.

The destruction and degradation of Chiricahua leopard frog critical habitat from the Proposed Action, combined with ongoing impacts from overgrazing and other agency actions, are likely to set back recovery efforts for this species. As federally designated critical habitat is essential for species recovery under the ESA, CBP and USFS have a legal and ethical obligation to avoid further harm.

Because, as the EA acknowledges, the proposed road connector is likely to degrade Chiricahua Leopard Frog habitat, CBP and USFS must disclose those impacts, together (cumulatively) with the past, present, and foreseeable harms from destructive levels of cattle grazing as well as all other agency actions that have impacted the species. The failure to assess these cumulative impacts constitutes a violation of NEPA.

Given the significant and irreversible harm to Chiricahua leopard frog designated critical habitat, CBP and USFS must abandon the EA and prepare an EIS. An EIS is necessary to fully analyze the direct, indirect, and cumulative impacts of the Proposed Action on Chiricahua leopard frog recovery; evaluate alternatives that would avoid or minimize impacts; and propose meaningful mitigation measures, including fencing critical ponds, rehabilitating degraded riparian areas, and reducing grazing impacts on critical habitat. By failing to address these issues with the preparation of an EIS, CBP and USFS are jeopardizing the recovery of the Chiricahua leopard frog and violating their obligations under NEPA and the ESA.

7. Sonora Chub (*Gila ditaenia*)

The EA states that “[p]otential impacts [to Sonora chub] would be the same as discussed for the Gila topminnow above” (EA at 87). However, nowhere in the document is there discussion of potential impacts to Gila topminnow. Perhaps this analysis was inadvertently deleted before publication. Or perhaps this section was copied and pasted from a different document and never reviewed. Regardless, such a comparison — which the EA failed to successfully make — would incorrectly equate impacts to Sonora Chub with Gila Topminnow. The analysis assumes that impacts to Sonora chub would mirror those for the Gila topminnow. However, the two species have different ecological requirements, behavior, and vulnerabilities. For example, Sonora chub depends on perennial pools like the *tinaja*, which could be more sensitive to sedimentation and hydrological changes. Likewise, the specific dietary or habitat needs of Sonora chub might differ, potentially making them susceptible to road decommissioning impacts.

While the EA mentions sedimentation and erosion control measures, it assumes these measures will fully mitigate potential impacts. Sediment transport in dynamic environments like California Gulch could still negatively affect aquatic habitats, even with best management practices, especially during unexpected weather events or equipment use near riparian areas.

The EA fails to address connectivity and population fragmentation. The analysis overlooks how road decommissioning and related activities could temporarily or permanently disrupt the Sonora chub's habitat connectivity, especially if sediment deposition alters water flow or pool formation. Temporary disruptions during decommissioning could have long-lasting effects on small populations in isolated habitats like California Gulch.

The EA relies on unsubstantiated assumptions of long-term benefits of decommissioning roads segments, some of which have already been naturally decommissioned.

The claim that long-term road decommissioning will result in beneficial effects does not consider the potential for new sediment inputs during road abandonment (e.g., roadbed erosion), the reality that some of the roads proposed to decommission do not exist in reality.

The EA fails to analyze cumulative impacts. The EA does not adequately evaluate cumulative impacts to Sonora chub, particularly when considering other stressors such as climate change, border infrastructure, or water resource development. Sedimentation impacts may interact synergistically with these stressors, exacerbating risks to the species.

The EA relies on assumptions without supporting evidence. The analysis does not cite site-specific studies or baseline data to justify conclusions that impacts will be insignificant or entirely mitigated. NEPA requires agencies to provide high-quality information and to disclose uncertainties.

There is inadequate alternatives analysis. The EA does not explore alternatives that could further reduce impacts to Sonora chub. For example, the avoidance of road decommissioning

near sensitive riparian zones and the use of additional sediment retention strategies, like bioengineered structures.

The EA fails to address adaptive management. While AMMs are mentioned, the EA does not discuss adaptive monitoring or contingency measures if sedimentation impacts exceed predictions. NEPA requires a discussion of measures to address uncertainties and ensure adequate mitigation.

The EA fails to consider critical habitat in the area. While the Action Area does not include critical habitat, NEPA requires consideration of how the project might affect species reliant on designated critical habitat nearby. Increased sedimentation or altered hydrology could indirectly affect Sycamore Canyon's critical habitat.

CBP and USFWS should conduct site-specific sedimentation modeling and baseline hydrology studies to validate claims about impacts being insignificant, provide cumulative impacts analysis that accounts for regional stressors, including climate change and border-related activities and incorporate the best available science to assess species-specific vulnerabilities for the Sonora chub, rather than relying on generalizations based on the Gila topminnow.

8. Monarch Butterfly (*Danaus plexippus*)

The EA underestimates habitat loss and fragmentation for monarch butterflies. CBP and USFWS minimize the impact of losing 14.93 acres of biotic vegetation by suggesting it is "insignificant" without fully addressing habitat fragmentation, which can have disproportionate effects on species like monarchs that rely on interconnected habitat corridors. The EA should include a detailed analysis of how habitat fragmentation will affect monarch movement, reproduction, and access to resources, particularly in riparian areas.

The EA overgeneralizes traffic impacts by dismissing road mortality concerns based on comparisons to higher-traffic roads, yet it fails to assess how even low-traffic roads can contribute to cumulative impacts, including mortality from vehicular collisions and disturbance during migration. There should be a site-specific analysis of how increased use of new roads in the project area, even at lower traffic volumes, might increase mortality risks, particularly during migration periods when monarchs are more vulnerable.

The EA has insignificant analysis of milkweed and nectar resources. It does not address whether the project area contains or could support native milkweed or other key nectar plants essential to monarch lifecycle stages. Construction and decommissioning activities could disrupt these resources. CBP and USFWS should conduct surveys and mapping of milkweed and nectar plants in the analysis area, along with plans to restore or enhance these resources as part of the project mitigation measures.

The EA over relies on road decommissioning as mitigation, claiming that decommissioning 4.01 acres offsets the loss of 14.93 acres without providing evidence that the decommissioned roads, some of which have already been naturally decommissioned, will successfully restore functional monarch habitat. CBP and USFWS need to provide specific

evidence or monitoring data from similar projects demonstrating the efficacy of road decommissioning as habitat restoration for pollinators like monarchs.

The EA fails to consider cumulative impacts of habitat loss, road construction, and climate change on monarch populations, which are already experiencing significant declines across their range. CBP and USFWS must include a cumulative impacts analysis that considers regional habitat loss trends, climate change, pesticide use, and other stressors on monarch butterflies.

The EA lacks sufficient depth in its analysis of alternatives, as required by NEPA. For instance, it does not explore whether modifying the road alignment, reducing its width, or timing construction to avoid peak migration periods could reduce impacts. CBP and USFWS must evaluate additional alternatives and mitigation measures, such as seasonal restrictions on construction, to minimize potential impacts on monarch butterflies.

9. *Bartram's stonecrop (Graptopetalum bartramii)*

The EA makes incorrect assumptions about the presence and habitat of Bartram's stonecrop. Absence of evidence is not evidence of absence. While the EA states no plants were observed during surveys, the absence of detections does not mean Bartram's stonecrop is definitively absent. Surveys may not have been comprehensive or conducted at appropriate times for detection (e.g., during blooming seasons).

CBP and USFWS seem to incorrectly underestimate suitable habitat: The EA downplays the potential for suitable habitat, focusing only on the immediate analysis area. Bartram's stonecrop could exist downstream where indirect impacts, such as sedimentation, may occur.

CBP and USFWS should conduct surveys during optimal conditions to confirm absence and reevaluate the analysis of suitable habitat to include areas potentially impacted by sedimentation or fugitive dust.

There is inadequate analysis of potential indirect and downstream impacts. The EA acknowledges that activities could cause erosion, sedimentation, and fugitive dust, but it dismisses impacts due to the distance (2 miles) of known populations. Sediment and dust can travel significant distances, especially in areas with steep topography or high winds, potentially affecting downstream or adjacent areas where undiscovered plants may exist. The potential for cumulative sedimentation impacts from both road construction and decommissioning was not fully addressed. CBP and USFWS must conduct more thorough analysis of indirect effects on downstream and adjacent habitats, including modeling of sediment and dust dispersion over the landscape.

The EA includes only minimal discussion of cumulative impacts concerning Bartram's stonecrop. Bartram's stonecrop faces multiple threats, including erosion and human activity, as acknowledged in the EA. However, the cumulative effects of the proposed action combined with existing stressors (e.g., recreational use, border activity, and climate change and illegal collection of succulents) are not discussed in detail. CBP and USFS must conduct cumulative impact

analysis that considers how the Proposed Action interacts with ongoing or reasonably foreseeable activities in the region.

The mitigation measures presented for Bartram's stonecrop may be inadequate and unenforceable. The EA references Appendix B for AMM measures but does not explain how these measures will be implemented, monitored, or enforced. It is also unclear whether AMM measures address specific threats to Bartram's stonecrop, like dust and sedimentation, effectively. The decommissioning of road segments is highlighted as an offsetting measure, but the actual benefit to habitat is speculative without clear plans for restoration or monitoring and doesn't mention that many of the roads segments proposed for decommissioning are already naturally decommissioned. CBP and USFWS must provide a detailed evaluation of whether road decommissioning will measurably benefit Bartram's stonecrop or its habitat and if so, how will it do so.

The EA improperly narrows the scope of analysis to the immediate project area, excluding broader regional impacts to Bartram's stonecrop. It also gives insufficient consideration of alternatives. The EA does not discuss whether alternatives could reduce sedimentation and dust impacts more effectively, such as alternate construction methods or enhanced restoration efforts post-construction.

*10. Beardless Chinchweed (*pectis imberbis*)*

The EA does not sufficiently address cumulative impacts to beardless chinchweed. It focuses solely on direct impacts (e.g., trampling and dust) but does not consider broader, indirect, and cumulative effects such as habitat fragmentation caused by road construction and decommissioning, and increased edge effects, such as altered hydrology, invasive species introduction, or changes in soil conditions. The EA does not address cumulative impacts on the beardless chinchweed in the region and fails to address and analyze other past, present, and reasonable foreseeable actions that could impact the plant. NEPA requires a comprehensive cumulative impacts analysis to understand the additive or synergistic effects of multiple actions in the region.

While the EA mentions dust-related impacts, it refers vaguely to mitigation measures without demonstrating their efficacy for protecting beardless chinchweed. Dust can reduce photosynthesis, impair reproductive success, and alter soil chemistry, yet these impacts are not explored in detail. Without supporting studies or mitigation-specific thresholds, the conclusion of "not likely to adversely affect" is speculative at best.

The EA broadly references Avoidance and Minimization Measures (AMMs) but does not clearly describe measures specific to beardless chinchweed. Appendix B is not directly included in the analysis section, making it unclear whether AMMs adequately address threats like trampling or habitat alteration.

The EA should include enforceable commitments to monitoring and adaptive management if beardless chinchweed is found during construction.

The conclusion that the Proposed Action "may affect, but is not likely to adversely affect" beardless chinchweed lacks a rigorous basis. The determination appears to be based on an assumption of limited habitat without a clear scientific rationale. NEPA requires agencies to substantiate their findings with robust evidence. While the EA states that critical habitat does not overlap with the action area, this does not negate the obligation to assess potential impacts on the species itself, particularly if the action affects areas that function as de facto habitat corridors or refugia.

CBP and USFS must conduct a rigorous quantitative dust analysis and set enforceable thresholds for dust mitigation. CBP and USFS must analyze cumulative impacts from related actions in the area, including how road construction may interact with climate change and invasive species pressures.

CBP and USFS must clarify mitigation commitments with mitigation measures specific to beardless chinchweed included in the body of the EA with enforceable requirements.

The EA does not satisfy NEPA's "hard look" requirement because it does not rigorously evaluate potential habitat or account for survey limitations.

F. CBP and USFS failed to adequately analyze impacts and effects of the Proposed Action, including cumulative effects, on wildfire risk.

CBP and USFS failed to adequately analyze the increased risk of wildfire associated with forest roads when analyzing the proposed expansion of roads for CBP. USFS admits "Wildfires ... negatively impact recreation by damaging vegetation, roads, and recreation areas"³ and recent wildfires are responsible for "erosion, sedimentation and the increase for invasive species establishment."⁴ While fire is an essential process in dry forests, many fires started by humans burn outside of the natural fire season and result in harmful consequences, including those cited above. Researchers at WildEarth Guardians recently summarized these effects as follows:

"Forest roads can increase the occurrence of human-caused fires, whether by accident or arson, and road access has been correlated with the number of fire ignitions (Syphard et al. 2007,⁵ Yang et al., 2007,⁶ Narayanaraj and Wimberly 2012,⁷ Nagy et al. 2018⁸). A recent study found humans ignited four times as many fires as lightning, representing 92% of the fire ignitions in the eastern United States and 65% of the fire ignitions in the western U.S. (Nagy et al. 2018). Another study reviewed 1.5 million fire records over 20 years and found human-caused fires were responsible for 84% of wildfires and 44% of the total area burned (Balch et al. 2017⁹).

In addition to changes in frequency, human-caused fires change the timing of fire occurring when fuel moisture is significantly higher than lightning-started fires (Nagy et al. 2018.). Forest roads may also limit fire growth acting as a fire break and providing access for suppression (Narayanaraj and Wimberly 2011, Robbinne et al. 2016¹⁰). The result is a spatial and temporal distribution of fire that differs from historical fire regimes.

Roaded areas create a distinct fire fuels profile which may influence ignition risk and burn severity (Narayanaraj and Wimberly 2013). Forest roads create linear gaps with reduced canopy cover, and increased solar radiation, temperature, and wind speed. Invasive weeds and

grasses common along roadsides also create highly combustible fine fuels. These edge effects can change microclimates far into the forest (Narayanaraj and Wimberly 2012, Ricotta et al. 2018¹¹). While there is little definitive research on roads and burn severity, an increase in the prevalence of lightning-caused fires in roaded areas may be due to roadside edge effects (Arienti et al 2009,¹² Narayanaraj and Wimberly 2012). Furthermore, heavily roaded watersheds have typically received intensive management in the past leaving forests in a condition of high fire vulnerability (Hessburg and Agee 2003¹³).

According to the Forest Service, roadless areas are remote and secure from many human impacts such as unintentional fire starts or arson. A forest fire is almost twice as likely to occur in a roaded area than a roadless area.¹⁴ In fact, human-ignited wildfire is almost five times more likely to occur in a roaded area than in a roadless area.¹⁵ Higher road density correlates with an increased probability of human-caused ignitions. (Syphard et al. 2007).”¹⁶

USFS and CBP failed to analyze the clear likelihood of increased fire risk resulting from the proposed action, while misleadingly minimizing the expected increase and public use of the Holden Canyon Connector Road. As demonstrated in the “reading library” of scoping comments on the USFS website, off-roading groups and hunting groups have both indicated clear intentions to use the new road, stating that the project “will provide improved recreational access” (comment from Trail Riders of Southern Arizona), and “be a benefit to hunters and game by providing better road access” (comment from Huachuca Gould's Chapter of the National Wild Turkey Federation). This increased public and recreational use will directly increase the threat and frequency of human-caused wildfire ignitions in the area, which CBP and USFS have wholly failed to analyze.

Additionally, CBP and USFS have failed to analyze how the likely spread of invasive species resulting from the Proposed Action (which is explained in depth below) would result in increased fire risk

G. USFS and CBP failed to adequately analyze the cumulative impacts and effects of the proposed action on invasive species.

The EA fails to adequately address the cumulative impacts of the proposed project on invasive species, as required under NEPA. The EA acknowledges that road construction, use, and maintenance can contribute to the spread of invasive species like Lehmann lovegrass (*Eragrostis lehmanniana*) and buffelgrass (*Pennisetum ciliare*), which pose significant threats to native ecosystems and fire regimes, but its analysis is flawed and insufficient regarding the impacts of the Proposed Action.

Lehmann lovegrass and buffelgrass compete with native plant species and create unnatural fire conditions, worsening burn frequency and severity. Both Lehmann lovegrass and buffelgrass are prolific seed-producers that are well-adapted to fire and grazing. This allows them to out-compete other native plants, posing serious risks to native vegetation and altering fire regimes.

The EA admits that roads can increase the dispersal of such species stating “The potential spread of invasive species along disturbed areas in and adjacent to proposed road construction would be likely” (EA at 42), yet the EA falsely states that this would not likely “result in a measurable increase in invasive species or other fuels or measurable change to fire frequency within the analysis area or vicinity as compared to existing conditions due to the existing widespread presence of invasives” (EA at 42).

One major flaw in this argument is the unsupported claim that invasive species are already widespread throughout the project area. This claim, that presence of invasives like buffelgrass are widespread throughout the area of analysis, is not supported. While it makes sense that buffelgrass would be present in much of the Project Area – especially the already-disturbed areas where road decommissioning is planned – CBP and USFS have not provided an analysis that only considers and maps buffelgrass prevalence on currently undisturbed areas, where existing prevalence of the species much lower, and where the risk of establishment and spread is much higher. NEPA requires agencies to provide rigorous and transparent analysis to support such conclusions; however, this failure to differentiate between previously disturbed and undisturbed areas undermines the credibility of the EA and prevents a proper evaluation of how the project may exacerbate the spread of invasive species.

Additionally, CBP and USFS have failed to cumulatively analyze the impact of the Proposed Action on the spread of invasive species in relation to past, present and future agency actions including cattle grazing and border barrier construction projects. CBP and USFS must disclose the impacts of road usage and increased traffic not just on the proposed Holden Canyon Road, but on all connected roads as well. A 2023 United States Government Accountability Office (GAO) report details the increase in invasive vegetation that has occurred as a result of border wall construction, stating “Clearing lands for border barrier construction damaged native vegetation... [and] leaving the lands cleared without reseeding them with native vegetation allowed invasive species to take root.”¹⁷ The report continues “FWS officials told us that invasive plant species took root at project sites in Texas, where contractors cleared native vegetation to create staging areas to store construction equipment and materials, although the contractor ultimately did not install any barrier in these locations.”

A 2021 U.S. Department of the Interior (“DOI”) presentation on the impacts of border wall construction to DOI lands stated “Extensive areas of disturbed soils within the construction areas are already leading to the spread of noxious, invasive plant species that threaten native species conservation. These areas will require many years of monitoring and treatment to protect park resources.”¹⁸ A November 2022 memo from the San Bernardino National Wildlife Refuge entitled *SBNWR Border Wall Status and Impacts* highlighted “Ongoing concerns for post construction spread of invasive and non-native plants onto refuge.”¹⁹ The EA fails to analyze the cumulative impacts of the proposed action in relation to these existing impacts that are already causing spread of invasive species in the project area and neighboring lands.

The EA’s treatment of mitigation measures is also inadequate. While it acknowledges the risk of invasive species spread, it fails to propose robust and enforceable strategies to prevent or minimize this impact. Despite noting that “request for long-term monitoring of decommissioned roads” was a topic of concern in the scoping phase, the EA does propose a long-term monitoring

plan for either the decommissioned or the proposed road segments. Such long-term monitoring of invasive species is essential for addressing the persistent risks associated with road construction and maintenance.

In sum, the EA fails to meet NEPA's requirements by inadequately analyzing the impacts of invasive species spread—particularly in relation to fire regimes, cumulative effects, and mitigation measures. Its unsupported conclusions, lack of cumulative analysis, insufficient mitigation strategies, and failure to incorporate the best available science render the EA legally and substantively deficient. Without a more rigorous evaluation, the EA cannot serve as a basis for decision-making or fulfill NEPA's intent of fostering informed public and agency review.

H. The destruction of special status and rare plants warrants the preparation of an EIS

The Proposed Action will cause the destruction of sensitive and rare plant species protected by USFS, yet the EA fails to adequately analyze or mitigate these impacts, as required under NEPA. In addition the ESA-protected species listed above, the project area contains several USFS-listed sensitive plant species, including Pima Indian mallow (*Abutilon parishii*), chiltepin (*Capsicum annuum* var. *glabriusculum*), Santa Cruz beehive cactus (*Coryphantha recurvata*), Wiggins milkweed vine (*Metastelma mexicanum*), and Arizona passionflower (*Passiflora arizonica*). According to the EA, 55 individuals of these rare plants were observed in the analysis area, with 26 of them located directly within the footprint of the proposed new road or road improvements. These plants, and their unique habitats, will be irreparably destroyed by construction, maintenance, and increased traffic along the proposed Holden Canyon Connector Road.

NEPA requires agencies to take a “hard look” at the impacts of their proposed actions on sensitive biological resources, including rare plants. However, the EA does not sufficiently evaluate the direct, indirect, and cumulative effects of destroying these plant populations or the loss of habitat that sustains them. While the EA acknowledges the presence of these plants, it fails to provide meaningful analysis of how their destruction will affect the long-term viability of these species. For example, the EA does not explain whether mitigation measures, such as transplantation or seed banking, are feasible or effective, nor does it assess the cumulative impacts of habitat loss in combination with other stressors like invasive species spread, grazing, and climate change. This lack of meaningful analysis violates NEPA's requirements.

The destruction of these plants undermines USFS's obligation to conserve sensitive species under its Sensitive Species Program. Many of these species, such as chiltepin and Arizona passionflower, rely on highly specific microhabitats, including rock outcrops and boulder-strewn slopes, that cannot be easily restored once disturbed. Furthermore, the EA reveals gaps in survey data, admitting that additional individuals of Arizona passionflower and Wiggins milkweed vine may exist in the project area but were not observed due to limited visibility. This raises concerns about the adequacy of the EA's baseline data. Without accurate baseline information, the true extent of the Proposed Action's impact on sensitive plant species cannot be determined, and the NEPA analysis is inadequate.

In light of these deficiencies, an EIS is required to fully evaluate the irreversible impacts of the Proposed Action on sensitive plant species and their habitats. An EIS would ensure a more

comprehensive cumulative impacts analysis, accounting for ongoing threats like invasive species proliferation along road corridors and habitat fragmentation from other nearby projects.

I. CBP and USFS failed to fully analyze and consider the cumulative impacts of border infrastructure projects carried out under REAL ID Act waivers.

1. CBP and USFS have failed to analyze the severe, cumulative harms of border wall construction.

NEPA requires federal agencies to take a "hard look" at cumulative impacts by considering the combined effects of past, present, and reasonably foreseeable future actions. CBP and USFS have failed to meet this standard by neglecting the significant environmental and cultural harms caused by border wall construction near the project area.

To expedite this construction, DHS has insisted on using an obscure authority under the REAL ID Act to exempt border wall projects from critical environmental laws, including those within and near the Proposed Action's affected area. CBP's unwillingness to adhere to these laws has demonstrated the agency's total disregard for environmental stewardship, cultural resource protection, stakeholder engagement, and transparency. The agency's insistence on operating outside the scope of these bedrock environmental laws has led to hundreds of miles of border walls, roads, and lighting being built across the borderlands with no meaningful analysis of the clear harms the construction would cause, resulting in severe destruction of environmental and cultural resources across the borderlands. CBP and contractors also blasted Native American cultural and burial sites, decimated ancient springs vital to endangered, destroyed portions of ecosystems vital to human society and damaged the critical habitat and movement corridors of some of the most sensitive, iconic and important wildlife species in North America. If these actions occurred anywhere outside of the border region, where our nation's laws were still enforced, the contractors and agencies responsible for them would be prosecuted for such severe destruction to public resources.

These actions have resulted in significant and often irreversible damage, including the destruction and of habitat for ESA-listed species including jaguars, ocelots, Chiricahua leopard frogs, Mexican spotted owls, cactus ferruginous pygmy owls, Bartram's stonecrop, yellow-billed cuckoo and other species. The cumulative impacts of these actions, combined with other regional stressors, have not been meaningfully analyzed in the EA, violating NEPA's requirements for cumulative impact analysis.

In 2020 and 2021, CBP contractors dynamited mountainsides and built access roads on the Coronado National Forest in areas near the proposed Project area. Many of these locations remain at serious risk of erosion or in danger of complete collapse. A September 2023 report by the Government Accountability Office (GAO) noted:

[C]ontractors disturbed large tracts of mountainside to install barrier, build access roads, and clear construction staging areas, leaving steep slopes unstable and at risk of collapse. In addition, according to CBP officials, incomplete erosion control measures along the

barrier and patrol roads threatened the integrity of the barrier system itself. (GAO Report, 2023. Pg 29).²⁰

The GAO report specifically highlights damages to Pajarito Mountains in the Coronado National Forest, stating:

Contractors built a large construction staging area near the top of a mountain in the Pajarito Mountains on the Coronado National Forest in Arizona, clearing the mountainside of its vegetation that kept the soil in place. As a result, silt is draining down the side of the mountain and, according to Forest Service officials, is beginning to fill a human-made pond, threatening to eliminate it as a drinking source for cattle and wildlife. Moreover, the entire mountainside is in danger of collapse, according to a Forest Service official. (*Ibid.*)

Despite these clear warnings about the dire habitat loss and destruction, and existing safety hazards neighboring the Proposed Action's area of impact, the EA has failed to mention, much less meaningfully analyze, the cumulative impacts of the Proposed Action in relation to the widespread and still-prevalent harms caused by nearby border wall construction.

The severe danger to people and wildlife posed by existing border wall construction on the Coronado National Forest requires immediate attention and remediation. CBP and USFS's priority should be restoring and revegetating the damages cause by border wall construction, rather than proposing to build new roads that will further fragment and destroy wildlife habitat.



Erosion below the site of a cleared staging area (left); erosion below an area where only several border barrier panels were installed as of January 2021 (right).

Source: GAO. | GAO-23-105443

FIGURE 5: Damage to Pajarito Mountains in Coronado National Forest as printed in 2023 US GAO Report: “Additional Actions Needed to Address Cultural and Natural Resource Impacts from Barrier Construction”

The EA makes claims like the following: “The Proposed Action, when combined with past, present, and reasonably foreseeable actions in the analysis area, would not result in major cumulative impacts on federally listed species or adverse modification of designated Critical Habitats. Any indirect, cumulative impacts on federally listed species would be minor” (EA at

91). Yet without a mention or analysis of the significant impacts of past (as well as future foreseeable) border wall construction, this is a conclusory allegation that cannot be relied on to be true.

To remedy this, the EA should be abandoned and an EIS should be prepared that accounts for cumulative impacts from past, present and future CBP activities in the area including border wall construction and associated infrastructure as well as all other projects/activities in the area that may affect resources, including but not limited to wildlife, vegetation, water quality/quantity, air quality, recreation, transportation/traffic, and cultural resources. This should include all existing and proposed border infrastructure installation projects including but not limited to other road construction, Make Safe and Remediation activities on the former 284 Border Barrier construction project area, new wall construction at California Gulch, and remediation efforts in Mariposa Canyon. Analysis should also include all existing or proposed projects in similar habitat in the region for species affected in the proposed Project, including but not limited to, mine proposals, cattle grazing, road construction and other projects affecting the Coronado National Forest and Tumacácori EMA.

2. CBP's "Environmental Stewardship Plans" are not a substitute for NEPA, do not constitute meaningful review, and are not scientific basis to examine cumulative impacts

CBP has published a series of what the agency calls "Environmental Stewardship Plans" (ESPs), which the agency has falsely touted as a viable alternative to NEPA and a framework for stakeholder engagement.²¹ We must note that ESPs are not and will never be an adequate substitute for the NEPA process. ESPs fail to meet the rigor set forth by NEPA in numerous ways. As stated in the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA, alternatives are "the heart of the environmental impact statement" (40 C.F.R. § 1502.14). See also Forest Service Handbook 1909.15, Ch. 14 (describing the importance of analyzing a range of reasonable alternatives). Whether in the context of an EIS or an EA, NEPA requires agencies to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." (42 U.S.C. § 4332(2)(H)). As such, any effort to reference CBP's ESPs in relation to analyzing the potential cumulative impacts of the Proposed Project will not suffice as any sort of meaningful or scientific analysis and not qualify as an adequate examination of cumulative impacts.

II. USFS and CBP Should Comply with Requirement of the Forest Plan, the National Forest Management Act and Other Rules and Regulations

In addition to impacts to species listed under the ESA, CBP and USFS must protect sensitive species and comply with the requirements of the Coronado National Forest, Forest Plan and agency manuals, policies and directives requiring protection of sensitive species as required by the National Forest Management Act (NFMA).

As stated in the Final EIS for the revised Forest Plan (2018):

The regional forester's sensitive species program is the Forest Service's dedicated initiative to conserve and recover plant and animal species according to Forest

Service policy found in Forest Service Manual 2670. The Coronado National Forest improves habitat and restores ecosystems for sensitive species through vegetation treatments and management practices. Sensitive species are those plant and animal species identified by the regional forester for which population viability is a concern, as evidenced by the following:

- significant current or predicted downward trends in population numbers or density
- significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution. (U.S. Forest Serv., Final Programmatic Environmental Impact Statement for Revision of the Coronado National Forest Land and Resource Management Plan, at 251 (Apr. 2018).²² [hereinafter FEIS].)

“Other forest planning species” are not listed as threatened, endangered, or sensitive but still have species-specific threats to their population viability that should be addressed by the coarse-filter analysis. FEIS. FEIS Table 73 has the Coronado's list of sensitive species, including those in the Tumacácori Ecosystem Management Area, which covers the project area. *See* FEIS at 252–54.

At a minimum, USFS and CBP should analyze how the project's impacts, alone and cumulatively with other past, present, and reasonably foreseeable activities may affect these species and complies with these requirements.

We urge USFS and CBP to do the required analysis of the baseline conditions, numbers, and habitat for these species (the same is true for ESA-listed species) in the lands/waters potentially affected by the project, in accordance with both NEPA, the NFMA, and agency manuals, policies and directives.

III. CBP and USFS Failed to Evaluate How the Proposed Action Will Likely Lead to Significantly Increased Motorized Traffic, Including Increased Smuggling Activity, in Previously Undisturbed Areas.

A. Failure to Analyze Increased Motorized Recreation and Hunting Traffic

Despite numerous concerns raised during the scoping process, CBP and USFS have failed to adequately address the clear likelihood that the Proposed Action will lead to increased motorized vehicle traffic, including off-road recreation and hunting. The EA admits that “the proposed Holden Canyon Connector Road would provide expanded access for recreation” (EA at 7). Public comments from off-roading and hunting groups in the scoping phase, including statements from the Trail Riders of Southern Arizona and the Huachuca Gould's Chapter of the National Wild Turkey Federation, indicate strong interest in using the new road for recreational purposes.

Yet the EA draws the conclusion that “there would **not likely be a measurable long-term increase in vehicular traffic** in the analysis area under the Proposed Holden Canyon Connector Road Project EA 28 November 2024 Action; therefore, long-term, adverse impacts under the Proposed Action would be negligible, and similar to the No Action Alternative” (EA at 27) (emphasis added). This conclusion is irrational and inadequate.

While the EA makes an attempt to justify this flawed conclusion by saying that decommissioning the 18 segments of road will reduce vehicular traffic, this reasoning is false for two reasons: 1) as described in detail above, many of the road segments identified for decommissioning are not currently operable so decommissioning them will have no impact on vehicular travel, and 2) the road segments being decommissioned that do appear to be currently operable are small shortcuts or routes that parallel existing roadways. Building an entirely new route that connects two previously isolated canyons will bring with it a host of new recreational traffic, the appetite for which is indicated by the comments above from dirt-biking and hunting groups.

The EA’s failure to analyze a clearly likely increase in recreational traffic, and how this increased traffic will impact fire regimes, invasive species, endangered species, and overall environmental health, is a glaring failure. This violates NEPA’s requirement to assess “reasonably foreseeable” effects, as expanded access and increased public use are foreseeable outcomes of the Proposed Action.

Increased public access to previously undisturbed areas poses a well-documented risk of heightened wildfire activity. Numerous studies have shown that roads increase human-caused ignitions, with roaded areas experiencing disproportionately higher fire frequencies than roadless ones.^{23 24 25} Despite this, the EA summarily concludes—without evidence—that the project will not significantly alter fire regimes. This dismissal overlooks the compounding fire risks from invasive species spread along road corridors, which are catalyzed by increased traffic and disturbance. NEPA mandates a rigorous examination of these risks, yet the EA lacks any substantive analysis or mitigation measures to address them.

Additionally, the EA fails to account for the cumulative impacts of road construction, maintenance, and expanded public access on wildlife and ecosystems. These impacts include direct effects such as wildlife mortality from vehicle collisions and indirect effects such as habitat fragmentation, behavioral modification, and the facilitation of invasive species proliferation. Currently, the project area experiences minimal illicit off-road traffic. However, the proposed road would introduce new access points, increasing the likelihood of cross-country travel that could exacerbate these issues. This omission represents a clear failure to meet NEPA’s requirement for a “hard look” at the environmental consequences of federal actions.

USFS policy on roadless areas explicitly recognizes that roadless areas are more likely to support healthy ecosystems and conserve native biodiversity due to the absence of road-related disturbances:

“Roadless areas are more likely than roaded areas to support greater ecosystem health, including a diversity of native and desired non-native plant and animal communities, due

to the absence of disturbances caused by roads and accompanying activities. Roadless areas also may conserve native biodiversity by providing areas where nonnative invasive species are rare, uncommon, or absent serving, and by serving as a bulwark against the spread of nonnative invasive species.” (36 CFR § 294.11)

While the Proposed Action does not fall within a designated roadless area, the scientific principles underlying this policy apply to any undeveloped land, including the Holden Canyon Project Area. The EA ignores these established principles and fails to justify why such impacts are deemed insignificant.

B. Failure to Analyze Increased Illicit Cross-Border Traffic resulting from Proposed Action

CBP and USFS have also failed to consider the likelihood that the Proposed Action will increase illicit cross-border traffic and smuggling activity. New road construction often provides smugglers with improved infrastructure, making it easier to traverse previously inaccessible terrain. Historical evidence strongly suggests that new and upgraded roads often facilitate, rather than deter, such activity. For example, after CBP constructed an all-weather road in the San Bernardino Valley in 2008, smugglers began using it within three days. The 2008 Annual Report for the San Bernardino National Wildlife Refuge documents how drug smugglers quickly exploited the new road, leading to a notable increase in drive-through smuggling incidents. The report recounts that smugglers were using the new road within just three days of its completion:

“Within three days of the completion of the project in the San Bernardino Valley, drug smugglers began cutting portions of the Normandy barrier, which a group of men could then physically lift and move to allow vehicles loaded with marijuana to drive into the United States using the new system of all-weather roads constructed by DHS. **Drive-through drug loads have subsequently increased in the San Bernardino Valley.**”²⁶ (emphasis added)

The stated Purpose and Need for the Proposed Action—to “prevent illegal cross-border traffic”—is undercut by historical precedents. Rather than advancing the stated goals, the Proposed Action may actively undermine them. In fact, the No Action Alternative could better serve the Purpose and Need by preserving the current inaccessibility of the area, which acts as a natural deterrent to illegal activity. NEPA requires a comprehensive analysis of all reasonable alternatives, and a hard look at the “no action” alternative. Yet the EA neglects to examine how road construction could inadvertently increase illicit traffic, and how the status quo may deter illegal crossings.

To comply with NEPA, CBP and USFS must fully analyze the environmental consequences of increased motorized traffic, including both legal recreational traffic and illicit cross-border traffic resulting from the Proposed Action. To comply with NEPA, the agencies must analyze how increased public access will heighten fire risk that includes evidence-based mitigation measures to address these risks and analyze the impacts of increased motorized traffic on wildlife, including vehicle collisions, habitat fragmentation, and behavioral changes. This analysis should include cumulative impacts from existing stressors such as grazing and border infrastructure.

IV. CONCLUSION

Due to the significant inadequacies with this NEPA process, CBP and USFS should abandon the EA and instead prepare a comprehensive EIS that fully analyzes the direct, indirect, and cumulative impacts of this project on endangered species, critical habitats, and the broader ecosystem, as required under NEPA. The significant deficiencies in the EA—including failure to provide accurate data, consider meaningful alternatives, or incorporate best available science—render it legally and substantively inadequate for informed decision-making.

CBP and USFS must prioritize remediation of past environmental harm caused by border infrastructure projects and address the cumulative impacts of ongoing and foreseeable activities in the region. These include but are not limited to border wall construction, border infrastructure projects, cattle grazing, invasive species spread, mining projects, and the destruction of habitat and critical cross-border wildlife corridors.

If the agencies elect not to prepare an EIS, the only legally and defensible action is to select the “No Action” Alternative. This would safeguard remaining wildlands and critical habitats from further harm while allowing CBP and USFS to focus resources on mitigating the destruction caused by previous projects. Moreover, meaningful public engagement—particularly with affected tribal and rural communities—must be incorporated into the decision-making process to ensure transparency, accountability, and environmental justice.

The Center remains committed to ensuring that NEPA’s mandates are upheld, and that our borderlands, wildlife, and communities are protected. We urge CBP and USFS to reconsider this ill-conceived project in light of the substantial environmental, ecological, and legal concerns outlined above.

¹ See: Hayleigh Evans, *Phoenix Zoo Researcher Spots an Ocelot on Trail Cam, the First in the Area for 50 Years*, Ariz. Republic (Aug. 12, 2024); Ignacio Ventura, *Phoenix Zoo officials spot ocelot on a southern Arizona trail camera*, KJZZ Radio Phoenix (Aug. 12, 2024); *Ocelot spotted in southern Arizona region for first time in 50 years*, Fox 10 Phoenix (Aug. 12, 2024).

² Center for Biological Diversity. 2022. Sixty-Day Notice of Intent to Sue the U.S. Forest Service and the U.S. Fish and Wildlife Service for Endangered Species Act Violations for Failing to Ensure that Forest Service Authorized Cow Grazing on the Coronado National Forest Does Not continue destroying Western Yellow-Billed Cuckoo, Chiricahua Leopard Frog, and Northern Mexican Garter Snake Critical Habitat. Accessible: https://www.biologicaldiversity.org/programs/public_lands/grazing/pdfs/coronado-NOI-20220228.pdf

³ U.S. Forest Service. Chiricahua Public Access Project Environmental Assessment. Page 14. Accessible here: <https://www.fs.usda.gov/project/?project=57856>

⁴ *Id.*, page 16.

⁵ Syphard, A.D., Radeloff, V.C., Keeley, J.E., Hawbaker, T.J., Clayton, M.K., Stewart, S.I. and Hammer, R.B. (2007), HUMAN INFLUENCE ON CALIFORNIA FIRE REGIMES. Ecological Applications, 17: 1388-1402. <https://doi.org/10.1890/06-1128.1>

⁶ Yang, Jian & He, Hong & Shifley, Stephen & Gustafson, Eric. (2007). Spatial Patterns of Modern Period Human-Caused Fire Occurrence in the Missouri Ozark Highlands. Forest Science -Washington-. 53. 10.1142/9789812706713_0001. https://www.nrs.fs.usda.gov/pubs/jrnl/2007/nc_2007_yang_001.pdf

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[n- and lightning-caused wildfire ignitions](https://www.researchgate.net/publication/256972109_Influences_of_forest_roads_on_the_spatial_patterns_of_huma)
- ⁸ Nagy RC, Fusco E, Bradley B, Abatzoglou JT, Balch J. Human-Related Ignitions Increase the Number of Large Wildfires across U.S. Ecoregions. *Fire*. 2018; 1(1):4. <https://doi.org/10.3390/fire1010004>
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[water risks to human and natural systems](https://www.researchgate.net/publication/319403396_A_spatial_evaluation_of_global_wildfire-water_risks_to_human_and_natural_systems)
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