



Norbeck Society
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Rapid City, SD 57709

Steve Kozel, District Ranger
Chris Stores, Natural Resources Planner
Northern Hills Ranger District
Black Hills National Forest
2014 North Main Street
Spearfish, SD 57783

July 25, 2025

Re: **Modified** Buffalo Forest Health Project
Submitted via: <https://www.fs.usda.gov/project/blackhills/?project=67248>

Dear Ranger Kozel and Planner Stores,

As part of our advocacy for sustainable use of public lands, Norbeck Society comments reflect a desire to support a management approach for the Black Hills National Forest (BHNF) that recognizes the imperative of protecting and enhancing the biocomplexity and ecological function of our forest.

Please find our comments on the *Modified* Buffalo Forest Health Project on the following pages. We request that these be included in the Forest Service Administrative project files along with the comments we submitted on the previous rendition of the Buffalo Project which we submitted in late March 2025 and include here by reference.

We believe that a 10-day comment period is not long enough for a project for which the Purpose & Need and the Proposed Action changes significantly. The modified project description was uploaded July 18th, just 7 days before the comment deadline.

In the legal notice published in the Black Hills Pioneer on March 4, 2025, and in the scoping letter of the same date, Steve Kozel is named as the responsible official. Both the notice and the letter state another comment period is not anticipated and that Steve Kozel is the person who will consider all comments. We would like to know how Steve Kozel will do this now that he is no longer at his post.

As always, we appreciate the opportunity to provide input to the USFS about the management of the Black Hills National Forest.

Sincerely,

Mary Zimmerman, President
On behalf of the Norbeck Society
P. O. Box 9730,
Rapid City, SD 57709

info@norbecksociety.com
cc: Shawn Cochran, Wendy Schuyler

Norbeck Society Comments
Modified Buffalo Forest Health Project #67248 (the Project)
Northern Hills District (the District), Black Hills National Forest (BHNF)
July 25, 2025

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Foreclosure on the Public’s Ability to Provide Substantive Comments by limiting comment period to 10 Days

Under the Section titled “Public Comment Opportunity,” it states that “Because the entirety of the Buffalo project area is within an area identified as being in an emergency, the EAD authorities will be used for the Buffalo Project.” Because a project may fall within an EAD area does not mean it automatically meets the terms and conditions of that EAD.

The fact that only a 10-day comment period was provided on a project that has a significant change in Purpose & Need and Proposed Action is both concerning and frustrating. The change of the Purpose & Need and the Proposed deserves a full 30-day comment period to allow the opportunity to provide thoughtful and substantive comments.

Under the section titled “Purpose and Need for Action,” this “modified” scoping letter deletes a bullet that stated, “Forest Plan Objective 5.1 204 calls for a distribution of ponderosa pine across nine structural stages. The forest-wide objective for structural stage 4A in Management Area (MA) 5.1 is 25%. The Buffalo project area, and the Forest as a whole currently has an excess of structural stage 4A. Forest-wide wide 43.7% of ponderosa pine stands in MA 5.1 are in structural stage 4A. In the Buffalo project area, 38% of ponderosa pine stands are in structural state 4A. Where this bullet has been deleted, a bullet is added that states, “Secretarial Memo 1078-066 identifies 78,800,000 acres of NFS lands that are experiencing, or at risk of experiencing, insect and disease infestation. The Buffalo project area is included in those lands.

The Secretary of Agriculture has determined that these areas are in an emergency situation and that actions should be taken to mitigate insect and disease risk.”

For more specifics, please see the section of these comments on page 4 titled “Secretary’s Memo 1078-006, Expediated Consultation Process, and EO 14225: Emergency Action Determination Authority.”

NEPA – Proposed Action

In the agency’s official NEPA Handbook FSH 1909.15, under Chapter 10 (11.2)¹ - Proposed Action, Purpose and Need, and Decision Framework, it states that - A proposed action is a proposal by the Forest Service to authorize, recommend, or implement an action to meet a specific purpose and need.

We are concerned that this project is trying to emulate condition-based management without going through the procedural steps to analyze. Is this a condition-based management project? (reference to ['CBM FAQs 24JAN22' of 'AR- Project Development'.pdf](#)). For example, the description for “Liberation Cut,” among others, seems to point to condition-based and/or a lack of site specificity. In addition, we question the following:

Commercial Thin:

- How does the following statement meet EAD - “However, in some stand conditions, an uneven distribution of residual trees may be desired, to encourage spatial structural heterogeneity consistent with MA 5.1 objectives.” Leaving this kind of structure seems in conflict with reducing hazardous fuels.
- The lay person has no idea what “Residual stocking levels will generally follow Forest Plan guideline 2409b, resulting in approximately 20-60% AMD. Please describe this more clearly.
- How does “Techniques including thinning from below and/or above are planned to be utilized.” The use of “**and/or**” of thinning from below or thinning from above results in very different outcomes. Also, thinning from above is not quantified and is again targeting mature trees that are in deficit across the forest.

Shelterwood Treatments

- How does Shelterwood treatment meet the criteria for the EAD?
- There continues to be a failure to disclose the status of current HSS distribution within the project area and across the district. The project area is already very open, a result of a lot of recent past management. The project area and district have lost a tremendous amount of mature forest, yet the Buffalo project proposes to continue to cut more mature trees. This puts in question compliance with the National Forest Management Act (NFMA).
- There is a mention in the modified scoping letter that there is an excess of 4A, yet there is no disclosure of HSS within the project area or across the district to support this claim.

¹ We know this project is not currently proposed as an EA, yet fitting a Categorical Exclusion (CE) category. Regardless, the definition for Proposed Action applies whether it is an EA or CE.

Forest Inventory and Analysis (FIA) and preliminary Light Detection and Ranging (LiDAR) data seem to suggest this statement is far from the truth.

- Without an updated and current HSS graphic and tabular disclosure of HSS within the project area and the district, the claims found under this section cannot be made.

Overstory Removal

- The forest, district, and project area have an overabundance of young HSS. Creating more young HSS is inconsistent with the Forest Plan.
- Cutting more mature trees violates NFMA, including the impacts to the species viability of the American Goshawk.

Liberation cut

- Liberation cut was not mentioned in the original scoping letter.
- Is the scoping letter's definition of "Liberation Cut" aligned with the industry standard SAF Forestry Dictionary?
- This treatment appears to target mature trees. How does this type of treatment change HSS? How is HSS distributed across the project area and district?

Single-tree selection/group selection

- This treatment was not mentioned in the original scoping letter.
- This lacks site specificity to allow disclosure of impacts to respective resources reports by "specialists." How can a wildlife biologist properly analyze affects to species, including the American Goshawk?

Secretary's Memo 1078-006, Expediated Consultation Process, and EO 14225: Emergency Action Determination Authority

Under the section titled "Public Comment Opportunity," it mentions that the Buffalo Forest Health Project will utilize the Fuels and Forest Health Emergency Action Determination authority under a memo issued by the Secretary of Agriculture, Brooke Rollins on April 3, 2025. The Secretary's memo is initiated by Executive Order (EO) 14225, Immediate Expansion of American Timber Production (March 1, 2025).

- (1) Pg 2 of Secretary's Memo under "Background:" states that "National Forests are in crisis due to uncharacteristically severe wildfires, insect and disease outbreaks, invasive species, and other stressors whose impacts have been compounded by too little active management."
 - a. Natural fire and insect & disease are known natural disturbance agents to our forests. The mere presence of these events is nothing to be afraid of. We know that the Black Hills National Forest has been and is actively managed, and overmanaged the last 10 years plus. We know this both observationally and by data provided through FIA and LiDAR. Although the memo may be applied to other forests in the West, it is not applicable to the Black Hills.
- (2) Pg 2 of Secretary's Memo under "Emergency Situation Determination:" the Secretary states, "I am making an Emergency Situation Determination (ESD) under Section 40807 of the Infrastructure Investment and Jobs Act (IIJA). This ESD

encompasses 66,940,000 acres of NFS lands rated as very high or high wildfire risk that are hereby determined to be an emergency as defined by IIJA.

- a. Nowhere in the scoping letter is there further explanation on how this specific project area meets the criteria of Very High or High wildfire risk. It seems an easy disclosure to overlay the Very High and High wildfire risk on the map along with the MA information that was included with the scoping letter.
 - b. As referenced in the Secretary's Memo, we were able to locate "See "Map #1 Forest Health and Fuels Emergency Situation Determination," from the Secretary's Memo. This search located a coarse-scale map ([Forest Health and Fuel Emergency Situation Determination \(FHFESD\)](#)) that appears to pull data from Agency's vegetation database. This database does not show any "Very High" so please overlay the "High" with the proposed treatment areas and include an acreage breakdown to justify the claim that this project fits under the Secretarial memo. In addition, collaboration between the silviculturist and fuel specialist is necessary to verify the site-specific conditions of some of these polygons that would no longer be considered "High" based upon the past treatments in the area. The assumption is that the Black Hills National Forest has not taken nor had the time to update the database(s) that feed into what is designated as "High" or "Very High."
 - c. It is a tough argument to make an "Emergency Determination" in this particular project area. This area has been treated multiple times over the last 10 to 15 years for the same purpose as is claimed here. This could no longer be an emergency but simply forest management.
- (3) In the same paragraph on page 2 of Secretary's Memo under ESD: the Secretary states, "In addition I have determined that the 78,800,000 acres of NFS lands designated under Section 602 of the Healthy Forest Restoration Act (HFRA), that are experiencing declining forest health; at risk of experiencing substantially increased tree mortality over the next 15 years [from time of designation] from insect and disease infestation; or containing hazard tree posing as imminent risk to public health, infrastructure, and safety, are an emergency situation as defined in the IIJA."
- a. Because it is unclear in the scoping letter what this project truly is pointing to in the Secretary's Memo as the reason for treatment, we can safely assume that Section 602 of HFRA is not the one being referenced as rationale for emergency determination. Section 602 refers to "Declining Forest Health, where "declining forest health" means a forest that is experiencing— (1) substantially increased tree mortality due to insect or disease infestation; or (2) dieback due to infestation or defoliation by insects or disease." That is clearly not the case here.
 - b. If Section 602 is said to apply here, then that has not been disclosed in the scoping letter, and that forecloses on our ability to offer meaningful and substantive comments.
- (4) Pg 3 of Secretary's Memo under ESD: the Secretary states "Consistent with IIJA section 40807 and this determination, the Forest Service may carry out authorized emergency actions after an ESD is declared to achieve relief from threats to public health and safety, critical infrastructure, and/or mitigation of threats to natural resources on NFS lands. These actions will improve the durability, resilience, and

resistance to fire, insects, and disease within national forests and grasslands across the National Forest System. To be eligible to use this authority, at least 50 percent of the treatment areas supporting this authorized emergency action must be within the designated areas.”

- a. The review and offering of substantive comments under the umbrella of the ESD is difficult. If the dependence on Hazardous Fuel and Wildfire Risk is the driver for this project and the tie to ESD, it would be essential to understand/display the existing vegetation (HSS), fuel models, and the Fire Regime (FR) and Condition Class (CC) that articulates the Normal Range of Variability. The scoping letter does not disclose this, nor any other documents made available through the Planning, Appeals, and Litigation System (PALS) program. These pieces of information are the foundational building blocks to the “Purpose & Need” that drives the “Proposed Action.”
 - b. Being aware that words matter, we teased apart the presence of two words found in this Secretarial Memo – resilience and resistance. If resiliency refers to the ability to bounce back from difficult situations and adapt to change, and resistance is the ability to withstand or fight against external pressures or influences, these two words can paint two very different pictures of the proposed action and treatments. Because the Proposed Action lacks site specificity, it is very difficult for us to see if these treatments will create resiliency, resistance, or neither. Our point is that the Proposed Action needs to articulate what treatments are planned in this project area.
 - c. Again, words matter, and definitions even more so. Hazardous Fuels appear to be the only “action” allowed within the Secretary’s Memo. “Hazardous fuels” are defined as an excess of woody materials on the ground or in the forest understory or canopy that can increase the severity of fire. To clarify what is being considered Hazardous Fuels, it seems fair to ask for disclosure of the existing Fuel Models and Fire Regime Condition Class (FRCC) for this project area.
- (5) Pg 4 of Secretary’s Memo under “Other Emergency Authorities:” “The agency shall use IIA Section 40807 where authorized emergency actions can facilitate current and future post-disaster recovery actions within the scope of this Emergency Situation Determination”
- a. How does one facilitate future post-disaster recovery actions when one cannot accurately predict the future? Since the Phase II amendment to the Black Hills Forest Plan, that process and amendment had helped to build trust and social license between the Black Hills National Forest and the public. There is no more “trust us” and social license due to rampant over-harvesting and willful avoidance of the impacts from over-harvesting to natural resources, including that of the American Goshawk.
- (6) Pg 4 of Secretary’s Memo under “Timber Production and Sound Forest Management.” So, the question is, what is sound management?” Sound management is the use of peer-reviewed scientific research, maintaining a workforce of trained resource professionals, and guidance from the Forest Plan.
- a. The point is made over and over that you cannot log your way out of this. The problem is not the presence of mature forests. The problem is complex...

not enough prescribed fire, encroaching WUI... a changing climate... the list goes on. The critical acknowledgement needed here is of the necessity of retaining mature forests in a landscape where these are becoming more rare.

- b. Sound forest management at this point of “active management” across the Black Hills National Forest is prescribed fire. Now is the time to reintroduce prescribed fire into the forest after the last 10 to 15 years of heavy, and in many places, overharvest of stands. Stop the overharvest action and incorporate fire.

(7) **Finally, and most importantly**, on page 6 of the Secretary’s Memo under “Effects of this Memo,” it states, “To the extent there is any inconsistency between the provisions of this memo and any federal laws or regulations, the laws or regulations will control.”

- a. Throughout our scoping comments related to this project, you will see references to laws, regulations, and policies that are likely to be violated if this project moves forward, including the fact that this project does not qualify as an ESD.

Fire Regime and Condition Class (FRCC) and Hazardous Fuels,

A natural fire regime is a general classification of the role fire would play across a landscape in the absence of modern human intervention, including the possible influence of aboriginal fire use. An understanding of fire regimes, ecological departure from historical reference conditions, and landscape patterns are an important part of modern land management. Fundamental to the concepts of biodiversity and landscape ecology is the increasing recognition that functioning disturbance regimes are key components of ecosystems. Consequently, data documenting the status of disturbance regimes and associated vegetation are important components of modern land management planning and subsequent management treatments (Hann and others 2003; Zimmerman 2003).

Hazardous fuels as an action appears to be the only “action” allowed within the Secretary’s Memo. “Hazardous fuels” are defined as an excess of woody materials on the ground or in the forest understory or canopy that can increase the severity of fire. To clarify what is being considered Hazardous fuels, then it seems fair to ask for disclosure of the existing Fuel Models and Fire Regime Condition Class (FRCC) for this project area

- ❖ This is critical for the reason that the ESD is hinged heavily on the hazardous fuels as the justification. This is a tough argument to make in this area, where so many treatments have occurred with the same purpose and need over the last 10 to 15 years.
- ❖ We would like to see disclosure of the fire regime for this project area. This is a basic initial tenet to developing a purpose and need for vegetation treatment projects and disclosure that helps to drive the management treatments for most of the proposed actions.
- ❖ We would like to see recognition of the Condition Classes present in the area, or at least in the stands proposed for treatment. For example, a departure from historical fire regimes of condition class of 3(CC3) would seem a potential good “Purpose” for the “need” for action and would be mappable and quantifiable, and of course, site-specific.

- ❖ We would like to see disclosure of the fuel models currently present in the project area, especially on the heels of the last 10 to 15 years of active management in the area.

Many studies of wildfires and the potential benefit of forest restoration efforts have shown that prescribed fire and fire-use are by far the most effective means to reduce the risk of wildfire to both forests and communities. Thinning and logging often increase the intensity of wildfire behavior, therefore, these tools should be used with great caution if the objective is to reduce fire risk.

Habitat Structural Stages (HSS)

Several groups and individuals administratively appealed the Regional Forester's decision to adopt the 1997 Revised LRMP. On October 12, 1999, Deputy Chief James R. Furnish, the reviewing officer for the Chief of the Forest Service, issued his 1999 Appeal Decision on three of the appeals. Shortly after the Chief's Appeal Decision in November 1999, several individuals and groups filed suit against the Forest Service to block the implementation of the Veteran Salvage Timber Sale within the Beaver Park Roadless Area. The lawsuit cited several deficiencies identified in the Chief's Appeal Decision and claimed the 1997 Revised LRMP direction was inadequate to protect certain resources in the timber sale area. Negotiations were initiated to settle the lawsuit, and in September 2000 a Settlement Agreement was signed and issued by the parties (U.S. District Court for the District of Colorado 2000). In signing the Settlement, the Forest agreed to undertake the Phase I and Phase II Forest Plan Amendments. Further, the Forest agreed to consider several specific items in the Phase II effort including: 1) the analysis of candidate areas for RNAs on the Forest; 2) completion of any designation process as a part of the Phase II Amendment; and 3) further evaluation of the viability of management indicator species (MIS), and the American Goshawk.

- 1) Without a transparent display of HSS it is difficult to understand compliance with Forest Plan and NFMA, especially related to species viability. This concern is validated by the findings of a peer-reviewed scientific General Technical Report (GTR) using FIA data and produced by scientists from the agency ([A scenario-based assessment to inform sustainable ponderosa pine timber harvest on the Black Hills National Forest | US Forest Service Research and Development](#)) and more recently the release of initial LiDAR plot data ([Black Hills National Forest | Black Hills National Forest Light Detection and Ranging \(LiDAR\) Project | Forest Service](#)) that supports the findings within the GTR.
- 2) Habitat for the American Goshawk has been in rapid decline over the last 10 to 15 years. The composition and distribution of HSS, as outlined in the Forest Plan, is crucial to the species' viability for the American Goshawk.
 - a. The Forest Plan contains clear direction and guidance that pertains to multiple uses and non-declining, even flow. This forest is not solely a tree farm with a primary objective of growth and yield at the cost or detriment of other resources, such as the species viability of the American Goshawk. What the stands in the project area and across the forest need is some rest from the abundance of disturbances such as logging, other vegetation treatments, and OHV incursions – the forests and related ecosystems just need a rest. Resting is also a positive and adaptive response that mimics the mixed-severity fire

regime and associated stand conditions that make the Black Hills so diverse. Let it rest.

- b. We continue to request from the district and forest a CURRENT map of structural stages, and that continues to hold here with this project.

The structural stages are the metric by which we can indicate viability for the American Goshawk (NFMA) and manage for sustainability and non-declining even flow (MUSY) of timber production. Please improve the scoping letter by providing the current structural stages and then disclose how the proposed treatments will alter those structural stages. We know this is possible since projects of a couple decades ago always included this information. In addition, provide the status and trend of the American Goshawk specifically through the disclosure of current versus past nest and foraging habitat. Finally, we would expect that in light of the over management of mature forests across the district and forest, that this project would drop the commercial treatment acres and work on re-introducing prescribed fire and finishing the work already covered by past NEPA. The Northern Hills Ranger District must propose treatments that move HSS composition and distribution towards Forest Plan HSS objectives across the district. **If the Northern Hills Ranger District is unable to disclose that in the analysis, then this project is in direct violation of NFMA and NEPA.**

Species Viability of the American Goshawk, a Management Indicator Species (MIS)

The American Goshawk is both a Management Indicator Species (MIS) and a US Forest Service Region 2 sensitive species for the Black Hills National Forest. The Northern Hills Ranger District has historically contained high-quality nesting habitat for the American Goshawk. A recent study validates what Black Hills National Forest nest-site monitoring data and related studies have previously concluded regarding forest changes within the past 30-40 years. Habitats, and specifically nesting habitat, for American Goshawk have been and are declining in availability. This study confirms that the most significant Goshawk habitat losses have occurred recently. The "South Dakota Wildlife Action Plan Explorer" [Wildlife of South Dakota](#) Final Technical Report Link: [T-84 bruggeman kennedy final technical report northern goshawk.pdf](#) state, "Through a combination of timber harvest practices and unpredictable natural disturbances, our results suggest the Black Hills National Forest (BKNF) has lost much of its high-quality Goshawk nesting habitat over the past 30 years. Furthermore, the remaining high-quality habitat has become increasingly fragmented. Given the loss of high-quality habitat and limited data documenting Goshawk use of lower-quality habitat, the BHNF is moving away from management objectives established to ensure Goshawk population viability." See: [Declining American Goshawk \(Accipiter atricapillus\) Nest Site Habitat Suitability in a Timber Production Landscape: Effects of Abiotic, Biotic, and Forest Management Factors | Journal of Raptor Research](#).

The Forest Service is obligated to provide habitat for the American Goshawk *and its prey*. This is supported by meeting or moving towards Habitat Structural Stage Objectives and has been an emphasized part of the Black Hills National Forest Plan, including Objectives 4.1-203, 5.1-204, 5.4- 206, 5.43-204, and 5.6-204.

Nowhere in the scoping letter is there discussion on HSS composition and distribution, nor mention of or impacts to the American Goshawk. We reiterate here that past projects in the area have ATPs, including those for Goshawks, that appear to be included in treatment areas. Timber sales/units have been laid out that appear to continue to put the viability of the American Goshawk on a trajectory toward Federal listing.

The Black Hills National Forest is legally obligated to ensure that ample habitat will be conserved to minimize the potential for federal listing of the American Goshawk. The forest must cease any more commercial timber harvest that involves reducing habitat structure that provides goshawk habitat. Maintaining the viability of this management indicator species (MIS) is a legal obligation.

ASQ, Sustained Yield, and non-declining even flow

Lands managed by the Forest Service are managed under a multiple-use-sustained yield model under the Multiple Use–Sustained Yield Act of 1960 (MUSYA). This statute directs the Forest Service to balance multiple uses of National Forest System lands and ensure a sustained yield of those uses in perpetuity. Congress, through the National Forest Management Act (NFMA), has directed the Forest Service to engage in long-term land use and resource management planning. In the case of timber, they describe where timber harvesting may occur and include measures of sustainable timber harvest levels.

The National Forest Management Act limits timber removals to a quantity equal to or less than a quantity that can be removed on such a forest annually in perpetuity on a sustained yield basis, given certain provisions. In the past, this sustained-yield provision was seen as an all-purpose safeguard of sustainability. The restriction on timber harvest to the level that could be sustained in perpetuity would ensure that the forest was not plundered. An even flow of timber was seen as ensuring economic and social sustainability.

If this analysis moves forward, please disclose the annual timber volume offered since October 31, 2005, in a chart similar to what is displayed here as examples from the Tongass National Forest in their annual monitoring report. In light of no annual monitoring reports by the Black Hills National Forest, please disclose this information in this analysis. In addition, modify the Proposed Action to exclude commercial timber harvest, instead focusing on prescribed fire.

Timber Resources 3 Table 1. Timber Volume Sold for Fiscal Years 2003-2012 MMBF

Fiscal Year	Timber Volume Sold	Percent of ASQ	Annual ASQ
2003	37 MMBF	14% of ASQ	267 MMBF
2004	87 MMBF	33% of ASQ	267 MMBF
2005	65 MMBF	24% of ASQ	267 MMBF
2006	85 MMBF	32% of ASQ	267 MMBF
2007	30 MMBF	11% of ASQ	267 MMBF
2008	5 MMBF	2% of ASQ	267 MMBF
2009	10 MMBF	6% of ASQ	267 MMBF
2010	49 MMBF	18% of ASQ	267 MMBF
2011	37.5 MMBF	14% of ASQ	267 MMBF
2012	52.5 MMBF	19.6% of ASQ	267 MMBF
Ten Year Average	45.8 MMBF	17% of ASQ	267 MMBF

The project's proposed commercial harvest treatments are potentially in violation of NFMA and MUSYA.

