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Comments:

April 12, 2019

U.S. Forest Service, Coronado National Forest
Attn: Sarah Baxter, Geologist
300 W. Congress Street, 6th Floor
Tucson, Arizona 86701
http://cara.ecosystem-management.org/Public/CommentInput?Project=55521

RE: Santa Rita Quarry-IMERYS Project

Dear Ms. Baxter:

Thank you for the opportunity to provide scoping comments on the Forest Service's proposed Santa Rita Quarry-IMERYS Project ("Project") as described in the March 7, 2019 Scoping Letter. This letter specifically addresses, among other things, that the Forest Service must initiate/reinitiate consultation pursuant to the Endangered Species Act ("ESA") with the Fish and Wildlife Service ("FWS") on the direct, indirect, and cumulative impacts of this Project on ESA listed species and their critical habitat, including the jaguar and ocelot, and, as an initial step, first determine whether there is an uncommon common variety deposit present on each and every mining claim that is part of the proposal.

These comments are submitted on behalf of the Center for Biological Diversity (the "Center") and its over 1.4 million members and online activities, many of whom live and recreate in and around the Santa Rita Mountains. The Center is a 501(c)(3) nonprofit organization founded in the 1990s that is based in Tucson, Arizona. Since its founding, the Center had been dedicated to protecting and restoring imperiled species and natural ecosystems. The Center uses science, policy, and law to advocate for the conservation and recovery of species on the brink of extinction and the habitats they need to survive. The Center has and continues to actively advocate for increased protections for species and their habitats in southern Arizona, including within the Coronado National Forest and Santa Rita Mountains.

These comments are also submitted on behalf of the Save the Scenic Santa Ritas Assocation. Save the Scenic Santa Ritas is a non-profit organization consisting of a coalition of business, homeowner, and conservation and recreational organizations working to protect the Santa Rita Mountains from the environmental degradation caused by mining and mineral exploration.

I.The Forest Service Must Initiate/Reinitiate Consultation with the Fish and Wildlife Service.

a.ESA background

Congress enacted the ESA to provide "a program for the conservation of . . . endangered species and threatened species." 16 U.S.C. § 1531(b). Section 2(c) of the ESA establishes that it is "the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act." 16 U.S.C. § 1531(c)(1). The ESA defines "conservation" to mean "the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this [Act] are no longer

necessary." 16 U.S.C. § 1532(3). Section 7(a)(1) of the ESA explicitly directs that all federal agencies "utilize their authorities in furtherance of the [aforesaid] purposes" of the ESA. 16 U.S.C. § 1536(a)(1).

Section 7 of the ESA requires the Forest Service, in consultation with the Fish and Wildlife Service ("FWS"), to insure that any action authorized, funded, or carried out by the agency is not likely to (1) jeopardize the continued existence of any threatened or endangered species, or (2) result in the destruction or adverse modification of the critical habitat of such species. 16 U.S.C. § 1536(a)(2). For each proposed federal action, the Forest Service must request from FWS whether any listed or proposed species may be present in the area of the agency action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12. If listed or proposed species may be present in such area, the Forest Service must prepare a "biological assessment" to determine whether the listed species may be affected by the proposed action. Id.

If the Forest Service determines that its proposed action may affect any listed species or critical habitat, the agency must engage in formal consultation with FWS. 50 C.F.R. § 402.14. To complete formal consultation, FWS must provide the Forest Service with a "biological opinion" explaining how the proposed action will affect the listed species or habitat. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14. If FWS concludes that the proposed action will jeopardize the continued existence of a listed species, or result in the destruction or adverse modification of critical habitat, the biological opinion must outline "reasonable and prudent alternatives." 16 U.S.C. § 1536(b)(3)(A).

The Forest Service's proposed Project is an agency action under the ESA. Action is broadly defined under the ESA to include all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by federal agencies, including the granting of leases, and actions that will directly or indirectly cause modifications to the land, water, or air. 50 C.F.R. § 402.02

Agencies are required to reinitiate ESA consultation if (1) the amount or extent of taking specified in the incidental take statement is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the action is modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) a new species is listed or critical habitat designated that may be affected by the identified action. 50 C.F.R. § 402.16.

b. The Forest Service must consult and/or reinitiate consultation for the Quarry's impacts on designated jaguar critical habitat and any other listed species and their critical habitat that may be affected.

Per the Forest Service's Scoping Letter Figure 7, the proposed exploration and expansion area of the Quarry is a mere 800 feet north of designated jaguar critical habitat. We have reason to believe that designated jaguar critical habitat to the east and north of the proposed project area is also very close, but this habitat is not reflected in the maps included in the scoping notice. However, such habitat also stands to be affected and thus must be part of the Agency's ESA consultation process as well as NEPA analysis for the proposed Project.

FWS finalized its critical habitat designation of 764,207 acres for the jaguar in 2014, including "Unit 3" (the Patagonia Unit) and "Unit 4" (the Whetstone Unit), which FWS further divided into Subunit 4a (Whetstone), Subunit 4b (Whetstone-Santa Rita), and Subunit 4c (Whetstone-Huachuca). 79 Fed. Reg. 12572, 12591 (Mar. 5, 2014). In making this designation, FWS found that all designated areas were essential to the conservation of the species. Id. at 12572. Jaguar critical habitat Unit 3 includes the Santa Rita Mountains and the action area of the Rosemont Mine. U.S. DOI, Fish and Wildlife Service, Amended Final Reinitiated Biological and Conference Opinion for the Rosemont Copper Mine, Pima County, Ariz., 309 (Apr. 28, 2016) ("2016 BiOp") (Attachment 1). FWS considers Unit 3 to be occupied based on the number of confirmed sightings. Id. at 292. A male jaguar has been repeatedly photographed in the Santa Rita Mountains, near the proposed Quarry, and FWS hypothesized that this jaguar "has established a home range in these mountains." Id. at 300.

Subunit 4b, named the "Whetstone-Santa Rita Subunit," consists of 12,710 acres between the Empire Mountains and the northern Whetstone Mountains, and provides connectivity from the Whetstone Mountains to Mexico. Id. at 293; see also id. at 297 ("[t]he intent of Subunit 4b is to connect Subunit 4a to Mexico via Unit 3."). Subunit 4b is essential to the conservation of the jaguar because it provides connectivity between critical habitat units within the United States and connectivity between the United States and Mexico. 79 Fed. Reg. at 12611; see also 2016 BiOp at 293.

According to FWS, a male jaguar was detected in the Whetstone Mountains in Subunit 4a in 2011, and the same jaguar was then detected in the Santa Rita Mountains in 2012, within a few hundred meters of the proposed Rosemont Mine site and within Unit 3, and in close proximity to the Quarry as well. See id. at 290, 304. This jaguar "is most likely to have used the shortest route" to travel from the Whetstones to the Santa Ritas, and "likely" used the "Santa Rita-Whetstone 'bridge'" that is in Subunit 4b. Summary of Issues Related to the Proposed Rosemont Copper Mine and Proposed Critical Habitat for the Jaguar, FWS041512-14 (Mar. 8, 2013) (Attachment 2).

The Forest Service and FWS have acknowledged that Imerys Quarry, which is north of the proposed nearly mile-wide and half-a-mile deep Rosemont copper pit mine, stands to have significant impacts on jaguar habitat connectivity in the Santa Rita Mountains to Mexico. See 2016 BiOp 303-04, 310. As FWS has also concluded in the consultation process for the proposed Rosemont Mine, "[i]f the constriction of the designated critical habitat between the proposed Rosemont Mine and Imerys Quarry render the northeastern portion of Unit 3 inaccessible" an additional 32,992 acres of Unit 3 "would be removed from its function in jaguar conservation." 2016 BiOp at 310.

Indeed, FWS biologists have determined that between the existing footprint of the Imerys Quarry and the proposed Rosemont Mine that the connection between Unit 3 and Subunit 4b would be reduced to a strip of 1.5 km in width and that this "bottlenecked area" would be further impacted by noise, vibrations, lighting, and increased vehicle traffic and public access. FWS, Draft Biological Opinion for Rosemont Copper Mine, Jaguar 34 (May 23, 2013) (Attachment 3). These impacts would only be further exacerbated by the proposed Quarry expansion (including but not limited to proposed helicopter use) as it would include additional noise, vibrations, lighting, as well as traffic and human foot use. See Figure 2 (showing new access roads and coreholes north of designated jaguar critical habitat and hiking route for phase 3 within close proximity of designated jaguar critical habitat); see Scoping Letter at 2 noting that "the third phase of exploration drilling . . . would be mobilized via helicopter . . .."). The Service and FWS must analyze and disclose these direct, indirect, and cumulative impacts on jaguar critical habitat.

The Forest Service's and FWS analysis and disclosure of impacts includes all phases of the proposed project, including those that the Forest Service purports would not have "new disturbance on NFS lands" as such activities would still, at a minimum, have indirect and cumulative impacts on jaguar critical habitat. See Scoping Letter at 4.

The proposed "Phase 2 Expansion of the North Pit Extension . . . would remove the top of the northern portion of the ridge." Scoping Letter at 5. To the extent this would remove a ridgeline that acts as a buffer between the Quarry and its related activities/operations and jaguar critical habitat, such impacts must be disclosed, analyzed, part of the Forest Service's and FWS' consultation analysis.

The undersigned are also aware that other ESA listed species and critical habitat may be within the vicinity of the proposed project area, such as ocelot (which has also been detected nearby). The Forest Service should also disclose and determine whether the proposed water use may affect ESA listed species and their critical habitat. See Scoping Letter at 4. The Forest Service must similarly comply with the mandates of the ESA for these species as well.

II.The Forest Service Must Bifurcate Exploration from Mine Expansion as the First Step is to Determine Whether the Limestone is Indeed an Uncommon Common Variety.

The Scoping Letter simply assumes that the proposed Project is for locatable minerals, it but also concedes that "the type of mineralization of interest is pharmaceutical grade limestone" which is not a de facto locatable mineral, such as gold. See Scoping Letter at 1. Accordingly, the Forest Service must first, before approving the proposed expansion, determine that each and every claim that would be subject to the expansion contains a mineral deposit that meets the uncommon common variety tests.

In 1955, Congress removed common varieties from the General Mining Law of 1872 with the passage of the Common Varieties Act. With this Act, Congress removed common varieties of "sand, stone, gravel, pumice, pumicite, or cinders" as they are found in widespread abundance and therefore are disposed of under the Materials Act of 1947 (30 U.S.C. § 611; United States v. Coleman, 390 U.S. 599, 604: 1968) (emphasis added). A common variety only falls under the General Mining Law of 1872 if it passes a stringent test that was set forth in McClarty v. Secretary of the Interior, 408 F.2d 907, 908 (9th Cir. 1969).

The five elements of the McClarty test are that (Id.; 43 C.F.R. § 3830.12(b)(1)-(b)(5)):
1.The mineral deposit in question must be compared with other deposits of such minerals generally;
2.The mineral deposit in question must have a unique property;
3.The unique property must give the deposit a distinct and special value;
4.If the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and
5.The distinct and special value must be reflected by the higher price which the material commands in the market place.

In addition, the Agency must ensure compliance with 36 C.F.R. Part 228, Subpart C, Disposal of Mineral Materials. The Forest Service must ensure each of these factors are indeed satisfied and disclose them to the public for review and comment. The Forest Service should also verify by obtaining sales and other records from the company that the deposit being mined by the current operations are still locatable (i.e. meet the McClarity test). Regarding the new areas to be explored, there is no evidence that these new deposits satisfy the McClarty test and Subpart C. The fact that the current deposit may contain a locatable deposit of chemical grade limestone (even if verified by evidence) does not in any way mean that the new deposit proposed to be explored here also contains the same grade and quality.

The Agency admits that the claimant needs to determine the nature of the mineral deposit in the new areas, yet the Agency also proposes to approve full scale mineral extraction operations on these same lands-before the exploration results are obtained and reviewed. The Agency does not know if the new deposit(s) within the proposed exploration lands contain common variety or locatable minerals. Approving the Project as proposed (i.e., approving both exploration and actual mining) puts the cart before the horse and ignores the necessary and prerequisite determination that the claims in the new areas contain the required locatable mineral deposit(s).

If the deposit requires exploration to delineate the ore reserves and determine grade, quality, and content before development may be confidently started, the claimant has not shown that the minerals in the new areas are locatable. In Converse v. Udall, 399 F.2d 616, 620-21 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969), the Court affirmed the action of the Department of the Interior in drawing a sharp distinction between "exploration" for and "discovery" of a valuable mineral deposit:

Converse attacks the Secretary for drawing a distinction between "exploration," "discovery," and "development." But the authorities we have cited show that there is a difference between "exploration" and "discovery." They do

not support the attack here made upon the distinction between the exploration work which must necessarily be done before a discovery, and the discovery itself, which is what the Secretary talks about when he distinguishes between "exploration" and "discovery." The real question here is not whether there is such a distinction, but whether Converse's exploration had resulted in a legal discovery.

In United States v. Lundy, specific examples of exploration work are discussed by the Secretary:

There is a clear distinction between "exploration" and "development" as they relate to discovery under the mining laws. The separate stages of mining activity serve as a basis for determining what further mining activity a prudent man would be justified in undertaking. Exploration work includes such activities as geophysical or geochemical prospecting, diamond drilling, sinking an exploratory shaft or driving an exploratory adit. It is that work which is done prior to a discovery in an effort to determine whether the land is valuable for minerals.

A_30724 (June 30, 1967), quoted in U.S. v. Bartels, 6 IBLA 124, 139-40 (1972), 1972 WL 13832, **12.

BLM regulations, 43 C.F.R. § 3809.420(a)(2), require mining companies to follow the "customary mineral exploration, development, mining and reclamation sequence." The Forest Service also requires the claimant to follow the same reasonable and logical sequence. See "Anatomy of a Mine, From Prospect to Production," https://www.fs.fed.us/geology/includes/minerals/anatomy_mine.pdf

According to the Forest Service Minerals Manual: "[i]n the evaluation of a plan of operations, the certified minerals administrator should consider the environmental effects of the mineral operation, including whether the proposed operation represents part of a logical sequence of activities, and whether the proposed activity is reasonable for the stage proposed." FSM 2817.03. "If questions arise about the logical sequence of a proposed or existing activity, or whether the activity is reasonably incident, the authorized officer should request a surface use determination. Surface use determinations are investigations conducted by certified mineral examiners (FSM 2892), and formally documented in a report. Their purpose is to provide information, recommendations, and conclusions about reasonableness and justification for proposed or existing operations to the authorized officer." FSM 2817.03a.

In other words, exploration is completed first to determine the nature of the deposit, and the corresponding regulatory authority (i.e., pursuant to 36 C.F.R. Part 228 Subpart A v. Subpart C) that should be applied. It is entirely premature for an agency to approve exploration and mining at the same time, especially when the question exists whether the new deposit(s) contains locatable or common variety minerals.

The Forest Service cannot assume that these new lands contain locatable mineral deposits without any evidence in support. The Agency's regulatory authority over mining of locatable v. common variety minerals is drastically different as there is a significant difference between federal regulation of mining locatable minerals under the 1872 Mining Law and regulation of "mineral materials" under the 1947 Materials Act and 1955 Common Varieties Acts.

Under the Materials Act, as amended, and its implementing regulations, 43 CFR Part 3600, BLM has considerable discretion to dispose of mineral materials from the public lands by sale or other means. Jenott Mining Corp., 134 IBLA 191, 194 (1995). No disposal is authorized by the statute where it would be "detrimental to the public interest." 30 U.S.C. § 601 (2000); 43 C.F.R. § 3601.6(a). In addition, the regulations preclude BLM from disposing of mineral materials if it determines "that the aggregate damage to public lands and resources would exceed the public benefits that BLM expects from the proposed disposition." 43 C.F.R. § 3601.11.

Ronald W. Byrd, 171 IBLA 202, 208 (2007). "The Secretary . . . may dispose of mineral materials . . . on public lands . . . if the disposal . . . would not be detrimental to the public interest." 30 U.S.C. § 601; see also Echo Bay Resort, 151 IBLA at 280 ("[n]o disposal is authorized by statute where it would be 'detrimental to the public

interest.'").

III. The Forest Service Must Review the Full Range of Reasonable Alternatives.

As detailed above, a reasonable, indeed the required, alternative is to allow only exploration to determine if the mineral deposit(s) in the new areas contain locatable or common variety minerals. The Scoping Letter admits that there is uncertainty as to the "location, concentration, quality and type of mineralization in the area" as determining those factors is the entire purpose of the proposed three phased exploration.

NEPA requires the agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(E); 40 C.F.R. § 1508.9(b). It must "rigorously explore and objectively evaluate all reasonable alternatives" to the proposed action. City of Tenakee Springs v. Clough, 915 F.2d 1308, 1310 (9th Cir. 1990). The alternatives analysis is considered the heart of a NEPA analysis. 40 C.F.R. § 1502.14. The alternatives analysis should present the environmental impacts in comparative form, thus sharply defining important issues and providing the public and the decisionmaker with a clear basis for choice. Id. The lead agency must "rigorously explore and objectively evaluate all reasonable alternatives" including alternatives that are "not within the [lead agency's] jurisdiction." Id.

Even if an EA leads to a FONSI, it is essential for the agency to consider all reasonable alternatives to the proposed action. One of the Ninth Circuit's leading EA/alternatives decisions states:

NEPA requires that federal agencies consider alternatives to recommended actions whenever those actions "involve unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E) (1982). The goal of the statute is to ensure "that federal agencies infuse in project planning a thorough consideration of environmental values." Conner v. Burford, 836 F.2d 1521, 1532 (9th Cir. 1988). The consideration of alternatives requirement furthers that goal by guaranteeing that agency decisionmakers "[have] before [them] and take into proper account all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit balance." Calvert Cliffs' Coordinating Comm., Inc. v. United States Atomic Energy Comm'n, 449 F.2d 1109, 1114 (D.C. Cir. 1971) (emphasis added). NEPA's requirement that alternatives be studied, developed, and described both guides the substance of environmental decision-making and provides evidence that the mandated decision-making process has actually taken place. Id. Informed and meaningful consideration of alternatives -- including the no action alternative -- is thus an integral part of the statutory scheme.

Moreover, consideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process. This is reflected in the structure of the statute: while an EIS must also include alternatives to the proposed action, 42 U.S.C. § 4332(2)(C)(iii) (1982), the consideration of alternatives requirement is contained in a separate subsection of the statute and therefore constitutes an independent requirement. See id. § 4332(2)(E). The language and effect of the two subsections also indicate that the consideration of alternatives requirement is of wider scope than the EIS requirement. The former applies whenever an action involves conflicts, while the latter does not come into play unless the action will have significant environmental effects. An EIS is required where there has been an irretrievable commitment of resources; but unresolved conflicts as to the proper use of available resources may exist well before that point. Thus the consideration of alternatives requirement is both independent of, and broader than, the EIS requirement.

Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-1229 (9th Cir. 1988). "While a federal agency need not consider all possible alternatives for a given action in preparing an EA, it must consider a range of alternatives that covers the full spectrum of possibilities." Ayers v. Espy, 873 F. Supp. 455, 473 (D. Colo. 1994).

IV. The Forest Service Must Take a Hard Look at Direct, Indirect, and Cumulative Impacts of the Proposal on Forest Service and Non-Forest Service Administered Lands.

The National Environmental Policy Act ("NEPA") requires agencies to take a "hard look" at the environmental impacts of federal actions. Marsh v. Or. Natural Resources Council, 490 U.S. 360, 374 (1989). "NEPA promotes its sweeping commitment to 'prevent or eliminate damage to the environment and biosphere' by focusing government and public attention on the environmental effects of proposed agency action.' 42. U.S.C. § 4321." Id. at 371.

NEPA requires that the Forest Service fully consider all direct, indirect, and cumulative impacts of the proposed action. 40 C.F.R. §§ 1502.16, 1508.8; 1508.25(c). Direct effects are caused by the action and occur at the same time and place as the proposed project. 40 C.F.R. § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Id. at 1508.8(b). Cumulative impacts are: "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." Id. § 1508.7 (emphasis added).

Despite NEPA explicit requirements that agencies' NEPA analysis include those "reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions," the Forest Service's Scoping Letter asserts that "[t]he Coronado NF will only analyze actions that would take place exclusively on National Forest System lands." Scoping Letter at 2. Such a narrowing of analysis and disclosure of impacts is simply impermissible.

Rather than abdicate its mandatory duties under NEPA, the Forest Service should ensure its analysis takes the necessary hard look at, but not limited to, the following reasonably foreseeable direct, indirect, and cumulative impacts that would stem from the Forest Service's approval of the Project.

1.The "[w]ater for drilling [that] would be supplied from an existing well (ADWR Registration No. 55-223648) on BLM-administrated land near the IMERYS plant location, which is indicated in Figure 2." Scoping Letter at 4. This includes the right to use such water, quantity of water that would be used, impacts, if any, the use (including transport of such water to the area where it would be used) would have on water quality, quantity, and any ESA listed species and their critical habitat.
2.Traffic on the County and NFS roads that would be used to gain access to the Project area (Sahuarita Road). Scoping Letter at 2.
3.Helicopter use. Scoping Letter at 2.
4.Residential and other development on the nearby private lands.
5.Cumulative impacts of this proposed Project with those from the proposed Rosemont Mine.
6.Any other past, present, and reasonably foreseeable projects, including but not limited to, those noted in the Environmental Impact Statement for the proposed Rosemont Mine.
7.Increase in wind-blown transport of dust to surrounding vegetation and habitat.

V. The Forest Service Must Analyze the North and South Pit Extension as Part of this NEPA Process.

In the instance the Forest Service moves forward, albeit improperly and illegally as detailed above, with the proposal as proposed, the Agency must analyze and disclose reasonably foreseeable and connected/cumulative action of proposed mine pit expansion alternative. See Scoping Letter 3-5. Complying with NEPA's hard look, impacts, and other analysis and disclosure requirements, require the Forest Service to ensure its analysis will include the impacts of this expansion itself and not merely the proposed exploration drilling.

VI. The Forest Service Can and Should Mitigation Impacts of the Proposal.

Under the Forest Service's Organic Act and implementing regulations, the Agency is required "to maintain and protect fisheries and wildlife which may be affected by the operations." 36 C.F.R. § 228.8(e). The Forest Service also has a duty to "minimize adverse environmental impacts on National Forest surface resources." 36 C.F.R. § 228.8. "The operator also has a separate regulatory obligation to 'take all practicable measures to maintain and protect fisheries and wildlife habitat which may be affected by the operations.' 36 C.F.R. §228.8(e)." Rock Creek Alliance v. Forest Serv., 703 F.Supp.2d 1152, 1164 (D. Mont. 2010) (mine approval violated Organic Act and 228 regulations by failing to protect water quality and fisheries). "Under the Organic Act the Forest Service must . . . require [the project applicant] to take all practicable measures to maintain and protect fisheries and wildlife habitat." Id. at 1170. All these requirements apply here.

In the Scoping Letter, the Forest Service states that "[a]ctivities at the project site would be conducted in accordance with . . . all mitigation and monitoring mandated by the Coronado NF." Scoping Letter at 4. And that "[a]ctivities would take place during daylight hours, and outside of key breeding seasons identified by the District Wildlife Biologist." Scoping Letter at 3. The Forest Service must disclose and analyze the mitigation measures, and their effectiveness, that would be required in subsequent environmental assessment so both the public and ultimate decisionmaker have a clear understanding on how the Agency is complying with its mitigation mandates.

VII.Significance May Be Present, Requiring an EIS.

The Forest Service is required to make its threshold determination with respect to the significance of impacts based on a hard look at two factors: "context" and "intensity." 40 C.F.R. § 1508.27. "Either of these factors may be sufficient to require preparation of an EIS in appropriate circumstances." Natl. Parks & Conserv. Assn. v. Babbitt, 241 F.3d 722, 731 (9th Cir. 2001). In the absence of an EIS, the agencies "'must put forth a convincing statement
of reasons' that explains why the project will impact the environment no more than
insignificantly. This account proves crucial to evaluating whether the [agency] took the requisite
'hard look.'" Ocean Advoc. v. U.S. Army Corps of Engrs., 402 F.3d 846, 864 (9th Cir. 2005). Here, the agencies have failed to provide a convincing statement explaining the insignificance of
impacts from this development. If the agencies proceed in their refusal to perform an EIS, they
must provide a detailed accounting of each NEPA significance factor, as provided in 40 C.F.R. § 1508.27, explaining why the project will impact the environment no more than insignificantly.

Depending on what happens with the Agency's consultation with FWS and other impacts that may come to light on species, water resources, or other important values, it may be appropriate for the Agency to conduct an EIS for the proposal. At a minimum, we ask that the Forest Service provide a clear discussion and analysis pertaining to the significance criteria so the public may review and analyze it during the next comment period.

Again, the undersigned appreciate the opportunity to participate in this scoping comment period process. We look forward to remaining involved and look forward to seeing the Agency's compliance with the ESA, as well as, but not limited to, disclosure and analysis of a full range of reasonable alternatives and direct, indirect, and cumulative impacts that would stem from the proposal.

Sincerely,

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Center for Biological Diversity

Gayle Hartmann
Save the Scenic Santa Ritas