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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION

WILD WATERSHED, MULTIPLE CHEMICAL SENSITIVITIES TASK FORCE, Dr. ANN MCCAMPBELL, M.D., and JAN BOYER, Plaintiffs, vs. SANFORD HURLOCKER, District Ranger, Santa Fe National Forest, JAMES MELONAS, Supervisor, Santa Fe National Forest, CAL JOYNER, Southwest Regional Forester, U.S. Forest Service, and VICTORIA CHRISTIANSEN, Chief of the U.S. Forest Service, an agency of the U.S. Dept. of Agriculture, Defendants.	**6:18-cv-00486** **PLAINTIFFS' MOTION AND BRIEF IN SUPPORT OF MOTION FOR INJUNCTIVE RELIEF**

MOTION

COMES NOW the Plaintiffs in the above-entitled matter, by and through their attorneys, and move this Court for a preliminary injunction against implementation of the Hyde Park and Pacheco Canyon Projects at issue in this case, pending resolution of the merits. In support of this motion, Plaintiffs herewith submit a brief of cases and authorities, together with a declarations establishing the potential for irreparable harm to Plaintiffs' interests absent the requested injunctive relief. Plaintiffs have been informed by counsel for Defendants that, absent injunctive

relief, the challenged Projects are scheduled to proceed according to the following timeline (excerpted from Aug. 14, 2018 e-mail) :

Schedule of activities planned for Hyde Park WUI Project
August/September 2018: Solicitation of work and selection of a contractor for a thinning and piling contract across up to 826 acres in the Hyde Park WUI Project area.
Early October 2018: Thinning and piling work begins in Hyde Park for a 300-acre section.
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Schedule of activities planned for Pacheco Canyon Forest Resiliency Project
July – September 2018: In mid-July, Forest Service crews began implementing control lines in the north-eastern portion of the Pacheco Canyon project around a 500-acre section that the agency intends to burn this Fall.
October 2018: 500 acres of prescribed burns will be implemented in the northeastern section of the project area depending on weather. Control line prep in the northwest section of the project may also begin during this timeframe.

Defendants have indicated their opposition to this motion through their attorney of record.

MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF INJUNCTION

I. Introduction

Plaintiffs respectfully request a preliminary injunction against implementation of the Hyde Park Wildland Urban Interface Project and the Pacheco Canyon Forest Resiliency Project ("Projects") in order to maintain the *status quo* of forests undisturbed from their natural state, and prevent imminent and irreparable harm pending this Court's decision on the merits of Plaintiffs' claims. The Forest Service is seeking to initiate an ambitious program of tree removal and annual burns in a project area of 167 square miles of largely roadless national forest lands adjacent to the city of Santa Fe. Infra. Permitting extensive clearance of wildlife habitats comprised of large trees, smaller understory trees (secondary canopy cover) and brush (tertiary canopy cover), together with prescribed fires, represents the kind of irreparable harm to Plaintiffs' interests which this lawsuit is designed to proscribe. See: Hitt Dec., generally.

Under the relevant provisions of the ‘‘Healthy Forests Restoration Act of 2003’’ (HFRA), courts are encouraged to “expedite, to the maximum extent practicable, the proceedings in the action with the goal of rendering… a final determination on the merits[] as soon as practicable after the date on which a complaint or appeal is filed to initiate the action,” and preliminary injunctions are limited to a 60-day time limit, subject to renewal(s). 16 U.S.C. § 6516. Furthermore, HFRA provides that in considering the equities of issuing injunctive relief, “the court reviewing the project shall balance the impact to the ecosystem likely affected by the project of (A) the short- and long-term effects of undertaking the agency action; against (B) the short- and long-term effects of not undertaking the agency action.” 16 U.S.C. § 6516(c)(3).

II. Factual & Legal Background

The Hyde Park Project Area is located on the Espanola Ranger District of the Santa Fe National Forest (“SFNF”), approximately 10 miles northeast of Santa Fe, New Mexico, within elevations approximately between 8,000 and 10,000 feet. This area is popular with recreation enthusiasts. Bio. Eval., 14. The northern project boundary is marked by the Santa Fe National Scenic Byway, with many recreational opportunities along this road, and attracts numerous visitors from Santa Fe and beyond throughout the entire year. Ibid. The forest in this area is predominately ponderosa pine with mixed conifer species - such as Douglas fir and white fir. The Hyde Park area is mostly roadless, and the oldest trees are 180 year-old ponderosa pines. Ibid.

The Pacheco Canyon Project is situated approximately three miles due north of the Hyde Park Project, at similar elevations. Similar to Hyde Park, these forests are predominantly ponderosa pine, along with white pine, in the upper canopy, with mixed conifers underneath, mostly Douglas fir and white fir. Bio. Eval., 15. No age is disclosed for the oldest trees in Pacheco Canyon.

The Hyde Park Project is highly controversial, and first appeared in the SFNF's Schedule of Proposed Activities (SOPA) in the summer of 2005. In February 2006, a decision was made to implement a thinning project. Upon formal review, that decision was reversed due to a lack of documentation regarding roadless area impacts. In August of 2006 the Forest Service again scoped the project, and by 2009 it had prepared a draft environmental assessment. This document received a number of comments, similar to those received in 2006, and the project was once again abandoned - again, largely due to concerns over roadless area impacts. Finally, on February 14, 2017, with new authority from the 2014 Farm Bill, infra., the Forest Service released its third scoping notice for the Hyde Park Project, this time in combination with the Pacheco Canyon Fire Resiliency Project. According to this notice, "[t]hese two projects are part of a larger effort sponsored by the Greater Santa Fe Fireshed Coalition," which coalition includes the Santa Fe National Forest.[1]

On September 14, 2017, the Forest Service submitted a map as part of a 'WorkPlan' to its partners in the Greater Santa Fe Fireshed Committee, revealing 75,953 acres (approximately 120 sq. mi.) of SFNF lands within the 107,626 acre (168 sq. mi.) Santa Fe Fireshed. Woodbury Dec. At the time of this work plan, there were **21,896 acres** of projects (34 sq. mi.) either ongoing or planned - approximately twenty percent of the entire fireshed - including 4,383 acres (6.8 sq. mi.) from the Hyde Park and Pacheco Projects (cumulatively). In spite of the 3,000 acre limitation for qualified projects under the Farm Bill, and in spite of the Projects being scoped together with the same stated purpose and need pursuant to the same larger effort, both the Hyde Park and Pacheco Canyon Projects have been categorically excluded from the requirements to prepare an

[1] All Project Documents are available on the Forest Service web site. See: Woodbury Dec.

environmental assessment (EA) or impact statement (EIS) under the National Environmental Policy Act (NEPA). The larger project referenced above has never been subjected to NEPA.

Subject to designation of appropriate areas by the Secretary of Agriculture, the Farm Bill (attached hereto as Appendix) established a categorical exclusion for qualifying insect and disease projects under 3,000 acres in size, provided that such projects maximize the retention of old growth and large trees and consider the "best available scientific information to maintain or restore the ecological integrity" of the forest. § 603(b)(1). An insect and disease project that may be categorically excluded under this authority is one that is designed to reduce the risk or extent of, or increase the resilience to, insect or disease infestation. § 602(d)(1).

Plaintiffs provided scoping comments in a timely manner on the Projects. These scoping comments represented the only opportunity for providing public input into the decision-making process, and were required to be submitted prior to release of any supporting documentation from Forest Service experts concerning the potential environmental impacts from the proposed thinning and burning. The Forest Service subsequently found that the Projects did not present any of the extraordinary circumstances listed in Forest Service Handbook 1909.15 (Ch 30) which would preclude them from being categorical excluded, and issued decision memoranda approving the Projects.

III. Legal Standards

A. Administrative Review

A federal agency's compliance with NEPA (42 USC § 4321 *et seq.*) is reviewed under the Administrative Procedure Act ("APA"). 5 U.S.C. § 706. Under the APA, a final agency action may be set aside if, after reviewing the administrative record, the court determines that the

agency's action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A)); *Marsh v. Or. Natural Res. Council,* 490 U.S. 360, 378, 104 L.Ed.2d 377 (1989) (courts examine "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment"). While review under this standard is deferential, the court must nonetheless "engage in a substantial inquiry, ... a thorough, probing, in-depth review." *Native Ecosys. Council v. U.S. Forest Serv.,* 418 F.3d 953, 960 (9th Cir.2005) (citation and internal quotations omitted).

B. National Environmental Policy Act, Generally

NEPA requires all government agencies to prepare an EIS when a proposed federal action "significantly affects the quality of the human environment." 42 U.S.C. § 4332(2)(C). The significant effect need not actually occur; instead, it is sufficient to trigger the preparation of an EIS if a substantial question is raised "whether a project may have a significant effect on the environment." *Blue Mtn. Biodiv. Proj. v. Blackwood,* 161 F.3d 1208, 1212 (9th Cir.1998). See, also: *Kleppe v. Sierra Club*, 427 U.S. 390, 409-410 (1976):

> We begin by stating our general agreement with respondents' basic premise that § 102(2)(C) may require a comprehensive impact statement in certain situations where several proposed actions are pending at the same time. NEPA announced a national policy of environmental protection and placed a responsibility upon the Federal Government to further specific environmental goals by "all practicable means, consistent with other essential considerations of national policy." § 101(b), 42 U.S.C. § 4331 (b). Section 102(2)(C) is one of the "action-forcing" provisions intended as a directive to "all agencies to assure consideration of the environmental impact of their actions in decisionmaking." Conference Report on NEPA, 115 Cong. Rec. 40416 (1969). By requiring an impact statement Congress intended to assure such consideration during the development of a proposal or — as in this case — during the formulation of a position on a proposal submitted by private parties. A comprehensive impact statement may be necessary in some cases for an agency to meet this duty. Thus, when several proposals for coal-related actions that will have cumulative or synergistic environmental impact upon a region are

> pending concurrently before an agency, their environmental consequences must be considered together. Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action.

If an agency moves forward without issuing an EIS, the agency must provide a "convincing statement of reasons" to support why the project's effects are not significant; this explanation is critical in demonstrating that the agency took the requisite "hard look" at the potential effects of a project. *Blue Mtn. Biodiv. Proj., supra. Accord: Alaska Ctr. for the Env't v. U.S. Forest Serv.*, 189 F.3d 851, 859 (9th Cir. 1999). In assessing a project's significance, both its context and intensity are evaluated. 40 C.F.R. § 1508.27. The context varies depending on the scope of the project. Ibid. The intensity, or the "severity of the impact" of the proposed action, should be evaluated based upon a number "significance" factors. Ibid., at (b)(1)-(10). A court may find a substantial risk of a significant effect based on just one of these factors. *Ocean Advocates v. U.S. Army Corps of Eng'rs,* 402 F.3d 846, 865 (9th Cir. 2004).

C. Categorical Exclusions Under NEPA

"Categorical exclusions, by definition, are limited to situations where there is an insignificant or minor effect on the environment." *Ocean Advocates,* 402 F.3d at 865; *see also* 40 C.F.R. § 1508.4. The Forest Service must still document the reasons why the action is considered to be insignificant, because the "threshold question in a NEPA case is whether a proposed project will 'significantly affect' the environment, thereby triggering the requirement for an EIS." *Blue Mtn. Biodiv, Proj., supra,* at 1212 (citing 42 U.S.C. § 4332(2)(c)).

D. Connected and Cumulative Actions Under NEPA

"Proposals or parts of proposals which are related to each other closely enough to be, in effect, a singe course of action, shall be evaluated in a single impact statement." 40 C.F.R. §

1502.4(a). NEPA analysis must consider both "connected actions" and "cumulative actions." Connected actions are "closely related [actions] and therefore should be discussed in the same [NEPA document]." 40 C.F.R. § 1508.25(a). Actions are connected if they "are interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. § 1508.25(a)(1)(iii). See, also: *Kleppe*, supra.

E. Preliminary Injunctions

"'In order to receive a preliminary injunction, the plaintiff must establish the following factors: (1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) that the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) that the injunction, if issued, will not adversely affect the public interest.' *Davis v. Mineta* , 302 F.3d 1104, 1111 (10th Cir. 2002)… 'Because a preliminary injunction is an extraordinary remedy, the movant's right to relief must be clear and unequivocal.' *WildernessWorkshop* , 531 F.3d at 1224 (internal quotation marks and brackets omitted)." *Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016). Regarding the showing of irreparable harm, "[p]urely speculative harm will not suffice, but [a] plaintiff who can show a significant risk of irreparable harm has demonstrated that the harm is not speculative and will be held to have satisfied this burden." *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1157 (10th Cir. 2011) (internal quotation marks and citation omitted).

IV. Plaintiffs are Likely to Succeed on the Merits of their Claims

A. Cumulative Impacts of Excluding Natural Wildfires From Roadless Areas

Categorically excluded projects under the 2014 provisions of the Farm Bill are limited to no more than 3,000 acres, are required to be consistent with governing forest plans, and must

maximize the retention of old growth and large trees. App. A. As noted above, the Forest Service here is proposing the Projects as "part of an effort by the Greater Santa Fe Fireshed Coalition (GSFF) to change conditions across a landscape… of more than 100,000 acres," and these first two projects total 3,882 acres. Rather than being isolated, targeted actions, the Projects "represent the type of actions the Coalition would like to see on a larger scale." In other words, this is not some small project that poses no potential for cumulative effects, but rather the first two projects of a program to alter an area more than thirty times the size of the Farm Bill CE.

"A single NEPA review document is required for distinct projects when there is a single proposal governing the projects, or when the projects are 'connected,' 'cumulative,' or 'similar' actions under the regulations implementing NEPA." *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 893-94 (9th Cir. 2002) (citing 40 C.F.R. § 1508.25 and *Kleppe,* supra.). According to a Forest Service map, submitted as part of a WorkPlan to the GSFFC (Woodbury Dec.), there are **75,953** acres of Santa Fe National Forest lands within the 107,626 acre Santa Fe Fireshed. At the time of this work plan - September of 2017 - there were already **21,896** acres of ongoing or planned projects, including approximately **5,483** acres (8.5 square miles) of thinning and burning projects on national forest lands within the Santa Fe NF. Clearly, these actions are connected, cumulative, and part of a larger programmatic decision that is subject to NEPA.

In the Farm Bill, Congress borrowed the terms "categorical exclusion" and "scoping" from existing NEPA regulations *without re-defining them* in the statute itself. The terms *are,* however, defined in CEQ's implementing regulations for NEPA, and have been part of the NEPA lexicon since 1978. 40 C.F.R. § 1508.4. Significantly, § 1508.1 provides that "[t]he terminology of this part shall be uniform throughout the Federal Government." Thus, the definition of "categorical

exclusion," and all it entails under the regulations, should apply to the Farm Bill CE, since the law provides for uniform terminology by its express terms and "it is a cardinal rule of statutory construction that, when Congress employs a term of art, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken[.]" *F.A.A. v. Cooper*, 566 U.S. 284, 292 (2012) (internal quotations omitted).

According to NEPA Regulations, a "categorical exclusion" is defined as:

> [A] category of actions which do not individually *or cumulatively* have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementation of these regulations (§1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required… Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

40 C.F.R. §1508.4. Thus, under the well-established law governing the NEPA exclusion process, agencies must make an independent determination for normally excluded actions to determine whether any extraordinary circumstances are present which "may have a significant environmental effect," and can only bypass detailed statements for "categories of actions which do not individually *or cumulatively* have a significant effect on the human environment." (emph. added). *Sierra Club v. Bosworth*, 510 F.3d 1016, 1019 (9th Cir. 2007).

In point of fact, the Forest Service may not take advantage of a categorical exclusion absent *certainty* that the project being considered will not cause significant direct, indirect or cumulative effects to the environment. 36 C.F.R. § 220.6(c). The same result is reached by considering 36 C.F.R. § 220.4, which applies generally to all Forest Service proposals that are "not statutorily exempt from the requirements of section 102(2)(C) of the NEPA (42 U.S.C.

4332(2)(C))." Ibid., § 220.4(a).[2] That regulation requires scoping "for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA or an EIS," Ibid., 220.4(e), and also requires consideration of cumulative effects for all agency proposals not exempted from NEPA. Ibid., § 220.4(f).

In the case of the Farm Bill CE, while Congress utilized the terminology of the NEPA regulations, there was never any statutory finding that qualifying projects, pursuant to the programmatic designations of eligible areas by the USFS Chief, would not have cumulatively significant environmental effects. As the Chief chose not to engage in rule making or to apply NEPA to the discretionary designation of eligible areas,[3] which would have necessarily included a consideration of the potential for cumulative effects, it was incumbent on the Forest Service during the scoping process for the Hyde Park and Pacheco Canyon Projects to consider the potential for cumulative effects. *Utah Envtl. Cong.,* infra. If the Projects were deemed to have potentially significant cumulative impacts under NEPA, then the Forest Service would have been precluded from categorically excluding the Projects from more careful environmental review.

It is presumed that Congress was aware of how the NEPA process works in incorporating the regulatory scheme into the Farm Bill. For example, as the 10th Circuit has found:

> We agree that it may be conceptually possible for a large number of small projects to collectively create conditions that could significantly effect the environment. But the regulation itself contains a provision to address that concern, namely the extraordinary circumstances exception. And the extraordinary circumstances safety-valve is more than capable of addressing specific harms allegedly created by specific projects….

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[2] Note that categorical exclusions are part of NEPA's process, and not exempted therefrom.

[3] There was a limited window for demonstration projects that the Chief would not have had any discretion over, but the New Mexico designations fell outside that window.

Utah Envtl. Cong. v. Dale Bosworth, 443 F.3d 732, 741 (10th Cir. 2006). Similarly, in *All. for the Wild Rockies v. Weber*, 979 F. Supp. 2d 1118 (D. Mont. 2013), *aff'd sub nom. All. for Wild Rockies v. Weber*, 639 F. App'x 498 (9th Cir. 2016), the Court held the Service's "extraordinary circumstances analysis includes consideration of whether a normally excluded action may have cumulatively significant environmental effect." *Weber*, supra., at 1129, citing 40 CFR §1508.4.

In this case, in spite of the combined scoping and subsequent approval of the first two projects of a much larger programmatic initiative - two projects that cumulatively exceed the statutory 3,000 acre limit - the Forest Service *never considered the potential for cumulative impacts* associated with the stated "effort by the Greater Santa Fe Fireshed Coalition (GSFF) to change conditions across a landscape… of more than 100,000 acres." Hyde Park DM, p. 1. The efficacy of these two projects clearly depends on a continuation of similar projects: "Although the Coalition is looking at an area of more than 100,000 acres, it has endorsed smaller projects that will represent the type of actions the Coalition would like to see on a larger scale." Id.

Under the Farm Bill, eligible projects under 3,000 acres are "considered [to be] an action categorically excluded from the requirements of" NEPA. While it could be argued that a statutory CE is different than a regulatory CE, according to the Forest Service's own explanation of the legal effect of the Farm Bill's new categorical exclusion for Insect and Disease Area Designations, published on its public information website:

> [T]hese designations do not change, or exempt the Forest Service from complying with, any other existing law, regulation and policy, such as the National Environmental Policy Act, Endangered Species Act… *and any other applicable law, regulation, and/or policy* that affects the designated areas.

(emph. added).[4] One such policy is found in the Forest Service Handbook which, while not enforceable, provides further clarification regarding consistency with NEPA and its regulations:

> The Council of Environmental Quality regulations provide for categorical exclusions… [that] allow Federal agencies to exclude from documentation in an environmental assessment or environmental impact statement categories of actions that do not individually or cumulatively have a significant effect on the human environment. Based on the Agency's experience and knowledge, *the responsible official can conclude that if the action fits within an identified category and analysis shows there are no extraordinary circumstances, then the action would not have significant effects.*

(emph. added) USFS Handbook 1909.15, Ch. 30. As pointed out above, courts have found that this extraordinary circumstance analysis encompasses cumulative impacts.

Under NEPA regulations, a "cumulative impact" 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. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. §1508.7. A continuation of similar treatment projects in the vicinity of the Hyde Park and Pacheco Canyon project areas is therefore not only reasonably foreseeable, from the Forest Service and GSFF's perspective it is *necessarily expected,* since none of these projects would make sense apart from the others (that is, from the standpoint of altering fire regime). It is only by breaking this effort "to change conditions across a landscape of more than 100,000 acres" down into smaller projects under 3,000 acres that the Forest Service is able to pretend that a programmatic EIS is not required by law.

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[4] http://www.fs.fed.us/farmbill/areadesignations.shtml

The need for a programmatic EIS in this case can be appreciated by considering the regulatory criteria established by CEQ for agency determinations of "significance" under NEPA's action-forcing scheme. Significance is determined, in part, by considering:

> ***
> (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
>
> (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

40 C.F.R. §1508.27(b). Since NEPA does not permit an agency to piecemeal a project in order to avoid a significance determination, and as Congress is presumed to have had a valid reason for limiting the size of such projects to 3,000 acres - for example, in order to avoid cumulatively significant impacts from thinning and burning vast expanses of roadless wildlands habitat - it is incumbent on the Forest Service to render a decision of potential significance in this matter for the entire GSFF initiative "to change conditions across a landscape of more than 100,000 acres." "Only through comprehensive consideration of pending proposals can the agency evaluate different courses of action." *Kleppe*, supra., at 410. To date, the Service has avoided such consideration. Plaintiffs assert that if it engaged in a comprehensive determination, the Service would be compelled to undertake preparation of a programmatic EIS as a matter of law, for the reasons detailed in this brief.

The overarching issue in this case, then, comes down to deciding whether or not dramatically changing "conditions across a landscape of more than 100,000 acres" with

mechanical treatments that remove around 90% of the trees[5] followed by prescribed fires has the potential to create cumulatively significant impacts to the human environment. Since the Forest Service has yet to undertake this kind of programmatic analysis, either at the time of designating landscapes under the Farm Bill or proposing the Hyde Park and Pacheco Canyon projects, this Court will have no choice under well-established law but to set the decision aside. See, e.g., *Alaska Ctr. for the Env't v. U.S. Forest Serv.*, supra., at 859 ("When an agency decides to proceed with an action in the absence of an EA or EIS, the agency must adequately explain its decision."). It is not, however, Plaintiffs' burden to prove such impacts will necessarily occur in the absence of agency analysis, since "Congress did not intend to unduly burden citizens by requiring them to basically carry out the job of the agency." *Cmty. Ass'n for Restoration of the Env't v. Henry Bosma Dairy*, 305 F.3d 943, 951-953 (9th Cir. 2002).

B. The Ecological Importance of Natural Roadless Areas

Approximately forty percent of the 100,000 acre landscape that the Greater Santa Fe Fireshed Coalition would like to see logged and burned is within Inventoried Roadless Areas (IRAs) - including almost all (93%) of the Hyde Park Project and forty percent of the Pacheco Canyon Project. The Projects challenged here seek to log and/or burn: 1,711 acres in the Black Canyon and Thompson Peak IRAs; 616 acres in the Pacheco Canyon IRA; and, 192 acres in the Tesuque Creek and Juan de Gabaldon IRAs - cumulatively accounting for 66% of the acres at issue in this case. DM's, p. 4. This focus on 'treating' IRAs raises two separate issues: consistency with NFMA and the Wilderness Act; and, consistency with the Farm Bill CE

[5] Vegetation Report shows approx. 65% trees over 9 inches diameter would be removed in mixed conifer forest, while 75-90% trees over 9 inches would be removed in ponderosa pine forest.

statutory provisions. For purposes of seeking injunctive relief, Plaintiffs will focus on the latter issue, though ultimately the wilderness characteristics of the IRAs may be of equal significance in determining the merits on summary judgment.

In allowing projects to be categorically excluded from careful NEPA analysis, the Farm Bill requires approved treatments to be consistent with forest plans and, significantly, to maximize the retention of old growth and large trees consistent with the overall purposes of the Act. § 603(b)(1)(A). An agency is required to "articulate a satisfactory explanation for its action." *Turtle Island Restoration Network*, 878 F.3d at 732 (quoting *Motor Vehicle Mfrs. Ass'n of U.S.*, 463 U.S. at 43); 36 C.F.R. § 219.15(d) ("A project or activity approval document must describe how the project or activity is consistent with applicable plan components . . . .").

The Santa Fe National Forest Plan sets forth very detailed criteria for measuring old-growth habitat, which criteria include consideration of such factors as:

- live tree component in main canopy;
- variation in tree diameters;
- dead trees (standing dead, or 'snags,' as well as downed logs);
- tree decadence (disease component);
- number of tree canopies;
- total basal area (a measure of density); and,
- total canopy coverage.

SFNF Plan, Replacement Page 69A. The Plan includes the following mandatory Forestwide Standards and Guidelines for managing old growth:

- Site specific identification of old growth will occur during ecosystem area analysis or project planning. Stands managed for old growth should be at least 40 acres in size, with a preference for larger stands.
- The amount of old growth can be provided and maintained will be evaluated at the ecosystem management area level and be based on forest type, site capability, and disturbance regimes.

- Strive to create or sustain as much old growth compositional, structural, and functional flow as possible over time at multiple-area scales. Seek to develop or retain old growth function on at least 20 percent of the forested area by forest type in any landscape.
- Forested sites should meet or exceed the structural attributes to be considered old growth in the five primary forest cover types in the southwest as depicted in the table on the following page [referenced, supra.].
- Thinning is permitted in stands being managed for old growth when the result will enhance attainment of the old growth characteristics. *No treatments should occur in a stand managed for old growth once the stand has achieved minimum structural characteristics of old growth*.

(emph. added) SFNF Plan, pp. 68-69. This last standard, an express limitation on the kinds of treatments at issue here, is an unambiguous recognition not only that old-growth habitat is most valuable when left in its natural state, but also that once habitat reaches its climax stage, the kind of decadence the Farm Bill ostensibly seeks to prevent is *beneficial* (for wildlife) - not something to be "treated" - and will naturally increase until such time as succession has run its course.

Neither of the challenged decisions explain how the intensive treatment prescriptions are consistent with the Forest Plan old growth definitions, direction, or standards. Without disclosing existing old growth levels in the Project Areas and analyzing the potential impacts of extensive treatments on the habitat characteristics of those stands, in comparison to the detailed forest plan criteria, the Forest Service is not able to demonstrate consistency with the Plan. Nor, for that matter, has it articulated a rational strategy for maximizing the retention of such valued habitats.

In Hyde Park, according to the Forest Service, "[t]he oldest trees are ponderosa pine many of which are **180 years old.**"[6] Bio. Eval., p. 14. It is beyond dispute that a 180-year-old ponderosa pine forest, as well as a mixed conifer forest with a 180-year-old ponderosa pine

[6] Similar information on age of the oldest trees is not disclosed in the Pacheco Canyon Project documentation, though stand surveys are referenced, indicating the Forest Service knows how old the affected habitats are.

overstory, qualifies as old-growth habitat. Assuming these older areas of the forest have not been previously logged - certainly a reasonable assumption in the inventoried roadless areas - such a 180-year-old ponderosa pine forest would *necessarily* constitute old-growth habitat; that is, a centuries-old, complex forest ecosystem that is both precious to wildlife and all-too-rare in the U.S. due to the economic value historically placed on large, old trees. It only stands to reason, then, that all the forested areas in the IRAs surrounding the Pecos Wilderness are comprised of natural, old-growth habitat, as they have largely been undisturbed for nearly two centuries. Thus, the most pertinent question posed by the challenged projects, in light of the statutory requirement to maximize retention of old growth and the detailed definitions of old growth set forth in the SFNF Plan, is whether or not these areas will still *retain* their old-growth habitat values *after* treatments that aim to remove 90% of the trees followed by prescribed burns.

Remarkably, the challenged decisions are silent on the impacts of treatments in relation to the old growth standards and definitions of the SFNF Plan. The Biological Evaluations simply state that "retention of existing old growth in accordance with forest plan old growth standards and guidelines" would be required - but nowhere disclose existing old growth conditions in the Project areas, as required by the forest plan as part of project design. Supra. ("Site specific identification of old growth will occur during ecosystem area analysis or project planning.")[7]

[7] Similarly, in relation to the large tree retention requirement, the Forest Service fails to adequately explain why trees under the 16-inch cut-off could not be retained, would not be considered "large," or what effect removing all trees smaller than 16 inches would have on existing old growth forest. A 15-inch diameter ponderosa pine is a large, older tree in a dry forest like the Santa Fe, where trees grow more slowly than in moist climates. Thus, one could certainly argue that "maximizing" large tree retention would include 15-inch trees, absent convincing reasons to the contrary.

Old growth habitat is more than just a few big old trees retained in open, park-like and fire-proofed conditions, as the criteria set forth in the forest plan clearly illustrate, supra. And old growth *necessarily* includes some level of "decadence," which conflicts on its face with the avowed purpose of the Farm Bill to remove "diseased" and "infested" trees. It is not plausible to maintain that the Projects as designed will maximize the retention of old growth when there is no disclosure of existing old-growth habitat levels, and no credible analysis in the record supporting that bald assertion. Removing 90% of trees seems inconsistent on its face with maintaining old growth characteristics as required by the forest plan, thus calling for *some* kind of disclosure and analysis in order to demonstrate consistency with the Farm Bill's mandates. In the absence of any old growth survey information to the contrary, it is reasonable to assume that all forests in roadless areas that have never been commercially logged are presently functioning as old-growth habitat, providing valuable structural components for a diversity of species associated with older forests, and thus it is incumbent on the Forest Service to demonstrate the required consistency by explaining to the public how they are complying with the forest plan requirement that "[n]o treatments should occur in a stand managed for old growth once the stand has achieved minimum structural characteristics of old growth." Supra.

One of the reasons roadless areas are considered critical to the overall health of our national forests is that they have never been commercially harvested, except perhaps near the boundary roads, thus serving as repositories for what precious little old-growth habitat remains in the continental United States after more than a century of high-grading the largest, most

economically valuable trees. The increasing scarcity of old-growth habitat,[8] and the impact its loss was having on wildlife species, prompted the Forest Service to recognize in 1989 the "many significant values associated with old growth forests, such as biological diversity, wildlife and fisheries habitat, recreation, aesthetics, soil productivity, water quality, and industrial raw material." *Green et al.* (1992), R-1 SES 4/92, App. C (Appended hereto as "Appendix B"). In the SW Region USFS, old-growth is defined generally in a manner that includes the SFNF IRAs:

> Forested sites distinguished by old trees and related structural attributes. Old growth encompasses the later stages of stand development that typically differ from earlier stages in a variety of characteristics which include tree size, accumulations of large dead woody material, number of canopy layers, species composition, and ecosystem function…

(FSH 2090.11) (excerpted from the "Glossary" to the Region 3 FEIS FP Amend).

In spite of the IRA's never having been commercially logged in the SFNF, and in spite of the fact that the Forest Service has been advocating the need to treat the Hyde Park Project Area for over a decade now, including its previous inadequate environmental assessments, the Forest Service *still* has not provided the public with survey information and maps comparing the habitat conditions in the Hyde Park Project Area to the minimum criteria for old-growth habitat set forth in the Forest Plan, or even narratively to the more general definition from the Regional Forester, and thus there is no record upon which this Court will be able to determine whether or not the

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[8] Exact estimates of remaining old growth habitat in the U.S. are difficult to find. However, Global Forest Watch cites the Forest Service in reporting that: "Approximately 20% of North American forests have been permanently cleared for agriculture and other uses, primarily within the last two centuries (Bryant, et al. 1997)… remaining forests have experienced significant human disturbance and do not possess the same degree of ecological integrity as the original forest. As human populations grow, forest fragmentation and degradation continues. One result has been the loss of extensive areas of old-growth forest. According to one estimate, *stands of century-old forest now account for only 7% of forest cover in the United States* (USDA-FS 2000)." See: https://www.ran.org/how_much_old_growth_forest_remains_in_the_us

Hyde Park Project, as approved, complies with the statutory requirement to maximize the retention of old growth and large trees.

V. Public Interest & Balance of Equities Favors Protecting Roadless Areas

Under the Farm Bill, forest restoration projects are required to "consider[] the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity" of affected national forests. § 603(b)(1)(B). Multiple lines of evidence suggests that mixed conifer and ponderosa pine forests such as those found in the Project Areas are characterized by, and dependent on, the kind of mixed-severity wildfires that include ecologically significant amounts of weather-driven, high-severity fire. The ecological importance of these large, infrequent, and sometimes severe natural disturbances in structuring historical landscapes, old growth habitats, and the biological diversity associated with this natural complexity, is well established in the best available science that has developed in recent years, when wildfire has become of more interest and concern to the public. See, e.g.: *Odion et al.*, 2016 ("Areas of Agreement: 'High-severity fire was undoubtedly a component of fire regimes in ponderosa pine and drier mixed-conifer forests.' This represents a significant shift from perspectives in much of the literature in recent decades, which often mentions only low- or low-moderate severity fire in describing historical fire regimes in ponderosa pine and mixed-conifer forests." p. 2/6)

According to recent (September 2017) Congressional testimony from the Chief Scientist of the nonprofit organization, Geos Institute, which works collaboratively with agencies, landowners, and decision makers in applying the best available science to climate change planning and forest management (as required by the Farm Bill):

> Wildfires are necessary natural disturbance processes that forests need to rejuvenate. Most wildfires in pine and mixed-conifer forests of the West burn in mixed fire intensities at the landscape scale that produce large and small patches of low to high tree mortality. This tapestry of burned patches is associated with extraordinary plant and wildlife diversity, including habitat for many big game and bird species that thrive in the newly established forests. From an ecosystem perspective, natural disturbances like wildfires are not an ecological catastrophe… Increased logging and decreased environmental review in response to wildfires and insect outbreaks is not science driven, in many cases may make problems worse, and will not stem rising wildfire suppression costs… *Wildfires burn most intensely in previously logged areas, while they burn in natural fire mosaic patterns in wilderness, parks, and roadless areas, thereby, maintaining resilient forests…*
>
> There is a very low probability of a thinned site actually encountering a fire during the narrow window when tree density is lowest. For example, the probability of a fire hitting an area that has been thinned is about 3-8% on average, and thinning would need to be repeated every 10-15 years (depending on site productivity) to keep fuels at a minimum (*Rhodes and Baker* 2008).

(emph. added) Woodbury Dec. Suppressing large wildfires, as intended by the Projects at issue here to 'remedy' past suppression of large wildfires, has been shown to result in multiple adverse impacts that include: (1) declining and potentially threatened native animals dependent on severely burned patches (*Hutton* 2008 and *Hanson* 2014); (2) loss of biologically diverse early-successional habitat (*Swanson et al.* 2001 and *Della Salla et al.* 2014); reduction in fire-stimulated native shrubs and trees that were historically abundant (*Baker* 2014 and *Vankat* 1978); and, simplification of landscape heterogeneity that is key to landscape resilience to future climate-change effects (*Millar* et al. 2007).

In contrast to this science, the Forest Service claims there is more than a 90 percent probability of a large crown fire in the Santa Fe Watershed in the next 20 years - the same contention they made in 2005, as it turns out. Even if this could be considered statistically valid at the landscape scale of the watershed, the probability that such a fire will occur in a relatively

small, <3000 acre project areas is, by comparison, much *less*-likely-than-not. *Rhodes and Baker* (2008) estimate the probability of a moderate to high intensity fire *in any given area* of Southwestern ponderosa pine forests as .0025% per year, or 15% over 60 years; and, since fuels reduction treatments may be effective for only 10-20 years (*Agee and Skinner* 2005), the treatment areas approved here are unlikely to encounter the fire they are designed to withstand. Thus, according to *Rhodes and Baker* (2008): "Potentially adverse treatment effects on watersheds are not counterbalanced by benefits from reduced fire severity" in projects like the Hyde Park and Pacheco Canyon Projects.

According to new reference data and records of high-severity fire from 1984–2012 across *all* dry forests (25.5 million ha) of the western USA, *Baker* (2015) found that "the rate of recent high-severity fire in dry forests is within the range of historical rates, *or is too low*, overall across dry forests and individually in 42 of 43 analysis regions" (emph. added) - *including the SFNF* - and thus "[p]rograms to generally reduce fire severity in dry forests are not supported and have significant adverse ecological impacts, including reducing habitat for native species dependent on early-successional burned patches and decreasing landscape heterogeneity that confers resilience to climatic change."

Thus, public interest favors injunctive relief at this time to preserve the *status quo* of the natural and undisturbed conditions of the Project Areas, which are threatened with permanent and irreparable harms if the project decisions turn out to be unwarranted or unlawful, versus delay in implementation of the projects while the Court considers the merits of Plaintiffs' case on an expedited basis, as required by law. Old growth forests take centuries to develop their unique characteristics, and are thus irreplaceable in human time scales.

VI. Potential Short- and Long-term Significance of Forest Thinning for Wildlife Affected by the Projects

Bill West, an experienced birder and resident of Hyde Park, has documented bird species found in and around the Hyde Park Project Area. His surveys from May/June of 2015, and May/June of 2016, submitted to the Forest Service as part of the record in this case, documented the following resident species:

> Western Screech Owl, Common Nighthawk, Northern Goshawk, Cooper's Hawk, Sharp-shinned Hawk, Grace's Warbler, White-winged Dove, Gray Flycatcher, Western Tanager, Flammulated Owl, Violet green Swallow, Black-throated Gray Warbler, Warbling Vireo, Orange-crowned Warbler, Yellow-rumped Warbler, Hermit Thrush, Plumbeous Vireo, Cordilleran Flycatcher, Common Poorwill, Ash-throated Flycatcher, Western Wood Pewee and Townsend's Solitaire.

Clearly, these Project Areas are biologically diverse and vibrant wildlife habitats. On just the morning of July 24, 2016, Mr. West identified 23 bird species within the Hyde Park project area, including several pairs and juveniles, indicating that the project area provides excellent bird breeding and fledging habitat. Nine species listed above are cavity nesters that would potentially be killed or displaced by felling occupied snags during the breeding season.

The Northern Goshawk was designated by the Forest Service as a sensitive species in 1982 to meet its duty under the Forest Act to provide for the diversity of animal communities. Large trees, high tree densities and dense canopies have been demonstrated to be important components of Goshawk foraging habitat. The SFNF Plan mandates 40% average canopy cover in all mid-aged, mature and old growth forests (outside of Mexican spotted owl restricted and protected habitat). These guidelines must be complied with to be consistent with the Forest Plan.

Canopy cover in the Project Area currently averages between 50-70%. The intent of the Projects is to reduce average canopy cover levels below 40% in thinned areas (between 35-40%). Only in Mexican spotted owl habitat does the decision provide that canopy closure will not be reduced below 40%. The Goshawk canopy closure requirement of 40% is considered by wildlife experts to be a *bare minimum.* Arizona Game and Fish Department (1993) contend that a denser canopy closure is needed by the non-hibernating, non-migratory prey species - such as Abert's squirrel (infra.) - that Goshawks utilize for winter prey. Abert's squirrel is an indicator for the presence of interlocking canopies in ponderosa pine forests. Patches of interlocking pine canopies, which are associated with mature and undisturbed ponderosa pine forests, are an increasingly rare habitat element on the national forests of the Southwest, and are targeted by most thinning operations. Thinning of interlocking canopy trees in the Project Areas will reduce the basal area (a measure of overall tree density) below what is required by the Abert's squirrel, a species that is also integral to the *proliferation* of ponderosa pine forests. Because the SFNF does not monitor populations of Albert's squirrel, there is a high degree of uncertainty and serious questions concerning species viability when initiating these kinds of vegetative manipulative projects in undisturbed forests. In spite of this, the Project Biological Evaluations *do not evaluate* the potential impacts of thinning and prescribed burns on Abert's squirrel.

VII. Long-term Public Interest Favors Protecting Public Health

Because of the size of the Santa Fe Fireshed, and the 3,000 acre limit for projects eligible for categorical exclusions, simple math reveals that the kind of intensive management of the IRAs that the Forest Service intends will effectively include annual prescribed fires indefinitely as a substitute for the kind of mixed severity wildfire that would naturally occur once or twice in

a person's lifetime. For the people of Santa Fe, this kind of annual forest burning presents a very real potential for significant adverse health effects. See: McCampbell, M.D. Dec. According to a recent (2015) study included in the National Institute of Health's Library of Medicine:[9]

> Given the increase in PM2.5 [particulate matter ≤ 2.5 microns in size] concentrations during smoke events, there is a need to understand the influence of prescribed burning smoke exposure on human health. This is important especially since adverse health impacts have been observed during wildfire events when PM2.5 concentrations were similar to those observed during prescribed burning events. Robust research is required to quantify and determine health impacts from prescribed burning smoke exposure and derive evidence based interventions for managing the risk.

"Unlike wildfires that are of high intensity, prescribed fires are cool low-intensity burns and produce relatively short plumes… While low-intensity prescribed burns (low heat, light emissions) cause minimal risk to life and property, they can however emit large amounts of smoke particulates… As a result, smoke from prescribed burning can have a ***substantial impact*** on rural/regional areas, along with potential to impact urban airsheds due to long-range transport of smoke particles." (emph. added) *Heikerwal et al*.[10] This same study found that "adverse health impacts due to PM related wildfire smoke exposure have been observed at comparatively low PM concentrations, well within current air quality standards" and "*there is no known safe level of pollutant exposure below which adverse health impacts are not observed.*" *Ibid*.

According to the Forest Service itself, smoke from prescribed fires contains a number of toxic air pollutants and known carcinogens, and the "acute (short-term) effects of smoke exposure… can result in reduced lung function, even in healthy people… Respiratory

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[9] See: https://www.ncbi.nlm.nih.gov/pubmed/25947317

[10] "Impact of smoke from prescribed burning: Is it a public health concern?" *Journal of the Air & Waste Management Assoc.*, Volume 65, 2015 - Issue 5. https://www.tandfonline.com/doi/full/10.1080/10962247.2015.1032445

complications of smoke exposure may be of particular concern in the very young, and in older individuals (Delfino *et al.* 2009)." NWCG Smoke Management Guide for Prescribed Fire, pp. 33-34. The Forest Service acknowledges that smoke from prescribed burns can result in emissions of heavy metals to the atmosphere. Ibid., p. 126. According to the New Mexico Environment Department (2008), smoke from wildfires and prescribed burns account for the second highest total amount of mercury - a neurotoxin associated with brain, kidney and lung damage - released in New Mexico, with fetal development and young children being most at risk of adverse health effects. In considering the potential significance of air pollution and release of toxic substances from prescribed fires so close to Santa Fe, the Forest Service failed to base their assessment on the best available scientific information currently available, raising substantial questions about the significance of prescribed fires on the human environment.

VIII. Conclusion

The Projects challenged in this litigation are part of a much larger program for aggressively altering the forested landscape in largely roadless, centuries-old ponderosa pine forests that are adjacent to, and quite popular with, the people of Santa Fe. For any or all of the reasons discussed above, the Forest Service owes it to the owners of these public lands to take a hard look at the risks and benefits of such a massive undertaking - including human health effects, wildlife impacts, recreation impacts, and consistency with the SFNF Plan's requirements for managing old growth habitat. Plaintiffs will show that this kind of hard look can only be accomplished with a programmatic EIS prepared under NEPA. Until such time as the Court has an opportunity to consider the merits of these claims, Plaintiffs respectfully request injunctive relief pursuant to HFRA.

Respectfully Submitted,

/s/ Thomas J. Woodbury
Thomas J. Woodbury
Forest Defense, P.C.
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case, as all are registered users of the CM/ECF system at the time of this filing.

SEC. 8204. INSECT AND DISEASE INFESTATION.
Title VI of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6591 et seq.) is amended by adding at the end the following:

"SEC. 602. DESIGNATION OF TREATMENT AREAS.

"(a) DEFINITION OF DECLINING FOREST HEALTH.—In this section, the term '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.

"(b) DESIGNATION OF TREATMENT AREAS.—

"(1) INITIAL AREAS.—Not later than 60 days after the date of enactment of the Agricultural Act of 2014, the Secretary shall, if requested by the Governor of the State, designate as part of an insect and disease treatment program 1 or more landscape-scale areas, such as subwatersheds (sixth-level hydrologic units, according to the System of Hydrologic Unit Codes of the United States Geological Survey), in at least 1 national forest in each State that is experiencing an insect or disease epidemic.
"(2) ADDITIONAL AREAS.—After the end of the 60-day period described in paragraph (1), the Secretary may designate additional landscape-scale areas under this section as needed to address insect or disease threats.

"(c) REQUIREMENTS.—To be designated a landscape-scale area under subsection (b), the area shall be—

"(1) experiencing declining forest health, based on annual forest health surveys conducted by the Secretary;
"(2) at risk of experiencing substantially increased tree mortality over the next 15 years due to insect or disease infestation, based on the most recent National Insect and Disease Risk Map published by the Forest Service; or
"(3) in an area in which the risk of hazard trees poses an imminent risk to public infrastructure, health, or safety.

"(d) TREATMENT OF AREAS.—

"(1) IN GENERAL.—The Secretary may carry out priority projects on Federal land in the areas designated under sub-section (b) to reduce the risk or extent of, or increase the resilience to, insect or disease infestation in the areas.
"(2) AUTHORITY.—Any project under paragraph (1) for which a public notice to initiate scoping is issued on or before September 30, 2018, may be carried out in accordance with subsections (b), (c), and (d) of section 102, and sections 104, 105, and 106.
"(3) EFFECT.—Projects carried out under this subsection shall be considered authorized hazardous fuel reduction projects for purposes of the authorities described in paragraph (2).

“(4) REPORT.—
“(A) IN GENERAL.—In accordance with the schedule described in subparagraph (B), the Secretary shall issue 2 reports on actions taken to carry out this subsection, including—
“(i) an evaluation of the progress towards project goals; and
“(ii) recommendations for modifications to the projects and management treatments.
“(B) SCHEDULE.—The Secretary shall—
“(i) not earlier than September 30, 2018, issue the initial report under subparagraph (A); and
“(ii) not earlier than September 30, 2024, issue the second report under that subparagraph.

“(e) TREE RETENTION.—The Secretary shall carry out projects under subsection (d) in a manner that maximizes the retention of old-growth and large trees, as appropriate for the forest type, to the extent that the trees promote stands that are resilient to insects and disease.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $200,000,000 for each of fiscal years 2014 through 2024.

“SEC. 603. ADMINISTRATIVE REVIEW.

“(a) IN GENERAL.—Except as provided in subsection (d), a project described in subsection (b) that is conducted in accordance with section 602(d) may be—
“(1) considered an action categorically excluded from the requirements of Public Law 91–190 (42 U.S.C. 4321 et seq.); and
“(2) exempt from the special administrative review process under section 105.

“(b) COLLABORATIVE RESTORATION PROJECT.—

“(1) IN GENERAL.—A project referred to in subsection (a) is a project to carry out forest restoration treatments that—
“(A) maximizes the retention of old-growth and large trees, as appropriate for the forest type, to the extent that the trees promote stands that are resilient to insects and disease;
“(B) considers the best available scientific information
to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity; and
“(C) is developed and implemented through a collaborative process that—
“(i) includes multiple interested persons representing diverse interests; and
“(ii)(I) is transparent and nonexclusive; or
“(II) meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125).

“(2) INCLUSION.—A project under this subsection may carry out part of a proposal that complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)).

“(c) LIMITATIONS.—

“(1) PROJECT SIZE.—A project under this section may not exceed 3000 acres.
“(2) LOCATION.—A project under this section shall be limited to areas—
“(A) in the wildland-urban interface; or
“(B) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface.
“(3) ROADS —
“(A) PERMANENT ROADS.—
“(i) PROHIBITION ON ESTABLISHMENT.—A project
under this section shall not include the establishment of permanent roads.
“(ii) EXISTING ROADS.—The Secretary may carry out necessary maintenance and repairs on existing permanent roads for the purposes of this section.
“(B) TEMPORARY ROADS.—The Secretary shall decommission any temporary road constructed under a project under this section not later than 3 years after the date on which the project is completed.

“(d) EXCLUSIONS.—This section does not apply to—

“(1) a component of the National Wilderness Preservation System;
“(2) any Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;
“(3) a congressionally designated wilderness study area; or
“(4) an area in which activities under subsection (a) would be inconsistent with the applicable land and resource management plan.

“(e) FOREST MANAGEMENT PLANS.—All projects and activities carried out under this section shall be consistent with the land and resource management plan established under section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) for the unit of the National Forest System con- taining the projects and activities.

“(f) PUBLIC NOTICE AND SCOPING.—The Secretary shall conduct public notice and scoping for any project or action proposed in accordance with this section.

“(g) ACCOUNTABILITY.—

“(1) IN GENERAL.—The Secretary shall prepare an annual
report on the use of categorical exclusions under this section that includes a description of all acres (or other appropriate unit) treated through projects carried out under this section.
“(2) SUBMISSION.—Not later than 1 year after the date of enactment of this section, and each year thereafter, the Secretary shall submit the reports required under paragraph (1) to—
“(A) the Committee on Agriculture, Nutrition, and For- estry of the Senate;
“(B) the Committee on Environment and Public Works of the Senate;
“(C) the Committee on Agriculture of the House of Representatives;
“(D) the Committee on Natural Resources of the House of Representatives; and
“(E) the Government Accountability Office.”.

APPENDIX A

NORTHERN REGION
USDA FOREST SERVICE
APRIL 1992
R-1 SES 4/92
(errata corrected 02/05,12/07,10/08/,12/11)

OLD-GROWTH FOREST TYPES OF THE NORTHERN REGION

by

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10/11/89

POSITION STATEMENT ON
NATIONAL FOREST OLD GROWTH VALUES

The Forest Service recognizes the many significant values associated with old growth forests, such as biological diversity, wildlife and fisheries habitat, recreation, aesthetics, soil productivity, water quality, and industrial raw material. Old growth on the National Forests will be managed to provide the foregoing values for present and future generations. Decisions on managing existing old growth forests to provide these values will be made in the development and implementation of forest plans These plans shall also provide for a succession of young forests into old growth forests in light of their depletion due to natural events or harvest.

Old growth forests encompass the late stages of stand development and are distinguished by old trees and related structural attributes. These attributes, such as tree size, canopy layers, snags, and down trees, generally define forests that are in an old growth condition. The specific attributes vary by forest type. Old growth definitions are to be developed by forest type or type groups for use in determining the extent and distribution of old growth forests.

Where goals for providing old growth values are not compatible with timber harvesting, lands will be classified as unsuitable for timber production. Where these goals can be met by such measures as extending the final harvest age well beyond the normal rotation or by using silvicultural practices that maintain or establish specific old growth values, lands will be classified as suitable for timber production. In making these determinations, consideration shall be given to the extent and distribution of old growth on National Forest lands that are Congressionally or administratively withdrawn from timber harvest, as well as adjacent ownerships.

Old growth values shall be considered in designing the dispersion of old growth. This may range from a network of old growth stands for wildlife habitat to designated areas for public visitation. In general, areas to be managed for old growth values are to be distributed over individual National Forests with attention given to minimizing the fragmentation of old growth into small isolated areas. Old growth on lands suitable for timber production and not subject to extended rotations is to be scheduled for harvest to establish young stands which more fully utilize potential timber productivity and also meet other resource objectives.

Regions with support from Research shall continue to develop forest type old growth definitions, conduct old growth inventories, develop and implement silvicultural practices to maintain or establish desired old growth values, and explore the concept of ecosystem management on a landscape basis. Where appropriate, land management decisions are to maintain future options so the results from the foregoing efforts can be applied in subsequent decisions. Accordingly, field units are to be innovative in planning and carrying out their activities in managing old growth forests for their many significant values.

GENERIC DEFINITION AND DESCRIPTION OF OLD GROWTH FORESTS
10/11/89

Purpose and Scope

The following describes the ecologically important structural features of old growth ecosystems. Measurable criteria for these attributes will be established in more specific definitions for forest types, habitat types, plant associations or groupings of them. The intent of the generic definition is to guide design of specific definitions and new inventories that include measurement of specific attributes. Although old growth ecosystems may be distinguished functionally as well as structurally, this definition is restricted primarily to stand-level structural features which are readily measured in forest inventory.

Definition

Old growth forests are ecosystems distinguished by old trees and related structural attributes. Old growth encompasses the later stages of stand development that typically differ from earlier stages in a variety of characteristics which may include tree size, accumulations of large dead woody material, number of canopy layers, species composition, and ecosystem function.

Description

The age at which old growth develops and the specific structural attributes that characterize old growth will vary widely according to forest type, climate, site conditions and disturbance regime. For example, old growth in fire-dependent forest types may not differ from younger forests in the number of canopy layers or accumulation of down woody material. However, old growth is typically distinguished from younger growth by several of the following attributes:

1. Large trees for species and site.
2. Wide variation in tree sizes and spacing.
3. Accumulations of large-size dead standing and fallen trees that are high relative to earlier stages.
4. Decadence in the form of broken or deformed tops or bole and root decay.
5. Multiple canopy layers
6. Canopy gaps and understory patchiness.

Compositionally, old growth encompasses both older forests dominated by early seral species, such as fire-dependant species, and forests in later successional stages dominated by shade tolerant species. Rates of change in composition and structure are slow relative to younger forests. Different stages or classes of old growth will be recognizable in many forest types.

Sporadic, low to moderate severity disturbances are an integral part of the internal dynamics of many old growth ecosystems. Canopy openings resulting from the death of overstory trees often give rise to patches of small trees, shrubs, and herbs in the understory.

Old growth is not necessarily 'virgin' or 'primeval.' Old growth could develop following human disturbances.

The structure and function of an old growth ecosystem will be influenced by its stand size and landscape position and context.