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8 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

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11 CENTER FOR BIOLOGICAL DIVERSITY;) Civ. No.
LOS PADRES FORESTWATCH; SIERRA)
12 CLUB; DEFENDERS OF WILDLIFE;)
CALIFORNIA NATIVE PLANT SOCIETY;) **COMPLAINT FOR DECLARATORY**
13 CALIFORNIA WILDERNESS COALITION;) **AND INJUNCTIVE RELIEF**
THE WILDERNESS SOCIETY,)
14)
Plaintiffs,)
15)
vs.)
16)
UNITED STATES DEPARTMENT OF)
17 AGRICULTURE; EDWARD SCHAFER, in his)
official capacity as Secretary of the Department)
18 of Agriculture; UNITED STATES FOREST)
SERVICE; ABIGAIL KIMBELL, in her official)
19 capacity as Chief of the Forest Service; and)
RANDY MOORE, in his official capacity as)
20 Regional Forester for the Pacific Southwest)
Region of the Forest Service,)
21)
Defendants.)

22
23 **INTRODUCTION**

24 1. This case concerns the United States Forest Service's ("Forest Service") revision of
25 land and resource management plans (commonly referred to as "forest plans") that govern nearly
26 every activity that takes place in the four national forests in southern California. These forests
27 encompass 3.5 million acres of forest lands in one of the most biologically diverse regions in the
28 world and are a mecca of outdoor activities for millions of Californians. Expanding populations in

1 southern California’s major metropolises, including Los Angeles and San Diego, have put increasing
2 pressure on the region’s forest ecosystems through a growing demand for recreational activities,
3 some of which, such as off-road vehicles, have significant adverse effects on environmental
4 resources. This fire-prone region also is heavily affected by a long history of fire suppression
5 activities.

6 2. In its most recent attempt at forest planning for these national forests, rather than
7 develop a comprehensive plan to address the myriad activities affecting the health of southern
8 California’s forests, the Forest Service instead ignored meaningful protections for environmental
9 resources that are critical for ensuring thriving populations of wildlife and healthy forests, refused to
10 recommend preserving in perpetuity as wilderness the vast majority of the most pristine and natural
11 areas in the southern California forests, and, instead, re-zoned nearly all of these sensitive areas to
12 allow some of the most damaging and resource intensive activities, such as road building and
13 motorized off-road vehicle recreation. In the course of doing so, the Forest Service failed to take a
14 hard look at many of the serious environmental consequences of shifting the direction of forest
15 management towards allowing more environmentally damaging activities while at the same time
16 failing to develop meaningful, enforceable forest plan requirements that would prevent, minimize,
17 and mitigate impacts to the forests’ diverse flora and fauna.

18 3. This Complaint alleges that the revised forest plans for the four southern California
19 national forests, associated records of decision, and final environmental impact statement (“FEIS”)
20 were promulgated in violation of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 553, 701-
21 706, and the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370f. The Forest
22 Service’s promulgation of the forest plans violated these laws through the agency’s failure to prepare
23 an adequate environmental impact statement that thoroughly analyzes the effects of the proposed
24 action on environmental resources in the forest planning area, including sensitive species of
25 vegetation and wildlife, and its failure to consider a reasonable range of alternative management
26 approaches. As to the last factor, the Forest Service failed to analyze alternative ways of addressing
27 fundamental decisions made by forest plans, such as required management standards necessary to
28 limit adverse impacts to forest resources. The Forest Service’s one-size-fits-all approach to its forest

1 planning duties under the National Forest Management Act (“NFMA”), 16 U.S.C. § 1604, is not the
2 kind of informed decision-making that NEPA requires and is a procedural violation of that law.

3 4. To rectify the NEPA violations alleged herein, plaintiffs Center for Biological
4 Diversity, Los Padres ForestWatch, Sierra Club, Defenders of Wildlife, California Native Plant
5 Society, California Wilderness Coalition, and The Wilderness Society request that the Court set
6 aside the FEIS, records of decisions, and forest plans, declare these documents in violation of NEPA
7 and the APA, enjoin the Forest Service from implementing the forest plans, and order the Forest
8 Service to prepare a legally adequate environmental impact statement and revised forest plans for
9 these forests.

10 5. Should they prevail, plaintiffs will seek to recover attorneys fees and costs pursuant to
11 the Equal Access to Justice Act, 28 U.S.C. § 2412.

12 **JURISDICTION AND VENUE**

13 6. This Court has jurisdiction over Plaintiffs’ claims pursuant to 28 U.S.C. § 1331
14 (federal question) and may issue a declaratory judgment and further relief pursuant to 28 U.S.C.
15 §§ 2201-02.

16 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e), because plaintiff
17 Sierra Club is incorporated in this district and maintains its headquarters in the County of San
18 Francisco. This case also is related to two cases pending before the district court for the Northern
19 District of California: *California Resources Agency, et al. v. U.S. Department of Agriculture, et al.*,
20 No. 08-1185 (N.D.Cal. filed Feb. 28, 2008) and *Center for Biological Diversity, et al. v. U.S. Fish*
21 *and Wildlife Service, et al.*, No. 08-1278 (N.D.Cal. filed March 5, 2008).

22 8. Assignment to the San Francisco Division of this judicial district is proper because
23 plaintiff Sierra Club maintains its headquarters in San Francisco. Civil L.R. 3-2(c).

24 **PARTIES**

25 9. Plaintiff Center for Biological Diversity (“the Center”) is a non-profit conservation
26 organization dedicated to protecting endangered and threatened species and their habitat throughout
27 North America, including California, through science, policy, public education, and the law. The
28 Center is based in Tucson, Arizona, with California offices in San Francisco, San Diego, Los

1 Angeles, and Joshua Tree, and has over 40,000 members nationwide. The Center pursues its
2 mission by preparing and publishing scientific articles, participating in state and federal
3 administrative proceedings, disseminating educational information through newsletters, alerts, the
4 world-wide web, and media releases, and petitioning and litigating to list numerous birds, fish,
5 amphibians, plants, and insects as threatened or endangered species.

6 10. Plaintiff Los Padres ForestWatch is a non-profit conservation organization dedicated
7 to protecting and restoring public lands along California's central coast through community
8 involvement, scientific collaboration, innovative field work, and legal advocacy. Los Padres
9 ForestWatch is a grass-roots watchdog group for the Los Padres National Forest with approximately
10 800 members throughout California.

11 11. Plaintiff Sierra Club is a nationwide non-profit conservation organization formed in
12 1892, with a mission to explore, enjoy, and protect the wild places of the Earth, to practice and
13 promote responsible uses of the Earth's ecosystems and resources, to educate and enlist humanity in
14 the protection and restoration of the quality of the natural and human environment, and to use all
15 lawful means to carry out those objectives. Sierra Club has over 700,000 members, approximately
16 80,000 of whom reside in California. For many years the Sierra Club and its members have
17 advocated for the protection of forest ecosystems throughout California. These advocacy efforts
18 have included forest mapping and identification of remaining ancient forest areas, lobbying for and
19 achieving funding for numerous forest conservation efforts, and urging protection for imperiled
20 species.

21 12. Plaintiff Defenders of Wildlife ("Defenders") is a national, non-profit membership
22 organization dedicated to the protection of all native wild animals and plants in their natural
23 communities. Based in Washington, D.C., and with three offices in California, Defenders has more
24 than 500,000 members nationwide, including over 70,000 in California. Defenders counts among its
25 priorities ensuring the conservation of wildlife and habitat on federal public lands, with particular
26 emphasis on national forests. In California, this has translated into years of advocacy for the
27 protection of the four Southern California national forests and the wildlife that call them home, with
28 special concern for preserving habitat for California condors and other highly endangered species.

1 13. Plaintiff California Native Plant Society (“CNPS”) is a non-profit organization whose
2 mission is to increase understanding and appreciation of California’s native plants and to conserve
3 them and their natural habitats, through education, science, advocacy, horticulture, and land
4 stewardship. CNPS is comprised of more than 10,000 laypersons and professional botanists
5 organized into 32 chapters throughout California.

6 14. Plaintiff California Wilderness Coalition (“CWC”) is a non-profit conservation
7 organization dedicating to achieving formal wilderness designation and protection by the state or
8 federal government for California’s wild areas. CWC pursues this objective through legislative
9 campaigns, grass-roots organizing, public education, such as publishing quarterly news journals,
10 guides, and white papers concerning wilderness issues, and, when necessary, legal action. Most
11 recently, CWC helped pass the Northern California Coastal Wild Heritage Wilderness Act, which
12 protects 275,000 acres of oak woodlands, salmon rivers, and old growth forest. In addition to other
13 projects, CWC is currently working on wilderness legislation to protect 200,000 acres of desert,
14 chaparral, and oak forest in Riverside County in southern California.

15 15. The Wilderness Society (“TWS”) is a non-profit conservation organization that since
16 1935 has sought to protect wilderness and inspire Americans to care for wild places through
17 scientific expertise, analysis, advocacy, and, when appropriate, litigation efforts. To that end, TWS
18 is committed to staving off logging and road building on the nation’s more than 58 million acres of
19 roadless lands and curbing the environmental damage caused by off-road vehicles. TWS has more
20 than 325,000 members and supporters, many of whom live and recreate in southern California.

21 16. Plaintiffs have individual members who live in Southern California, regularly visit the
22 national forests throughout Southern California, and intend to continue to use and enjoy the four
23 southern California national forests in the near future. They use these national forest lands for a
24 variety of purposes, such as scientific study, wildlife observation, photography, hiking, backpacking,
25 fishing, and hunting and intend to continue to do so on an ongoing basis in the future. Plaintiffs’
26 members derive recreational, spiritual, professional, aesthetic, educational, and other benefits and
27 enjoyment from these activities.

1 17. Many of plaintiffs’ members regularly visit both wilderness and non-wilderness
2 roadless areas in the southern California national forests and enjoy these areas for their unique
3 biodiversity, naturalness, and incomparable solitude. Plaintiffs’ members also frequently visit areas
4 of the national forests in southern California that are known for supporting relatively high
5 concentrations of endangered, threatened, candidate, proposed, and sensitive species, and/or the
6 habitat of such species, including sensitive species of native vegetation. Plaintiffs and their members
7 have a procedural interest in influencing national forest management through participation in the
8 development of meaningful, substantive forest plans as prescribed by the NFMA and in the
9 development of comprehensive environmental analyses required by NEPA.

10 18. The above-described interests of plaintiffs and their members have been and are
11 suffering, and will continue to suffer, irreparable injury as a result of the Forest Service’s adoption of
12 the southern California forest plans and the agency’s failure to comply with NEPA. For example,
13 the forest plans re-zone the vast majority of roadless areas such that it will be easier for activities that
14 diminish plaintiffs’ members enjoyment of each forest to occur, including road-building and the
15 intrusion of off-road vehicles. The forest plans thus diminish the ability of plaintiffs’ members to
16 find diverse areas in which to recreate that possess the unique characteristics of solitude, naturalness,
17 and biodiversity that plaintiffs’ members enjoy most about excursions in the southern California
18 forests. The forest plans fail to adopt adequate standards for addressing impacts of the plans and
19 activities authorized by the plans on wildlife and native vegetation, thus diminishing the enjoyment
20 plaintiffs’ members derive from the national forests.

21 19. The Forest Service’s failure to comply with NEPA has injured plaintiffs and their
22 members by depriving them of information pertaining to the southern California forest plans to
23 which they are entitled under NEPA, including information pertaining to the forest plans’ impacts on
24 environmental resources in the planning area, reasonable alternatives to the proposed action, and
25 mitigation measures available to address adverse environmental impacts; by depriving plaintiffs and
26 their members of a meaningful opportunity to comment on the missing information; and by denying
27 them the procedural safeguards embodied in NEPA to ensure that government agencies carefully
28

1 consider the environmental consequences of a proposed action, environmentally superior alternatives
2 to that action, and appropriate mitigation measures prior to granting any project approval.

3 20. Plaintiffs were actively involved throughout the rulemaking process for the Forest
4 Service’s revision of the forest plans for the four southern California national forests. Plaintiffs
5 participated in scoping meetings, submitted scoping comments to the Forest Service, and also
6 submitted comments on the draft environmental impact statement for the revised forest plans.
7 Plaintiffs consistently raised concerns about the Forest Service’s preferred alternative and its impacts
8 on the environment, including wildlife and biodiversity, and on the public, including environmental
9 justice communities. During the rulemaking process, plaintiffs developed and submitted to the
10 Forest Service a comprehensive alternative to the Forest Service’s proposed forest plans, also
11 referred to as the “Conservation Alternative.” Among other important provisions, the Conservation
12 Alternative proposed protecting substantially more acres of forest land as wilderness and included
13 specific, binding standards for managing adverse impacts on environmental resources throughout the
14 forests. For example, the Conservation Alternative included alternative standards for managing
15 adverse impacts on forest resources caused by fuels reduction activities, specific standards
16 mitigating impacts of the forest plans on endangered, threatened, candidate, and sensitive species,
17 and specific standards for increasing participation in forest-related decisions by environmental
18 justice communities. After the Forest Service issued the FEIS and records of decision, plaintiffs
19 administratively appealed the forest plan to the Chief of the Forest Service.

20 21. Plaintiffs’ injuries will be redressed by the relief sought herein because the forest
21 plans will be set aside and a new analysis of the proposed forest plan pursuant to NEPA may result
22 in improved forest plans that better protect environmental resources, increase the number and size of
23 areas protected from roads, off-road vehicles, and other environmentally damaging activities, adopt
24 mitigation for fuels reduction activities, and increase the amount and quality of lands recommended
25 for designation as wilderness under the Wilderness Act. All such relief would improve plaintiffs’
26 opportunities for enjoying the Southern California forests, including its remaining roadless areas, in
27 the future.

1 36. In 1982, the Forest Service promulgated regulations for implementing the NFMA
2 (“1982 Regulations”) that include detailed requirements for the content of forest plans. The 1982
3 Regulations require that forest plans include: (1) a summary of the management situation, (2)
4 multiple-use goals and objectives including a description of the desired future condition of the forest,
5 (3) multiple-use “prescriptions and associated standards and guidelines” for each management area,
6 and (4) monitoring and evaluation requirements for periodic evaluation of the effects of management
7 practices. Former 36 C.F.R. § 219.11 (1982).¹

8 37. The 1982 Regulations set forth additional requirements regarding a variety of
9 resources, including wilderness, wildlife, vegetation, recreation, minerals, water, and soil. See *id.*
10 §§ 219.18-.25. The 1982 Regulations also require that the Forest Service evaluate roadless areas for
11 recommendation to Congress for designation as wilderness areas during the forest planning process.
12 *Id.* § 219.17(a). With respect to plant and animal communities, the 1982 Regulations require that
13 forest planning provide for diversity of plant and animal communities and also manage fish and
14 wildlife habitat to maintain viable populations of existing species in the forests. *Id.* §§ 219.26,
15 219.19.

16 38. The NFMA requires that the regulations promulgated to aid in its proper
17 implementation must “specify procedures to insure that land management plans are prepared in
18 accordance with [NEPA].” 16 U.S.C. § 1604(g)(1). Accordingly, the 1982 Regulations address the
19 Forest Service’s duty to comply with NEPA during the preparation and revision of its forest plans.
20 *Id.* § 219.12(a). Pursuant to its regulations, the Forest Service must identify and evaluate public
21 issues, management concerns, and resource use and development opportunities identified throughout
22 the forest planning process; prepare criteria to guide the planning process that apply to the design,
23 formulation, and evaluation of alternatives; obtain and keep current inventory data for planning and
24 managing the forest resources; analyze the management situation through analyses of benchmarks
25 defining various issues, such as the minimum level of management needed to maintain and protect
26

27 ¹ The 1982 Regulations have been superseded by a revised version of NFMA regulations. 36 C.F.R.
28 Part 219 (April 21, 2008). However, the southern California forest plans were revised pursuant to
the 1982 regulations, so references to relevant provisions of that version of the NFMA planning
regulations are given throughout this complaint, cited as “1982 Regs. § 219.[].”

1 the forest; formulate, estimate effects of, and evaluate management alternatives; and adopt
2 monitoring and evaluation requirements. *Id.* § 219.12.

3 39. With respect to the analysis of management alternatives, the Forest Service must
4 formulate a “broad range of reasonable alternatives according to NEPA procedures,” including a “no
5 action” alternative, that reflect “the full range of major commodity and environmental resource uses
6 and values that could be produced from the forest.” *Id.* § 219.12(f). The “primary goal” in
7 formulating alternatives is to “provide an adequate basis for identifying the alternative that comes
8 nearest to maximizing net public benefits . . . “ *Id.* The 1982 Regulations require that alternatives
9 considered by the Forest Service “shall provide different ways to address and respond to the major
10 public issues, management concerns, and resource opportunities identified during the planning
11 process.” *Id.* In so doing, each alternative must state at least: the condition and uses that will result
12 from long-term application of the alternative; the goods and services to be produced together with
13 associated costs and benefits; resource management standards and guidelines; and the purpose of the
14 management direction proposed. *Id.*

15 40. In considering the management alternatives, the 1982 Regulations reinforce the
16 Forest Service’s duty to “estimate” and “compare” the physical, biological, economic, and social
17 effects of implementing each alternative considered in the EIS, including among other things the
18 “significant resource tradeoffs and opportunity costs associated with achieving alternative resource
19 objectives.” *Id.* § 219.12(g). Finally, the Forest Service must then evaluate the significant physical,
20 biological, economic, and social effects of each management alternative, including a “comparative
21 analysis of the aggregate effects of the management alternatives” that compares social and economic
22 impacts as well as the overall “protection and enhancement of environmental resources.” *Id.*
23 § 219.12(h).

24 **FACTUAL BACKGROUND**

25 **Southern California’s National Forests**

26 41. Southern California hosts four national forests covering over 3.5 million acres of
27 public land: the Los Padres, Angeles, San Bernardino, and Cleveland national forests. The southern
28 California forests contain an impressively diverse landscape that includes the world-renowned Big

1 Sur coastline south of Monterey Bay, as well as snow-covered mountain peaks in the San Gabriel,
2 San Bernardino, and San Jacinto mountains farther south.

3 42. The national forests in southern California encompass mountain ranges with
4 extensive coastal and desert scrublands, montane meadows, and hardwood and conifer forests;
5 portions of the San Joaquin Valley; and the interior Mojave and Colorado deserts. Unlike other
6 national forests in California and the Pacific Northwest, the Forest Service has determined that there
7 are no areas suitable for timber sale production in the southern California national forests. These
8 forests instead contain a wealth of plant community types, many of which are sensitive, rare, and
9 unique. The most dominant vegetative communities in the southern California national forests
10 include hardwood forests and woodlands; conifer and conifer-hardwood forests; chaparral, coastal
11 sage scrub, and desert scrub; and meadows, grasslands, and herbaceous habitat types.

12 43. The southern California national forests are vital refugia for native plant and animal
13 species that are impacted by intense urban development on surrounding private lands throughout
14 southern California. The southern California forests are part of the south coast ecological region.
15 This region provides habitat that is critical to the survival and well-being of species for nearly every
16 taxonomic group, including plants, invertebrates, birds, mammals, and reptiles.

17 44. The southern California national forests contain over one million acres of designated
18 wilderness that provide important habitat for plant and animal communities. Over half of the
19 forests' wilderness is concentrated in the Los Padres National Forest.

20 45. There are approximately one million acres of roadless areas in the southern California
21 national forests that are eligible for designation as wilderness. Approximately 10,128 miles of roads
22 exist in the southern California national forests. The existence of such an extensive roads system
23 means that protection of the remaining roadless areas is of paramount importance to the region's
24 plant and animal communities.

25 46. The southern California national forests are an important source of clean water for
26 consumption, agriculture, and industry for many communities in southern California.

1 47. The southern California national forests are immensely popular destinations for
2 millions of visitors who come each year to hike, camp, picnic, fish, observe wildlife, rock climb,
3 bicycle, horseback ride, and engage in numerous other outdoor activities.

4 48. The southern California national forests and the biodiversity contained therein are
5 under intense pressure from a variety of activities, including motorized recreation, due to their
6 proximity to some of the most heavily populated urban centers in the country. Approximately 20
7 million people live in the Los Angeles and San Diego metropolitan areas. The region is expected to
8 grow to 35 million people by 2020.

9 49. The Forest Service has determined that the four major threats to national forests and
10 grasslands are fire and the build up of fuels in the forests, invasive species, loss of open space, and
11 unmanaged recreation. All of these problems threaten the environmental resources of the southern
12 California national forests.

13 **Prior Forest Planning for the Southern California National Forests**

14 50. The Forest Service promulgated forest plans for each of the four southern California
15 national forests between 1986 and 1989. These plans adopted weak and ambiguous standards and
16 guidelines that led to inconsistent management among the four national forests.

17 51. Between 1995 and 1999, the four southern California national forests initiated a large
18 scale analysis of ongoing activities and their effects on species and habitat. In 1999, the Forest
19 Service published the Southern California Mountains and Foothills Assessment (“SCMFA”), a
20 comprehensive habitat conservation assessment that analyzed trends of ecological systems and
21 species in the southern California national forests. An interdisciplinary team of Forest Service
22 biologists used the SCMFA to review the forest plans and their ability to meet the needs of
23 threatened, endangered, and sensitive species. The conclusions of the interdisciplinary team were
24 published in the Province Forest Plan Monitoring and Evaluation Report (“M&E Report”). The
25 M&E Report found that the southern California forest plans do not adequately protect threatened,
26 endangered, and sensitive species or provide direction necessary to sustain particular ecological
27 communities. The M&E Report recommended that the Forest Service revise the southern California
28 national forest plans.

1 and the management objectives and also established binding standards and guidelines for all of the
2 various activities affecting each resource.

3 60. The Forest Service circulated a draft EIS (“DEIS”) for public comment in May 2004.
4 Although the DEIS purported to consider an alternative based on the Conservation Alternative,
5 Alternative Six, the DEIS altered and deleted important aspects of the Conservation Alternative. For
6 example, Alternative Six in the DEIS did not include the alternative standards described in the
7 Conservation Alternative because the DEIS considered only one set of standards (also described as
8 “design criteria”) that was exactly the same in each of the alternatives. The DEIS failed to provide
9 any coherent basis for failing to analyze the standards proposed in the Conservation Alternative.

10 61. Plaintiffs and numerous other organizations, state and federal agencies, and
11 individuals submitted comments on the DEIS. Plaintiffs’ comments objected to the forest plans and
12 the Forest Service’s inadequate analysis of the environmental effects of the forest plans in the DEIS;
13 its decision to recommend a bare fraction of the eligible roadless areas for designation as wilderness;
14 its failure to adopt standards and guidelines for important resources, including sensitive species of
15 vegetation and wildlife; its failure to consider adequately the forest plans’ impacts on environmental
16 justice communities; and its failure to consider legitimate alternatives to the proposed action, in
17 addition to numerous other deficiencies with the FEIS and forest plans.

18 62. On September 20, 2005, the Forest Service Regional Forester for the Pacific
19 Southwest Region of the National Forest System issued the FEIS, forest plans, and records of
20 decision for each national forest. The Forest Service subsequently withdrew the September 20, 2005
21 forest plans and records of decision and reissued them on April 3, 2006. Public notice of the FEIS
22 and reissued forest plans and records of decision was published in the Federal Register on April 21,
23 2006 at 71 Fed. Reg. 20660 (April 21, 2006).

24 63. On July 20, 2006, Plaintiffs administratively appealed the FEIS and records of
25 decision to the Chief of the Forest Service. Those appeals were denied in four separate decisions
26 issued on May 30, 2008.

1 **FIRST CLAIM FOR RELIEF**

2 (Failure to Consider a Reasonable Range of Alternatives in Violation of NEPA and APA)

3 64. Plaintiffs reallege, as if fully set forth herein, each and every allegation contained in
4 the preceding paragraphs.

5 65. NEPA requires preparation of an EIS for any “major federal action significantly
6 affecting the quality of the human environment.” 42 U.S.C. § 4332(C).

7 66. The alternatives analysis NEPA mandates is the “heart of the environmental impact
8 statement.” 40 C.F.R. § 1502.14. In the alternatives section of an EIS, federal agencies must:

- 9 a. Rigorously explore and objectively evaluate all reasonable alternatives, and, for
10 alternatives which were eliminated from detailed study, briefly discuss the
11 reasons for their having been eliminated.
- 12 b. Devote substantial treatment to each alternative considered in detail including the
13 proposed action so that reviewers may evaluate their comparative merits.
- 14 c. Include reasonable alternatives not within the jurisdiction of the lead agency.
- 15 d. Include the alternative of no action.
- 16 e. Identify the agency's preferred alternative or alternatives, if one or more exists, in
17 the draft statement and identify such alternative in the final statement unless
18 another law prohibits the expression of such a preference.
- 19 f. Include appropriate mitigation measures not already included in the proposed
20 action or alternatives.

21 *Id.*

22 67. As repeatedly emphasized by the Ninth Circuit Court of Appeals, the “existence of a
23 viable but unexamined alternative renders an environmental impact statement inadequate.” *Oregon*
24 *Natural Desert Ass’n v. BLM*, No. 05-35931, --- F.3d ----, 2008 WL 2718831, *27 (9th Cir. decided
25 July 14, 2008) (quoting *Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853, 868 (9th Cir.
26 2004) (quoting *Morongo Band of Mission Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 575 (9th
27 Cir. 1998))).

28 68. The FEIS for the four revised southern California forest plans violates NEPA and its
implementing regulations with respect to its analysis of alternatives to the proposed action. The

1 FEIS does not “[r]igorously explore and objectively evaluate all reasonable alternatives” to the
2 proposed action, 40 C.F.R. § 1502.14, because the FEIS fails to assess alternative ways of
3 addressing many of the important issues that must be resolved by the forest plans. For example, one
4 of the fundamental decisions made by a forest plan for the long-term management of a national
5 forest is the identification of forest-wide standards and guidelines that establish parameters for all of
6 the various activities that may take place in the national forests. *See* 16 U.S.C. § 1604(g); 1982
7 Regs. § 219.11(c). Yet, although the FEIS’ alternatives contain identical standards and guidelines,
8 many of which are completely inadequate for protecting and/or enhancing environmental resources
9 that exist in each of the four southern California national forests.

10 69. Plaintiffs jointly submitted to the Forest Service a Conservation Alternative that
11 described numerous alternative standards that should have been considered and analyzed in the draft
12 EIS. The Conservation Alternative, for example, described a comprehensive plan for managing
13 adverse impacts to sensitive species of vegetation caused by fuels reduction activities designed to
14 reduce the risk of wildfires. Yet, these standards were never presented to the public as a possible
15 alternative or studied in detail. Many of the other standards described in the Conservation
16 Alternative were either ignored or arbitrarily excluded from detailed study in the FEIS.

17 70. Another critical decision made in a forest plan is the establishment of monitoring and
18 evaluation requirements for implementation of the forest plans. *See* 16 U.S.C. § 1604(g)(3)(C);
19 1982 Regs. § 219.11(d). Monitoring is an important issue for endangered, threatened, proposed,
20 candidate, and sensitive plant and animal species effected by activities that are authorized and
21 managed by the forest plans. Yet each alternative in the FEIS included an identical plan for
22 monitoring and evaluation.

23 71. Likewise, forest plans must select management indicator species whose population
24 trends must be monitored as indicators of the overall health of species and habitat types and to
25 ensure diversity of plant and animal communities. *Id.* § 219.19(a); *see also* 16 U.S.C.
26 § 1604(g)(3)(B). Plaintiffs’ Conservation Alternative proposed a list of management indicator
27 species that identified more appropriate species as indicators of habitat types and forest health. This
28 list of management indicator species would have been more protective of the environment because

1 monitoring the population trends of such species would have produced more accurate information
2 about the status of the represented forest ecosystems. Yet the Forest Service's FEIS does not present
3 this proposed list of management indicator species to the public, study it in detail, nor analyze the
4 environmental consequences of such an alternative approach to complying with the NFMA's
5 requirement to ensure diversity of plant and animal communities. Instead, each of the alternatives
6 studied in the FEIS analyzed only one set of management indicator species.

7 72. The Forest Service arbitrarily eliminated other important issues from detailed study in
8 the alternatives section of the FEIS, such as proposed standards for improving involvement in
9 environmental decision-making by environmental justice communities and standards related to
10 reducing the impacts of global warming on forest resources. The Forest Service claimed that it need
11 not study these issues in detail because they are outside the scope of decisions made in forest plans
12 or the responsibility of other agencies. However, consideration of such issues falls well within the
13 broad purpose and need for revising the forest plans, which includes the objective to describe "up-to-
14 date strategic direction" for the southern California national forests to address various public
15 concerns including, for example, concerns about human access and concerns that the number of
16 species threatened with extinction has increased and needs to be reduced. In addition, federal
17 agencies are required to consider all reasonable alternatives even if they are not within the
18 jurisdiction of the lead agency. *See* 40 C.F.R. § 1502.14.

19 73. The Forest Service refused to consider reasonable, feasible alternative ways of
20 addressing important decisions that the Forest Service must make when it revises a forest plan under
21 the NFMA. The Forest Service also failed to provide any coherent rationale for eliminating
22 alternative standards and guidelines, including those described in the Conservation Alternative, from
23 detailed study in the FEIS.

24 74. The Forest Service's failure to rigorously explore and objectively evaluate a
25 reasonable range of alternatives in the manner described above violates NEPA and its implementing
26 regulations and is arbitrary, capricious, an abuse of discretion, contrary to law, and also without
27 observance of procedure required by law, contrary to the APA, 5 U.S.C. § 706(2)(A), (E).

1 **SECOND CLAIM FOR RELIEF**

2 (Failure to Consider Adequately the Impacts of the Forest Plans’ Re-zoning of Roadless Areas and
3 Recommending Very Few Areas for Wilderness Protection in Violation of NEPA and APA)

4 75. Plaintiffs reallege, as if fully set forth herein, each and every allegation contained in
5 the preceding paragraphs.

6 76. The Forest Service must evaluate roadless areas during the forest planning process to
7 determine whether to recommend that Congress designate them as wilderness areas. 1982 Regs.
8 § 219.17(a). The Wilderness Act, 16 U.S.C. §§ 1131-1136, defines wilderness as “a large area of
9 undeveloped federal land remaining in its primitive state unaffected by humans, and providing
10 outstanding opportunities for solitude and primitive recreation.” *Id.* §1131. The Forest Service’s
11 evaluation of roadless areas must consider a variety of issues related to the value of potential
12 wilderness areas, including the diversity of natural plant and animal communities of the forest
13 planning area “and the effects of such changes on the values for which wilderness areas were
14 created.” 1982 Regs. § 219.17(a)(2). The Forest Service Handbook further explains that the Forest
15 Service must describe “the potential effects of wilderness and nonwilderness recommendations for
16 each potential wilderness area,” including a discussion of “the impact on the area if it were managed
17 as nonwilderness.” Forest Service Handbook Ch. 74.

18 77. NEPA requires that EIS’s analyze the environmental effects of a proposed action and
19 alternatives to the proposed action. *See* 42 U.S.C. § 4332(C); *see also* 40 C.F.R. § 1502.16. The
20 effects that an EIS must evaluate include “direct effects” which are “caused by the action and occur
21 at the same time and place,” as well as “indirect effects which . . . are later in time or farther
22 removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8. An EIS must also
23 consider potential cumulative effects, which are the impacts “on the environment that result from the
24 incremental impact of the action when added to other past, present, and reasonably foreseeable
25 future actions regardless of what agency (Federal or Non-Federal) or person undertakes such other
26 actions.” *Id.* § 1508.7. An EIS must demonstrate that an agency took a “hard look” at all of the
27 environmental effects. *Idaho Sporting Congress, Inc. v. Rittenhouse*, 305 F.3d 957, 963 (9th Cir.
28 2002).

1 78. An EIS also must analyze mitigation measures to address any adverse environmental
2 impacts identified in the EIS. 40 C.F.R. § 1502.16; *see also id.* § 1502.14. The omission of a
3 “reasonably complete discussion of possible mitigation measures would undermine the action-
4 enforcing function of NEPA,” because without such a discussion, “neither the agency nor other
5 interested groups and individuals can properly evaluate the severity of the adverse effects.”
6 *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989). The importance of
7 analyzing mitigation measures is reinforced by the NFMA, which itself requires that forest plans
8 contain “standards and guidelines” for each area including “proposed and probable management
9 practices.” 1982 Regs. § 219.11(c).

10 79. Federal agencies must “integrate the NEPA process with other planning at the earliest
11 possible time to insure that planning and decisions reflect environmental values, to avoid delays later
12 in the process, and to head off potential conflicts.” 40 C.F.R. § 1501.2.

13 80. The forest plans reclassify over 90 percent of roadless areas in the national forests to
14 land use zones that are managed for development, road-building, and other activities that could
15 prevent these areas from being designated as wilderness in the future. The Forest Service failed to
16 analyze adequately and take a hard look at the impact of its decision to manage these particular areas
17 for uses other than wilderness and not to recommend that the vast majority of eligible roadless areas
18 be designated as wilderness. The FEIS also fails to analyze adequately the broader impact of the
19 zoning decisions made in the forest plans on wilderness values throughout the national forests.

20 81. The FEIS fails to present an adequate explanation of the Forest Service’s rationale for
21 its decision to recommend for designation as wilderness only a fraction of the roadless areas that are
22 potentially eligible as wilderness, including many areas recommended by the public for wilderness
23 designation. This prevents informed decision-making by the Forest Service and the public and
24 violates NEPA’s public disclosure requirements.

25 82. The Forest Service also failed to analyze adequately and take a hard look at the
26 impact that recommending a bare fraction of eligible roadless areas for designation as wilderness
27 will have on minority and low-income communities, which face cultural, financial, and linguistic
28 obstacles to accessing remote wilderness areas. The Forest Service underestimates the impact of not

1 designating more wilderness on environmental justice communities and fails to analyze adequately
2 measures to increase access to wilderness areas, and the national forests generally, by environmental
3 justice communities.

4 83. The Forest Service’s failure to analyze adequately and take a hard look at the impacts
5 of recommending so few roadless areas for designation as wilderness and instead reclassifying most
6 of those areas to land use zones that anticipate road building and other development and mechanized
7 activities that could prevent them from being designated as wilderness violates NEPA and its
8 implementing regulations and is arbitrary, capricious, an abuse of discretion, contrary to law, and
9 also without observance of procedure required by law, contrary to the APA, 5 U.S.C. § 706(2)(A),
10 (E).

11 **THIRD CLAIM FOR RELIEF**

12 (Failure to Consider Adequately the Impacts of the Forest Plans on Vegetation and Biodiversity in
13 Violation of NEPA and APA)

14 84. Plaintiffs reallege, as if fully set forth herein, each and every allegation contained in
15 the preceding paragraphs.

16 85. The FEIS for the revised forest plans fails to analyze adequately or take a hard look at
17 all of the forest plans’ likely impacts on biodiversity, particularly sensitive species of vegetation and
18 wildlife. For example, the FEIS fails to analyze adequately or take a hard look at the potential
19 effects of the system of illegal or “unclassified” roads and trails that are a major management
20 concern in the southern California forests. The FEIS fails to analyze adequately measures to reduce
21 the existing system of illegal roads and motorized trails and their impacts on plant communities and
22 wildlife and fails to disclose information concerning the extent of illegal motorized trails in the
23 forests.

24 86. The FEIS similarly fails to analyze adequately the effects of the Forest Service’s
25 decision to expand off-road vehicle use on important and/or sensitive vegetative communities in the
26 southern California forests, such as coastal sage scrub and chaparral. The forest plans’ allocation of
27 national forest lands to various land use zones allows the expansion of off-road vehicle use. Yet, the
28 “Effects on Vegetation” section of the FEIS does not even mention the impacts of expanding off-

1 road vehicle use in the forests, and elsewhere the FEIS only lists in general terms potential adverse
2 effects of off-road recreation on plants.

3 87. Although Appendix D of the forest plans, entitled “Adaptive Mitigation for
4 Recreation Uses,” generically outlines a mechanism for resolving conflicts between all recreational
5 uses and “sensitive” resources, the measures contained in Appendix D fail to address management
6 issues unique to various specific vegetative communities that exist throughout the national forests
7 and do not address adequately significant recreational management issues, such as the proliferation
8 of illegal off-road vehicle trails. The FEIS itself omits any discussion of Appendix D in its analysis
9 of impacts on vegetation and does not analyze adequately whether the measures will be effective at
10 mitigating adverse impacts to various plant communities, particularly sensitive species.

11 88. The FEIS similarly fails to analyze adequately or take a hard look at the effects of
12 planned fuels reduction activities announced in the forest plans on vegetation and biodiversity.
13 These activities will occur in virtually every vegetative community that exists in the forests,
14 including mixed conifer forests, chaparral, and coastal sage scrub, and will impact numerous species
15 of wildlife. Although fuels reduction activities are necessary to reduce fire risk in the southern
16 California national forests, adverse impacts of fuels reduction activities can and should be mitigated
17 through avoidance and/or restoration activities. The FEIS violates NEPA because it does not
18 analyze adequately mitigation measures to address adverse impacts of the planned fuels reduction
19 activities, particularly on sensitive plant and wildlife communities.

20 89. In addition, the FEIS fails to analyze adequately and disclose information concerning
21 the potential adverse impacts to the federally endangered California condor from increased oil and
22 gas development.

23 90. The Forest Service’s failure to analyze adequately and take a hard look at the
24 environmental impacts of the forest plans in the manner described above violates NEPA and its
25 implementing regulations and is arbitrary, capricious, an abuse of discretion, contrary to law, and
26 also without observance of procedure required by law, contrary to the APA, 5 U.S.C. § 706(2)(A),
27 (E).

1 **REQUEST FOR RELIEF**

2 WHEREFORE, plaintiffs respectfully request that the Court:

3 A. Find and declare that the FEIS for the revised southern California forest plans violates
4 the National Environmental Policy Act and its implementing regulations;

5 B. Enjoin the Forest Service from implementing the revised southern California forest
6 plans, set aside the record of decisions approving the forest plans and the FEIS, and reinstate the pre-
7 existing forest plans;

8 C. Award plaintiffs their costs of litigation, including reasonable attorneys' fees and
9 costs, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

10 D. Grant plaintiffs such additional relief as the Court may deem just and proper.

11
12 DATED: August 7, 2008

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14 Respectfully submitted,

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16 _____
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18 TRENT W. ORR

19 *Counsel for Plaintiffs*
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