August 26, 2019

NEPA Services Group
c/o Amy Barker
USDA Forest Service
125 South State Street
Suite 1705
Salt Lake City, UT 84138
Submitted electronically via nepa-procedures-revision@fs.fed.us

Comments Submitted RE: Doc. No. 2019-12195, U.S. Forest Service NEPA Compliance

Dear Ms. Barker,

These comments are submitted on behalf of the Grand Canyon Trust, Sierra Club - Grand Canyon (Arizona) Chapter, Center for Biological Diversity, The Wilderness Society, Southwest Hospitality Management, Flagstaff Lodging, Restaurant, and Tourism Association, Momentum Aerial, Q Media, Mountain Sports Flagstaff, and Wild Arizona. We are members of a broad community in Northern Arizona that understands the connection between the protection of our public lands and that of the economic and environmental well being of our region. We have worked together to ensure the Grand Canyon region is protected from the risks posed by development activities on public lands. The latest proposed revision of the U.S. Forest Service (USFS) NEPA procedures will have great implications for the Grand Canyon region's public lands. You may note that some of the groups authoring this particular letter are party to similar comments that raise a much broader number of points regarding the proposed rule change. But this letter is intended to highlight two particular problems with the proposed rule that are shown by examples near the Grand Canyon.

The National Environmental Policy Act (NEPA) serves a critical role in the protection of the waters, ecosystems, economies, and people who depend on this region and we have serious concerns about how the proposed rule changes will impact both the ability of the public to have a voice in agency decisions that impact them, and the ability of the USFS to fulfill its stewardship responsibilities. Two provisions in the proposed rule will have a particularly severe negative impact on public transparency and the overall ability of the USFS to fulfill its obligations to the environment and the public, as shown by examples from the Grand Canyon region. Those provisions are:

- A proposal to identify a category of actions for which an Environmental Impact Statement (EIS) would only normally be prepared for a mine that would disturb more than 640 acres. This could be taken to imply that mines disturbing 640 acres or less could be approved with a less detailed Environmental Assessment (EA) as opposed to an EIS. Note that the Canyon Mine near the south rim of the Grand Canyon involves 17 acres of surface disturbance, and the Pinenut mine on the north rim of the Grand Canyon, about the same. An acreage of around 20 acres is fairly typical for uranium mines around the Grand Canyon. Yet both Canyon and Pinenut mines have had serious problems and all mines around the Grand Canyon, regardless of size, have implications for the regional environment and economy that cannot be simplified. A regulatory presumption of environmental assessments for actions involving significant environmental impacts will also cause more litigation.

- A proposal to allow the Forest Service to issue special use permits (SUPs) for any action that will involve less than 20 acres of surface disturbance; the current rule permits the use of Categorical Exclusions (CEs) only if the SUP disturbs 5 acres or less. According to the Town of Tusayan's 2014 SUP application for rights-of-way for a company called Stilo, the north access to Kotzin Ranch involves less than 20 acres of surface disturbance, as does the south access, though together they disturb more than 20 acres (TenX access would disturb 27.3 acres.). The proposed rules could seemingly permit the Forest Service to piecemeal approve the Kotzin rights-of-way with zero public input.

Mining and Environmental Impact Statements

As part of its proposal to modify regulations concerning classes of actions that normally require that the agency prepare an EIS, the Forest Service proposed adding the following new category:

> (3) Class 3. Mining operations that involve surface disturbance on greater than 640 acres over the life of the proposed action.

Proposed rule 36 C.F.R. § 220.7(a)(3).[1] This proposal is similar, but not identical, to that identified in the BLM NEPA Handbook, which states: "The following actions normally require preparation of an EIS: "…. (7) Approval of any mining operation where the area to be mined, including any area of disturbance, over the life of the mining plan is 640 acres or larger in size."[BLM NEPA Handbook, H-1790-1 (Jan. 2008) at 70, available at https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1790-1.pdf (last visited Aug. 1, 2019).[2]

[1] This provision appears in part to replace the provision in current regulations that directs the agency when "approving a plan of operations for a mine that would cause considerable surface disturbance in a potential wilderness area." 36 C.F.R. § 220.5(a)(2)(iii).

[2] The Forest Service does not explain the discrepancy between the proposed rule change and the BLM NEPA Handbook – which normally requires preparation of an EIS where surface disturbance would be

The USFS proposal would encourage the Forest Service to prepare an environmental assessment for anything 640 acres or less, and thus to assume no potential for significant impacts, for actions that would involve the creation of road networks, waste rock dumps, leach piles, and massive pits up to a square mile in size. Mines far smaller in size are likely to degrade – and have significantly degraded – the natural environment. In fact, according to the Associated Press, 40 percent of headwaters of the western U.S. watersheds have been polluted by mining with hardrock mines producing around 50 million gallons of contaminated waters daily, threatening water supplies of downstream communities. *See* M. Brown, Associated Press, 50M gallons of polluted water pours daily from US mine sites (Feb. 20, 2019), available at https://bit.ly/2Gp3M1R (last viewed Aug. 1, 2019).

Further, the proposed provision does not specify that the 640 acres of surface disturbance be contiguous. This means that mining impacts could be spread out over, and damage values on, a much greater area. The proposed provision is also unclear as to whether the 640 acre limit refers to surface disturbance on Forest Service lands. If the mine overlaps significant private or state surface but "only" 500 acres of Forest Service surface, would the provision apply? At a minimum, the Forest Service should clarify whether the 640 acres includes the entirety of the mine's surface disturbance or only the disturbance on Forest Service lands.

Because hard-rock mining will almost always have the potential for significant environmental damage no matter the size of the mine, we urge the Forest Service to modify the proposal to classify any mining action to be the kind that normally requires the preparation of an EIS. The Forest Service's ambition to curtail environmental review with a proposed regulatory presumption of an environmental assessment for actions threatening significant environmental impacts will lead to more litigation because rulemaking does not change the underlying legal standards to which the Forest Service will be held to account.

We note that some of the most contentious mining proposals on Forest Service land – and some with the greatest potential to significantly, and negatively, impact Tribal communities and important natural resources – are proposed or already-approved uranium mines within the Kaibab National Forest that disturb far less than 640 acres. For example, in 1984, the Forest Service properly prepared an EIS for the plan of operations for the Canyon Mine within the Kaibab National Forest. According to that EIS, the mine would disturb "approximately 17 acres for the mine shaft and surface facilities, plus some new or improved roads within the Forest, depending on which ore transportation route is ultimately selected." U.S. Forest Service, Final Environmental Impact Statement, Canyon Uranium Mine (Aug. 1986) at page 1.1, available at https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5346657.pdf (last viewed Aug. 1, 2019). This 17-acre mine thus proposed to disturb less than 3% of the 640-acre area proposed by the Forest Service as the threshold for presumptively preparing an EIS. The legality of the Forest Service's decisions and NEPA analysis concerning this mine have been repeatedly challenged in court; at least one challenge remains pending. *See Havasupai Tribe v. Provencio*, 906 F.3d 1155 (9th Cir. 2018) (remanding to district court the merits of a claim challenging the Forest Service's conclusion that Energy Fuels had "valid existing rights"). The potential environmental damage from the Canyon Mine – to culturally significant landscapes, to groundwater, to communities

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640 acres or more, whereas the Forest Service proposal normally requires an EIS where surface disturbance would be more than 640 acres.

along the route where uranium ore would be trucked – all required preparation of an EIS. The Canyon Mine's size is not unusual for uranium mines in the area; the Pinenut and Kanab North uranium mines on the North Rim (on BLM land) are both about 20 acres in size. It would take more than 30 of these mines put together under the Forest Service's proposed rule to normally require an EIS, an absurd result, especially given that contamination of the groundwater from these mines would be impossible to clean up. That factor alone should warrant an EIS.

Special Use Permits and Categorical Exclusions

Increasing from five to 20 acres the area that could be disturbed and would be assumed to have absolutely no potential to have significant impacts under 36 C.F.R. § 220.5(e)(3) could allow numerous projects that are likely to have significant negative impacts.
For example, Stilo, a foreign-owned company, is seeking to construct a massive resort development on a private inholding less than a mile from the southern boundary of Grand Canyon National Park. Current access to the parcels that Stilo hopes to develop is by dirt road. In 2014, the Town of Tusayan, on Stilo's behalf, submitted a permit to pave and widen the routes to the parcels and to obtain rights-of-way for water, sewer, electricity, gas, etc. Because the total area to be disturbed totaled more than 5 acres, the Forest Service could not have categorically excluded the proposal. However, under the proposed rule, the applicant could seek access across a single route to the western most (Kotzin Ranch) parcel, either the north (14.8 acres of disturbance) or the south (8.9 acres) access routes, via a CE. *See* Town of Tusayan, Application For Transportation And Utility Systems And Facilities On Federal Lands, (submitted June 5, 2014) at page 2, available at https://www.fs.usda.gov/nfs/11558/www/nepa/101448_FSPLT3_2461075.pdf (last viewed Aug. 1, 2019). The applicant could attempt to submit separate, sequential applications for each of the Kotzin access routes as well, and each application would meet the new categorical exclusion definition. On Kotzin Ranch, Stilo proposes to construct a wide range of visitor services that will include lodging, a pedestrian-orientated retail village, an educational campus, a Native American Cultural Center, a conference hotel, other services, and hundreds of residential units—development that cannot take place but for the improvements Stilo seeks across Forest Service land via the special use permit. As a result, a significant portion of one of the most contentious and potentially damaging proposals involving Forest Service lands near Grand Canyon National Park could be approved via a CE (or two), that is, without public involvement or environmental review, ignoring the larger connected action (development of the private parcels) the rights-of-way seek to promote.

In summary, impacts to the Grand Canyon region by activities that would be newly exempt from public scrutiny under the proposed regulatory revision have the potential to negatively affect millions of people who visit the region, support our economies, and depend on the Grand Canyon watershed. Public involvement, transparency, and careful analyses are indispensible and not worth foregoing for the sake of more quickly permitting activities that put this region at risk. Our groups do not support the aforementioned provisions proposed by the Forest Service. We ask that environmental impact statements are prepared for every proposed mine and that the acreage threshold for SUPs and CEs is not increased.

Thank you for your time and consideration of these comments.

Sincerely,

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Energy Program Director
Grand Canyon Trust

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