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13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 **EARTH ISLAND INSTITUTE**, a non-
16 profit corporation,

17 Plaintiff,

18 v.

19 **CICELY MULDOON**, in her official
20 capacity as Superintendent of Yosemite
21 National Park; **UNITED STATES**
22 **NATIONAL PARK SERVICE**, an
23 agency of the United States Department of
24 the Interior; **UNITED STATES**
25 **DEPARTMENT OF THE INTERIOR**,

26 Defendants.

No. 1:22-CV-00710-AWI-EPG

**FIRST AMENDED COMPLAINT FOR
VACATUR, INJUNCTIVE, AND
DECLARATORY RELIEF**

Administrative Procedure Act, 5 U.S.C. §§ 701
et seq.; National Environmental Policy Act, 42
U.S.C. §§ 4321 *et seq.*; National Park
Management, 54 U.S.C. §§ 100101 *et seq.*

1 **JURISDICTION AND VENUE**

2 1. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 701-706 (APA)
3 and 28 U.S.C. §§ 1331 (federal question), and 2412 (costs and fees). Plaintiff is challenging final
4 agency actions of the National Park Service (“NPS”), as defined by the Administrative Procedure
5 Act (“APA”), 5 U.S.C. § 704 (actions reviewable).

6 2. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because the
7 events or omissions giving rise to this claim occurred in this district, primarily in Mariposa
8 County.

9 3. An actual judiciable controversy exists between the parties hereto.

10
11 **INTRADISTRICT VENUE**

12 4. This case is properly filed in Fresno, California and properly before the Fresno
13 Division of this District pursuant to Local Rule 120(d) because the events or omissions giving rise
14 to this claim occurred, and are occurring, in Yosemite National Park in Mariposa County.

15
16 **INTRODUCTION**

17 5. Plaintiff Earth Island Institute (“Plaintiff” or “EII”) challenges Defendant National
18 Park Service’s approval of two biomass removal and thinning projects: (1) the Biomass Removal
19 and Thinning to Protect Sequoias, Wildlife Habitat and Communities Project-Wawona Road to
20 Merced Grove (PEPC 99551)¹ (the “Wawona Road Project”), and (2) Biomass Removal and
21 Thinning - Yosemite Valley, Wawona, and Yosemite West (PEPC 104171) (the “Yosemite
22 Valley Project”)(collectively the “Projects”). Each Project was approved pursuant to a
23 “Categorical Exclusion Documentation Form” (“CE Form”) and other documents contained
24 within the “Approved CE Package” (“CE Package”) for each Project.² Defendant Yosemite
25

26 _____
27 ¹ The National Park Service uses Planning, Environment & Public Comment (“PEPC”) project
28 numbers to identify its proposed projects and other actions.

² “CE Package” refers to the entire set of documents Defendants used as a part of the decision-
making process for the Projects, while “CE Form” refers specifically to the document that
contains the Project description, the categorical exclusion (“CE”) used to exempt the Project from

1 National Park Superintendent Cicely Muldoon (“Muldoon”) signed the CE Form and other
2 authorizing documents with the CE Package for the Wawona Road Project on August 17th, 2021,
3 and the CE Form and other authorizing documents within the CE Package for the Yosemite
4 Valley Project on April 29th, 2022. Defendants NPS, Muldoon, and the Department of the
5 Interior (“DOI”) are collectively referred to herein as “Defendants,” “National Park Service,” or
6 “NPS.” The Projects themselves, and their approval via CE Package violates the National
7 Environmental Policy Act (“NEPA”) and its implementing regulations, the National Park Service
8 Organic Act, and the APA.

9 **Description of the Projects**

10 6. The Wawona Road Project approves the logging of trees, including an undisclosed
11 amount of commercial logging and the removal of all or most of the resulting biomass, on over
12 two-thousand acres in Yosemite National Park. This removal occurs two-hundred feet from the
13 centerline on both sides of the following roads and trails:

- 14 • the intersection of Wawona Road and Alder Creek to South Side Drive (16.68
15 miles, 810.77 acres)
- 16 • the intersection of Henness Ridge Road and Wawona Road to park boundary (0.79
17 miles, 41.15 acres)
- 18 • the intersection of South Side Drive and Wawona Road to Big Oak Flat Road
19 (1.86 miles, 92.72 acres)
- 20 • the intersection of Big Oak Flat Road and El Portal Road to Merced Grove parking
21 lot (13.22 miles, 643.3 acres)
- 22 • the intersection of Tioga Road and Big Oak Flat Road to Gin Flat (3.76 miles,
23 184.44 acres)
- 24 • Merced Grove Trail (1.21 miles, 64.6 acres)
- 25 • the intersection of Merced Grove truck trail north and Merced Grove Parking Lot
26 to Y (1.21 miles, 61.33 acres)
- 27 • the intersection of Merced Grove truck trail south and Y to park boundary (2.57
28 miles, 68.25 acres)
- the intersection of South Landing Road and Oak Flat Road to park boundary (2.12
miles, 63.35 acres)

Removal will also occur on approximately 120 acres within the Merced Grove of sequoias
and downhill of the grove. The Project area includes habitat used by Endangered Species Act
 (“ESA”) listed and sensitive species, such as the Pacific fisher, black-backed woodpecker, great

further NEPA review, and the justification for the use of that CE. The CE Form is a part of the
larger CE Package.

1 grey owl, and spotted owl. Plaintiff first became aware that logging pursuant to the Wawona
2 Road Project was occurring on or about May 11, 2022.

3 7. The NPS approved the Wawona Road Project for the stated purpose of reducing
4 post-drought and post-fire fuels by returning the area to what the NPS asserts was pre-settlement
5 density, which could result in as little as twenty-four trees per acre. No source was referenced in
6 support of the NPS's assumption regarding historical tree density. There was no mention of the
7 many recent scientific studies which report much higher historical tree densities and which report
8 that removing mature trees and dead trees tends to increase, not decrease, overall wildfire
9 severity, while also increasing carbon emissions. The NPS plans to reach their goal by "thinning
10 conifers <20" diameter, standing dead trees, and removing dead and down trees that died after the
11 2012-2016 drought." Wawona Road CE Package at 4. The NPS's CE Package is not clear
12 regarding how many trees will actually be removed, nor what percentage of those trees will be
13 used for commercial purposes. The Defendants relied upon an inappropriate "categorical
14 exclusion" ("CE") to exempt the Wawona Road Project from additional required analysis under
15 NEPA, and, in their words, "tiered" to an admittedly outdated 2004 Fire Management Plan
16 ("FMP") environmental impact statement ("EIS"), which has not been made available to the
17 general public for review, and the complete CE package was only recently made available to the
18 Plaintiff on June 23rd, 2022.

19 8. The Yosemite Valley Project also approves the logging of trees, including an
20 undisclosed amount of commercial logging and the removal of all or most of the resulting
21 biomass, on over one-thousand acres in Yosemite National Park. Similar to the Wawona Road
22 Project, the removal for the Yosemite Valley Project occurs two-hundred feet from the centerline
23 of both sides of the 11 Mile road and spur roads. Removal will also occur on approximately 1,250
24 acres surrounding Yosemite Valley, as well as the communities of Wawona and Yosemite West.
25 The Yosemite Valley Project area includes habitat used by ESA listed and sensitive species such
26 as the Pacific fisher, the California Red-Legged Frog ("CRLF"), and the great grey owl. While
27 Plaintiff first became aware of the Wawona Road Project in early May, it did not become aware
28

1 of the Yosemite Valley Project until on or about June 17th, 2022, and Plaintiff did not receive the
2 Yosemite Valley CE Package until June 23rd, 2022.

3 9. The NPS approved the Yosemite Valley Project for the stated purpose of reducing
4 post-drought and post-fire fuels to protect the aforementioned areas, as well as to protect
5 significant habitat for the Pacific fisher and great grey owl. However, there was no scientific
6 authority supporting the assertion of benefits the Yosemite Valley Project claims to provide, just
7 as there was no scientific support in the Wawona Road Project. There was no mention of the
8 many recent scientific studies which report much higher historical tree densities and which report
9 that removing mature trees and dead trees tends to increase, not decrease, overall wildfire
10 severity, while also increasing carbon emissions. The NPS plans to reach their goal by “thinning
11 conifers <20” diameter at breast height (dbh), standing dead trees, and removing dead and down
12 trees that died after the 2012-2016 drought.” Yosemite Valley CE Package at 5. The NPS’s CE
13 Package is not clear regarding how many trees will actually be removed, nor what percentage of
14 those trees will be used for commercial purposes. Defendants rely on the same inappropriate CE
15 to exempt the Yosemite Valley Project from additional required analysis under NEPA as they do
16 for the Wawona Road Project, and improperly “tier” to a number of documents, including the
17 outdated 2004 FMP EIS.

18 10. The specific CE relied upon by the NPS to approve the Wawona Road Project and
19 the Yosemite Valley Project is one which exempts from further NEPA review “[c]hanges or
20 amendments to an approved plan, when such changes would cause no or only minimal
21 environmental impact.” Wawona Road CE Package at 6; Yosemite Valley CE Package at 6. The
22 approved Projects, however, do not involve a change or amendment to an approved plan. Instead,
23 both Projects authorize site-specific activities. The Wawona Road Project involves cutting live,
24 mature trees and “hazard” trees, stump grinding, off-road log hauling, and the chipping and/or
25 burning of limbs. The Yosemite Valley Project involves cutting live, mature trees and “hazard”
26 trees, applying anti-fungal compounds to stumps, removing fuel ladders, and piling and/or
27 burning of material. All of these activities purport to implement, but are in many other ways
28 directly contrary to an “approved plan.”

1 NPS also appears to assert that Project activities are compliant with, and therefore approved by,
2 several other documents/analyses. First, at the beginning of the CE Form, the NPS lists two
3 documents it claims the Wawona Road Project follows: (1) the Merced Grove Special
4 Management Area Burn Preparation and Fire Fuels Thinning Project Phase I into Phase II, and
5 (2) the 2004 FMP EIS “with several additions,” and the Forestry Programmatic CE (PEPC
6 79616). Wawona Road CE Package at 4. Then under the “CE Justification” at the end of the CE
7 Form, the NPS lists two other documents: (1) the 2017 Fire Management Plan amendment (PEPC
8 41967) (“2017 FMP Amendment”), and (2) the Forestry Programmatic CE (PEPC 24425). *Id.* at
9 6. There are no specific citations to any of these supposedly supportive documents.

10 14. Initially, none of these documents were available to the public, except for some
11 supporting documents for the 2017 FMP Amendment (but for which the CE Form itself and
12 comments were not included). Plaintiff requested the remaining documents, as well as the
13 complete 2017 FMP Amendment, and received these documents from the Defendants on July 1st,
14 2022, except for the 2017 FMP Amendment comments, which Defendants have yet to provide to
15 Plaintiff.

16 15. Plaintiff became aware of the Yosemite Valley Project on or about June 17th,
17 2022, in the course of requesting documents from defendants’ counsel and reviewing documents
18 related to the Wawona Road Project. On June 23rd, the Defendants’ counsel emailed Plaintiff’s
19 counsel two CE Packages: one for the Yosemite Valley Project, which as of the date of this
20 amended complaint is not available on the NPS website, and one for the Wawona Road Project,
21 which is different than the one publicly available on the NPS website. Because the CE Package
22 for the Wawona Road Project included documents Plaintiff had never seen before, Plaintiff has
23 made an effort to obtain documents directly from the Defendants’ counsel rather than relying on
24 any documentation available via the NPS website.

25 16. For the Yosemite Valley Project, it is difficult to ascertain exactly what documents
26 the NPS asserts allow the Project to move forward without additional NEPA analysis. Initially,
27 the CE Form states that the Yosemite Valley Project “follows” three documents/analyses: (1) the
28 2004 FMP EIS, (2) the Merced River Plan EIS, and (3) the Scenic Vista Management Plan “with

1 several additions.” Yosemite Valley CE Package at 5. Then, when describing the types of actions
2 the Project will take, the CE Form lists two other authorities: (1) 16 U.S.C. 6, and (2) PEPC
3 88127. *Id.* When specifically discussing the Project actions that will take place in the community
4 of Wawona, the CE Form mentions the 2021 Mariposa County Community Wildfire Protection
5 Plan. *Id.* at 6. Finally, under the “CE Justification” at the end of the CE Form, the NPS mentions
6 (1) the 2017 FMP Amendment “generally” and (2) specifically the Record of Decision (“ROD”)
7 for the Merced River Plan EIS, the Forestry Programmatic CE (PEPC 24425), as well as several
8 of the other previously stated documents. *Id.* at 6–7. There are no specific citations to any of these
9 documents.

10 17. Similarly to the documents for the Wawona Road Project, none of these
11 documents for the Yosemite Valley Project were initially available to the public, except for the
12 2021 Mariposa County Community Wildfire Protection Plan, which is located on Mariposa
13 County’s website, and not the NPS website. Plaintiff has since received the remaining documents
14 from Defendants on July 1st, 2022. Additionally, the NPS’ Organic Statute, which was cited in
15 the Yosemite Valley CE Package as 16 U.S.C. 6, was recodified in December of 2014 at Title 54.
16 Not only did the NPS cite to an outdated version of their own Organic Statute, they also
17 incorrectly cited the wrong section. 16 U.S.C. 6, which addresses donations of lands within
18 national parks and monuments and moneys. The Yosemite Valley CE Form cites 16 U.S.C 6 in
19 the context of removing and hauling dead and down biomass to a co-gen facility or mill.
20 Yosemite Valley CE Package at 5. The NPS likely should have instead cited to 16 U.S.C. § 3,
21 which is addresses the rules and regulations of national parks, reservations, and monuments;
22 timber, and was recodified as 54 U.S.C. § 100752 and § 100753. Section 100752 addresses the
23 destruction of animals and plant life, and allows the Secretary of the Interior to “provide for the
24 destruction of such animals and plant life as may be detrimental to the use of any [Park] System
25 unit.” Section 100753 addresses disposal of timber, and allows the Secretary to “sell or dispose of
26 timber” where the “cutting of timber is required to control attacks of insects or diseases or
27 otherwise conserve the scenery or the natural or historic objects in any [Park] System unit.”

28 18. Although the NPS’s counsel has given Plaintiff the above documents, almost none

1 of these documents are generally available to the public. Although Plaintiff submitted a Freedom
2 of Information Act request to the NPS for all project records regarding the Wawona Road Project
3 on May 12, 2022, the NPS still has not fully responded to that request, and there still may be
4 important documents Plaintiff does not have.

5 19. In order to prevent the NPS from logging in ways that will degrade old forest and
6 trees and result in violations of the NPS's duties under NEPA, Plaintiff seeks from this Court
7 declaratory and injunctive relief including, if necessary, a preliminary injunction, and an order
8 setting aside the NPS's illegal CE Packages to prevent such violations of law and irreparable harm
9 from occurring.

10 **PARTIES**

11
12 20. Plaintiff **EARTH ISLAND INSTITUTE (“EII”)** is a nonprofit corporation
13 organized under the laws of the State of California. EII is headquartered in Berkeley, California.
14 EII’s mission is to develop and support projects that counteract threats to the biological and
15 cultural diversity that sustain the environment. Through education and activism, these projects
16 promote the conservation, preservation, and restoration of the earth. One of these projects is the
17 John Muir Project—whose mission is to protect all federal public forest and parklands from
18 commercial exploitation that undermines and compromises science-based ecological
19 management. The John Muir Project offices are located in San Bernardino County, California. EII
20 is a membership organization with over 15,000 members in the United States, many of whom use
21 and enjoy the National Parks of California for recreational, educational, aesthetic, spiritual, and
22 other purposes. EII through its John Muir Project has a longstanding interest in protection of
23 federal public lands. EII’s John Muir Project and EII members actively participate in
24 governmental decision-making processes with respect to federal public lands in California and
25 rely on information provided through the NEPA processes to increase the effectiveness of their
26 participation.

27 21. EII’s members include individuals who regularly use public lands within Yosemite
28 National Park, including the Wawona Road and Yosemite Valley Project areas proposed for

1 logging in particular, for scientific study, recreational enjoyment, aesthetic beauty, and nature
2 photography. These members' interests will be irreparably harmed by the planned logging, as
3 they will no longer be able to scientifically study these areas in their current state, take nature
4 photographs of the area in its current state, or enjoy the aesthetic beauty of the unlogged forest
5 habitat and its inhabitants.

6 22. EII officers, staff, and supporters reside near and/or regularly visit the Yosemite
7 National Park Wawona Road and Yosemite Valley Project areas. EII officers, staff, and
8 supporters derive recreational, inspirational, religious, and aesthetic benefit from their activities
9 within Yosemite National Park, including the area in and around the Project areas, and intend to
10 continue to use and enjoy these areas frequently and on an ongoing basis in the near and distant
11 future. Specifically, at least one of EII's supporters is interested in specific species which are
12 known to reside in and around the Wawona Road Project area, and the Yosemite Valley Project
13 area, such as the Pacific fisher, black-backed woodpecker, the spotted owl, and the great grey
14 owl. If the NPS continues to execute the Wawona Road and Yosemite Valley Projects as
15 described in the CE Packages, Project activities will negatively affect the habitat for these
16 species, which will cause EII's supporters to avoid the Project areas.

17 23. EII has an organizational interest in the proper and lawful management of
18 Yosemite National Park. EII's aesthetic, recreational, scientific, and religious interests have been
19 and will be adversely affected and irreparably injured if Defendants continue to act as alleged
20 herein. These are actual, concrete injuries caused by Defendants' failure to comply with
21 mandatory duties under NEPA. The injuries would be redressed by the relief sought.

22 24. EII has not had the opportunity to participate in administrative actions to protect
23 Plaintiff or its interests within the Project areas because the NPS did not make the two Projects
24 available to the public for notice and comment. In addition, many of the documents upon which
25 the NPS relies are not publicly available and were not initially provided to EII despite submitting
26 a Freedom of Information Act ("FOIA") request for the Wawona Road Project, discussed in
27 additional detail below. EII has exhausted any and all available administrative remedies.
28

1 Reviewable final agency action exists that is subject to this Court's review under 5 U.S.C. §§ 702
2 & 704.

3 25. The National Park Service's implementation of the Wawona Road Project and
4 Yosemite Valley Project is in contravention of the NEPA. Because Defendants' actions approving
5 the Projects violate the law, a favorable decision by this Court will redress the actual and
6 imminent injuries to Plaintiff. If the National Park Service were to comply with NEPA, it would
7 cease both Projects' implementation until it has completed the requisite NEPA analysis demanded
8 by the Projects. It is possible that this may involve exempting the Projects under an appropriate
9 CE with proper documentation. It is more likely, however, that the necessary NEPA analysis
10 would involve preparing either an environmental assessment ("EA") or environmental impact
11 statement ("EIS") to consider the potential significant effects from the Projects, given the
12 potential significant effects to the Pacific fisher, great grey owl, and CRLF, as well as the
13 potential for the logging to increase wildfire severity in and around Yosemite Valley and put the
14 public at risk. The analyses would consider additional alternatives to the proposed action, and
15 could minimize or avert the harm to Plaintiff's members that will be caused from the logging of
16 trees and destruction of wildlife habitat by the proposed actions.

17 26. Defendant **CICELY MULDOON**, Superintendent of the Yosemite National Park,
18 approved the Wawona Road Project and Yosemite Valley Project and signed the CE Forms and
19 other project approval documents contained within the CE Packages challenged in this case. The
20 CE Forms and other project approval documents contained within the CE Packages were the
21 NPS's final agency action regarding the Wawona Road Project and Yosemite Valley Project.
22 Defendant Muldoon is only sued in her official capacity.

23 27. Defendant **NATIONAL PARK SERVICE** is an agency of the United States and
24 is a division of the Department of the Interior, and is charged with preserving the natural and
25 cultural resources and values of the National Park System, in accordance and compliance with
26 NEPA and its implementing regulations.

1 28. Defendant **DEPARTMENT OF THE INTERIOR** is an executive department of
2 the United States, and is charged with protecting and managing the Nation's natural resources and
3 cultural heritage. The National Park Service is an agency within this department.

4
5 **STATUTORY AND REGULATORY FRAMEWORK**

6 **National Environmental Policy Act (42 U.S.C. §§ 4321-4370(h))**

7 29. Congress enacted the National Environmental Policy Act (“NEPA”) in 1969,
8 directing all federal agencies to assess the environmental impacts of proposed actions that
9 significantly affect the quality of the human environment. NEPA seeks to “promote efforts which
10 will prevent or eliminate damage to the environment and biosphere and stimulate the health and
11 welfare of man.” 42 U.S.C. § 4321. The primary purposes of NEPA, 42 U.S.C. §§ 4321-4370(h),
12 are to ensure fully informed decision-making and to provide for public participation in
13 environmental analysis and decision-making. 40 C.F.R. §§ 1500.1(a), (b). NEPA’s public
14 disclosure goals are twofold: (1) to ensure that the agency has carefully and fully contemplated
15 the environmental effects of its action; and (2) to ensure that the public has had sufficient
16 information to review, comment on, and challenge (if necessary) the agency’s action. *See* 42
17 U.S.C. §§ 4321, 4332.

18 30. The Council on Environmental Quality (“CEQ”) promulgates regulations
19 implementing NEPA. CEQ’s regulations are binding on all federal agencies, 40 C.F.R. §
20 1500.3(a), and can be found at 40 C.F.R. Parts 1500–1508.

21 31. Agency actions taken pursuant to NEPA are reviewable by this Court under the
22 APA. 5 U.S.C. §§ 702, 704, 706.

23 32. There are three potential avenues for federal agencies to comply with NEPA, each
24 reflecting a different level of analysis required to meet statutory and regulatory requirements.
25 These are, in descending level of complexity, an Environmental Impact Statement (“EIS”), an
26 Environmental Assessment (“EA”), or a Categorical Exclusion (“CE”).

27 33. An EIS is appropriate where the agency anticipates that the proposed action will
28 likely have a significant impact, 40 C.F.R. § 1501.3(a)(3), because federal agencies must prepare

1 an EIS for all “major federal actions significantly affecting the quality of the human
2 environment.” 42 U.S.C. § 4332(2)(C). Under NEPA, both adverse and claimed beneficial
3 impacts are relevant and may be significant. *See* 40 C.F.R. § 1508.1(g)(4).

4 34. An EA is appropriate where the agency anticipates that the proposed action is not
5 likely to have significant impacts, or if the significance of impacts is unknown. 40 C.F.R. §§
6 1501.3(a)(2), 1501.5(a), 1508.1(h). If, after preparing the EA, the agency determines that the
7 action *will* have significant impacts, then it must prepare an EIS. 40 C.F.R. § 1501.3(a)(3). If the
8 agency determines that it *will not* have significant impacts, then it must issue a finding of no
9 significant impact (“FONSI”). 40 C.F.R. § 1501.6(a).

10 35. A CE is appropriate for “categories of actions that normally do not have a
11 significant effect on the human environment, and therefore do not require preparation of an
12 environmental assessment or environmental impact statement.” 40 C.F.R. § 1501.4(a). CEs must
13 be identified in an agency’s NEPA procedures. 40 C.F.R. § 1507.3(e)(2)(ii).

14 36. A CE is inappropriate, however, where its use is precluded by the presence of
15 extraordinary circumstances. *See* 40 C.F.R. § 1501.4. If the agency determines that extraordinary
16 circumstances exist, the agency “nevertheless may categorically exclude the proposed action if
17 the agency determines that there are circumstances that lessen the impacts or other conditions
18 sufficient to avoid significant effects.” 40 C.F.R. § 1501.4(b)(1).

19 37. Consequently, to avoid preparation of either an EA or EIS, the agency must
20 employ an established CE which specifically exempts the proposed action from additional NEPA
21 review and determine that no extraordinary circumstances preclude use of the CE.

22 38. “[W]hen it would eliminate repetitive discussions of the same issues, focus on the
23 actual issues ripe for decision, and exclude from consideration issues already decided or not yet
24 ripe at each level of environmental review,” NEPA allows agencies to “tier” to existing NEPA
25 documents. 40 C.F.R. § 1501.11(a). The CEQ’s NEPA-implementing regulations identify two
26 situations in which tiering is appropriate, both of which involve tiering only to and/or from an EIS
27 or an EA. *Id.* at § 1501.11(c). The regulations neither discuss nor authorize an agency to tier to or
28 from a CE. A CE, by definition, is an action that “normally do[es] not have a significant effect on

1 the human environment[,]” 40 C.F.R. § 1508.1(d), and thus does not require further analysis
2 under NEPA.

3 39. According to the CEQ NEPA-implementing regulations, “[t]iering is appropriate
4 when the sequence from an [EIS] or [EA] is: (1) From a programmatic, plan, or policy
5 environmental impact statement or environmental assessment to a program, plan, or policy
6 statement or assessment of lesser or narrower scope or to a site-specific statement or
7 assessment[;] (2) From an environmental impact statement or environmental assessment on a
8 specific action at an early stage (such as need and site selection) to a supplement (which is
9 preferred) or a subsequent statement or assessment at a later stage (such as environmental
10 mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the
11 issues that are ripe for decision and exclude from consideration issues already decided or not yet
12 ripe.” 40 C.F.R. § 1501.11(c)(1)-(2). *See also* 43 C.F.R. § 46.140.

13 40. In order to properly tier to another document, the agency must “summarize and
14 incorporate by reference the issues discussed in the broader document. The tiered document shall
15 concentrate on the issues specific to the subsequent action. The tiered document shall state where
16 the earlier document is available.” 40 C.F.R. § 1501.11(b).

17 41. One of the primary purposes of NEPA is to provide for public participation in
18 environmental analysis and decision-making. 40 C.F.R. §§ 1500.1(a), (b). NEPA requires that
19 agencies “[m]ake diligent efforts to involve the public” and to “[p]rovide public notice of . . . the
20 availability of environmental documents so as to inform those persons and agencies who may be
21 interested or affected by their proposed actions.” 40 C.F.R. §§ 1506.6(a), (b).

22 **Department of the Interior NEPA-Implementing Regulations (43 C.F.R. Part 46)**

23 42. DOI’s NEPA-implementing regulations include a list of “Departmental categorical
24 exclusions” available for use by all departments within the DOI, including the NPS. *See* 43
25 C.F.R. § 46.210. In addition to the DOI Departmental CEs, the NPS also has agency-specific CEs
26 that it may use. These agency-specific CEs are included in the DOI’s “Departmental Manual,”
27 516 DM 12.
28

1 43. As required by NEPA, the DOI NEPA-implementing regulations also provide a
2 list of extraordinary circumstances which may nevertheless require NEPA analysis for actions
3 which may otherwise typically be categorically excluded from review. 43 C.F.R. § 46.215. One
4 of these specifically identified extraordinary circumstances is when a proposed action may
5 “[h]ave significant impacts on species listed, or proposed to be listed, on the List of Endangered
6 or Threatened Species or have significant impacts on designated Critical Habitat for these
7 species.” 43 C.F.R. § 46.215(h).

8 44. With regard to tiering, the DOI NEPA regulations state that tiering documents
9 “must include a finding that the conditions and environmental effects described in the broader
10 NEPA document are still valid or address any exceptions[.]” 43 C.F.R. § 46.140, and that “[t]o
11 the extent that any relevant analysis in the broader NEPA document is not sufficiently
12 comprehensive or adequate to support further decisions, the tiered NEPA document must explain
13 this and provide any necessary analysis.” *Id.* at § 46.140(b).

14 **Public Participation Requirements and Guidance for NPS Decisions**

15 45. The NPS has an internal guidance document used to inform the agency’s
16 participation in the NEPA process – the 2015 NPA NEPA Handbook. This 2015 NEPA
17 Handbook acknowledges and details, among other things, the NPS’s responsibility to involve the
18 public in its NEPA decision-making process.

19 46. “NEPA also requires federal agencies to involve the interested and affected public
20 in decision-making processes.” 2015 NEPA Handbook at 5.

21 47. “Public involvement is a key component of the NEPA process. The CEQ
22 regulations require agencies to ‘encourage and facilitate public involvement’ to the fullest extent
23 possible in making decisions that would have environmental impacts and to make diligent efforts
24 to involve the public in the NEPA process [.]” 2015 NEPA Handbook at 12. “Though you should
25 always seek ways to involve the interested and affected public in the NEPA process, the type and
26 extent of public involvement will vary depending on the nature of a proposed action, its impacts,
27 the degree to which the public is interested and affected, and the level of NEPA review.” *Id.*

1 48. “As set forth in *Director’s Order 75A: Civic Engagement and Public Involvement*
2 (*DO-75A*), NPS decision makers are required to plan early for appropriate opportunities for
3 public involvement when decisions are made for actions or policies that will significantly affect
4 or interest the public.” 2015 NEPA Handbook at 12–13.

5 49. “Public comment is not required when using a CE. However, you may wish to
6 seek public comment in situations where there is a high degree of public interest or uncertainty
7 regarding potential effects of a proposed action. Public input can help identify environmental
8 issues . . . and provide information that will help determine whether any extraordinary
9 circumstances exist.” 2015 NEPA Handbook at 30. “Regardless of whether or not you seek public
10 comment, when using a CE that requires documentation, you should consider notifying the public
11 once the CE is approved by the superintendent. This can be accomplished by posting a brief
12 notice on PEPC or your park unit or program’s website, or by other means.” *Id.*

13 50. “The procedures contained in [the Handbook] will ensure that both adverse and
14 beneficial impacts of NPS proposed actions are fully and openly evaluated before actions are
15 taken that may impact the human environment. This evaluation must include provisions for:
16 Meaningful participation by the public and other stakeholders; . . .” Director’s Order 12 at 3.

17 51. The CEQ regulations include procedures for avoiding full compliance with NEPA
18 in emergency situations, but the NPS did not seek to invoke those procedures for the Projects at
19 issue. In fact because there are several months each year during which the Projects cannot be
20 implemented, during this “off season” the NPS could have engaged the public, sought public
21 comment during its decision-making process for each Project and otherwise fully complied with
22 NEPA without in anyway delaying the implementation of these Projects.

23 **National Park System Management (54 U.S.C. §§ 100101 – 104909)**

24 52. The fundamental purpose of the National Park System units is “to conserve the
25 scenery, natural and historic objects, and wild life in the System units and to provide for the
26 enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such
27 means as will leave them unimpaired for the enjoyment of future generations.” 54 U.S.C. §
28 100101(a). The Secretary of the Interior as well as the Director of the NPS are instructed to

1 “promote and regulate the use of the National Park System by means and measures that conform
2 to the fundamental purpose” of the system. *Id.*

3 53. This Congressional mandate to manage for non-impairment preempts any contrary
4 NPS regulations or guidance unless Congress expressly provides for such a deviation.

5 “[P]romotion and regulation of the various System units shall be consistent with and founded in
6 the purpose established by subsection (a), to the common benefit of all the people of the United
7 States.” 54 U.S.C. § 100101(b)(2). “The authorization of activities shall be construed and the
8 protection, management, and administration of the System units shall be conducted in light of the
9 high public value and integrity of the System and shall not be exercised in derogation of the
10 values and purposes for which the System units have been established, except as directly and
11 specifically provided by Congress.” *Id.*

12 54. Under this authority, plants and animals located within NPS units may only be
13 destroyed, sold, or disposed of in specific circumstances. “The Secretary may provide for the
14 destruction of such animals and plant life as may be detrimental to the use of any System unit.”
15 54 U.S.C. § 100752. “The Secretary, on terms and conditions to be fixed by the Secretary, may
16 sell or dispose of timber in cases where, in the judgment of the Secretary, the cutting of timber is
17 required to control attacks of insects or diseases or otherwise conserve the scenery or the natural
18 or historic objects in any System unit.” *Id.* § 100753.

19 **Administrative Procedure Act (5 U.S.C. §§ 701-706)**

20 55. Section 702 of the APA, 5 U.S.C. § 702, provides a private cause of action to any
21 person “suffering legal wrong because of agency action, or adversely affected or aggrieved by
22 agency action within the meaning of a relevant statute[.]” The APA provides a cause of action to
23 challenge any final agency action where there is no other adequate remedy in a court. 5 U.S.C. §
24 704.

25 56. Under Section 706 of the APA, reviewing courts “shall...(1) compel agency action
26 unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action,
27 findings, and conclusions found to be... arbitrary, capricious, an abuse of discretion, or otherwise
28 not in accordance with law” or “without observance of procedure required by law[.]” 5 U.S.C. §§

1 706(1), 706(2)(a), (d). NEPA does not contain specific judicial review provisions, and the NPS's
2 actions governed by NEPA, such as the Wawona Road Project and Yosemite Valley Project, are
3 therefore subject to judicial review under the APA.

4
5 **ADDITIONAL FACTS GIVING RISE TO THE PLAINTIFF'S CAUSE OF ACTION**

6 57. Yosemite National Park was established by Congress in 1864 with a grant of land
7 to the State of California whereby "the premises shall be held for public use, resort, and
8 recreation[.]" S. 203; Public Act No. 159.

9 58. The Park is located near central California, and has grown to encompass
10 approximately 748,000 acres of land. The forests, grasslands, and rivers of the Yosemite National
11 Park provide important habitat for fish and wildlife, and is a popular destination among the
12 recreating public due to its breathtaking scenery and variety of recreational opportunities in
13 remote and/or relatively undisturbed natural settings. The Park is also used by members of the
14 public for wildlife viewing, photography, and scientific studies of species, habitats, and other
15 important biological processes. Plaintiff's members use the Park for such purposes, and have an
16 interest in the proper management of Park resources.

17 59. The Wawona Road Project CE Form and other CE Package documents were
18 approved and signed by Defendant Muldoon in August of 2021, Plaintiff EII did not become
19 aware of the implementation of extensive logging associated with this Project until May 11th,
20 2022, after an EII-JMP volunteer witnessed project implementation, followed by an EII-JMP staff
21 member witnessing project implementation on May 13th, 2022. Plaintiff confirmed such logging
22 was continuing during the week of June 7th, when Plaintiff initially filed this Complaint, but has
23 since been mostly temporarily halted pursuant to the parties' agreement as set forth in the Court's
24 Order Setting a New Briefing Schedule. *See* ECF No. 20. Absent this agreement, logging could
25 otherwise continue.

26 60. Plaintiff can find no information indicating that the NPS notified the public about
27 this action before the NPS made its final decision regarding the Wawona Road Project, and no
28 information indicating that NPS sought public comment regarding this action. On the morning of

1 May 11th, 2022, Plaintiff and its counsel visited the NPS’s Yosemite Park website and the
2 general Park Planning website in order to locate and review the agency’s documentation
3 authorizing the Wawona Road Project.

4 61. On May 11th, 2022, Plaintiff was only able to locate a two-page description of the
5 Wawona Road Project, which included references to the following documents:

- 6 • PEPC 41967 Merced Grove Special Management Area Burn Preparation and Fire
7 Fuels Thinning Project – Phase I into Phase II
- 8 • 2004 Fire Management Plan Environmental Impact Statement (“EIS”)
- 9 • Forestry Programmatic CE (PEPC 79616)

10 Because these documents were relied upon to authorize the Wawona Road Project, they should
11 have been made available to the public and included on the Project’s webpage. They were not.
12 Plaintiff was unable to locate these documents elsewhere on either NPS website, and so drafted a
13 FOIA request seeking these documents, along with other records used to support authorization of
14 the Wawona Road Project.

15 62. That FOIA request was submitted the next day, on May 12th, 2022, with a request
16 for expedited processing due to the time-sensitive nature of the request and to allow Plaintiff to
17 discover and publicize any information about the logging in a National Park. The NPS notified
18 Plaintiff, on May 20th, 2022, that its request for expedited processing was denied. Plaintiff
19 immediately began preparing a FOIA appeal, and submitted the appeal to the NPS on May 23rd,
20 2022. That appeal was denied on June 10th, 2022. Defendant’s initial May 20th FOIA response
21 also indicated that a complete response would be forthcoming on June 24, 2022. Both the FOIA
22 statutory deadline and defendants’ own deadline for fully responding to Plaintiff’s May 12th
23 FOIA request have now come and gone. Plaintiff does not allege any actual legal claims under
24 FOIA in this Amended Complaint, but it reserves the right to do so in a subsequent amended
25 complaint or in a separate, related action. Plaintiff includes allegations about its FOIA request
26 here to underscore and explain why it is still proceeding with incomplete information regarding
27 Defendants’ actions.

1 63. On the same day that the NPS denied expedited processing (May 20th, 2022),
2 Plaintiff and its counsel spoke with Yosemite National Park FOIA Coordinator Quentin Kendall
3 via telephone regarding the status of the request. Upon concluding that call, Mr. Kendall emailed
4 to Plaintiff's counsel, an 11-page version of the CE Package used to approve the Wawona Road
5 Project. That CE Package included the CE Form and other forms which identified additional
6 documents of interest, including but not limited to the following:

- 7 • 2017 Fire Management Plan amendment (PEPC 41967)
- 8 • Forestry Programmatic CE (PEPC 24425)
- 9 • Biological Assessment analyzing potential impacts to the Pacific fisher
- 10 • United States Fish and Wildlife Service ESA consultation concurrence letter
11 received 8/3/2021

12 Plaintiff was able to locate some documents related to the first two items, but was unable to locate
13 the Biological Assessment or concurrence letter – documents which should have been made
14 available as part of the project record. Plaintiff later discovered, when it was provided by
15 Defendants' counsel on or about June 23, 2022, and that complete CE Package for the Wawona
16 Project contains 20 consecutively numbered pages of material.

17 64. The Yosemite Valley CE Form and other CE Package documents were approved
18 and signed by Defendant Muldoon on April of 2022. Plaintiff EII did not become aware of the
19 implementation of extensive logging associated with this Project until on or about June 17th,
20 2022, when its existence was disclosed by Defendants' counsel, and Defendants did not give
21 Plaintiff the second CE Package until June 23rd, 2022 via an email from Defendants' counsel.
22 Implementation of the Project has been temporarily restricted pursuant to the parties' agreement
23 as reflected in this Court's Order Setting a New Briefing Schedule. *See* ECF No. 20. Absent this
24 agreement, complete implementation could otherwise continue.

25 65. Plaintiff can find no information indicating that the NPS notified the public about
26 the Yosemite Valley Project before or after the NPS made its final decision regarding the
27 Yosemite Valley Project, and no information indicating that NPS sought public comment
28 regarding this action.

1 66. Further, the Defendants also attached the CE Package for the Wawona Road
2 Project to the same email received on June 23rd, 2022. However, this 20-page CE Package
3 included additional documents that are not a part of the CE Package available on the NPS
4 website, such as a Letter of Compliance Completion and an Assessment of Actions Having an
5 Effect on Historic Properties. Because the publicly available Wawona Road CE Package was
6 incomplete, Plaintiff is concerned that other publicly available documents related both to the
7 Wawona Road Project and Yosemite Valley Project may also be incomplete, and has asked the
8 NPS's counsel to provide these documents directly from the agency itself, rather than requiring
9 Plaintiff to rely on possibly incomplete documents posted on the agency's website.

10 67. Plaintiff may seek to further amend its complaint to include additional claims
11 arising from, among other things, information made available to Plaintiff after the date of filing
12 this amended complaint or based on claims, such as those arising under the ESA, that require a
13 statutory, pre-litigation notice. Plaintiff received a number of voluminous ESA-related documents
14 from defendants' counsel on July 1, 2022 and is still in the process of reviewing and evaluating
15 those records.

16 68. The Wawona Road Project is roughly 2,000 acres in size and runs from Merced
17 Grove into Yosemite Valley.

18 69. The Yosemite Valley Project is roughly 1,400 acres in size and encompasses
19 activities in Yosemite Valley, Yosemite West, and Wawona.

20 70. The areas encompassed by both Projects, including Yosemite Valley itself and the
21 Giant Sequoias in Merced Grove, are extremely popular and much cherished sites in the Yosemite
22 National Park and are responsible for bringing many visitors to the Park, to recreate and to enjoy
23 the natural beauty of the area.

24 71. As alleged above, to properly use a categorical exclusion, the agency must choose
25 one which actually covers the proposed action and explain why the categorical exclusion still
26 applies in the face of any evidence that extraordinary circumstances may be present.

27 72. The CE Form for the Wawona Road Project cites the "change and amend" CE,
28 identified as CE B.1, Wawona Road CE Package at 6, as exempting the Wawona Road Project

1 from NEPA, an exclusion which permits changes and amendments to pre-approved plans when
2 creating no or minimal environmental impacts. The NPS describes the Wawona Road Project as
3 “incorporat[ing] and expand[ing] PEPC 41967 Merced Grove Special Management Area Burn
4 Preparation and Fire Fuels Thinning Project-Phase I into Phase II” (“Burn Preparation Project”)
5 and following the 2004 FMP EIS “with several additions.”³ *Id.* at 4. The Wawona Road Project
6 CE Package does not provide any record of the alleged changes or amendments that are being
7 made to the 2004 FMP EIS or the Burn Preparation Project. Consequently, the Wawona Road
8 Project does not fall within the CE that the NPS attempts to use. Further, the NPS uses “tiering”
9 incorrectly, as it states Project actions described in the CE Form “tier off” the authority used to
10 justify the Project, but indicates that those “tiered” actions “differ from [sic] FMP.” *Id.* at 4.

11 73. Similarly, the CE Form for the Yosemite Valley Project cites the “change and
12 amend” CE B.1, Yosemite Valley CE Package at 6, as exempting the Yosemite Valley Project
13 from NEPA, an exclusion which permits changes and amendments to pre-approved plans when
14 creating no or minimal environmental impacts. The NPS states that this Project will follow the
15 2004 FMP EIS, the Merced River Plan EIS, and the Scenic Vista Management Plan, but then
16 immediately states the Yosemite Valley Project includes “several additions.” *Id.* at 5. The CE
17 Form then continues on to list several more authorities that supposedly give the NPS authority to
18 avoid completing an EA under NEPA, including: 16 U.S.C. 6, PEPC 88127, the 2017 Fire
19 Management Plan amendment (PEPC 41967), the 2014 Record of Decision for the Merced River
20 Plan/EIS (PEPC 18982), the 2004 FMP, and the Forestry Programmatic CE (PEPC 24425), but
21 still states that “[n]ew impacts not covered by these comprehensive plans are addressed
22

23 ³ As of the filing of the initial Complaint in this matter, ECF No. 1, on June 13, 2022, neither the
24 2004 FMP EIS nor documentation for the Burn Preparation Project were available to the public
25 on the NPS’s Park Planning website, or, to EII’s knowledge, anywhere else. After litigation was
26 commenced, NPS provided the 2004 FMP EIS to Plaintiff, but as of the date of filing this
27 Amended Complaint, June 7, 2022, this document has still not been made available to the public
28 via the NPS Park Planning website. After litigation was commenced, NPS did not provide EII
with documentation for the Burn Preparation Project, and their counsel has indicated that the
“Merced Grove Special Management Area Burn Prep project” did not ultimately go forward. This
recent revelation underscores the inappropriate nature of any reliance upon that defunct project as
authorizing any actions in the current Projects.

1 [elsewhere in the CE Package].” *Id.* at 5, 7.⁴ The NPS again uses “tiering” incorrectly, as it states
2 Project actions described in the CE Form “expand and tier” from the authority used to justify the
3 Project. *Id.* at 5.

4 74. NEPA only allows tiering from a broader or earlier NEPA document to
5 incorporate the broader programmatic analysis or earlier analysis from that document, and
6 thereby avoiding duplication. That, however, is not what the NPS did here. First, the NPS admits
7 that the Projects expand on issues not addressed in the 2004 FMP EIS. Second, the NPS attempts
8 to expand on that analysis in its CE Packages, rather than in a site-specific EA or EIS for either
9 Project. The NPS cannot utilize what it calls “tiering” to avoid completing further NEPA analysis
10 through either an EIS or EA.

11 75. The NPS failed to complete the subsequent analysis required when “tiering” in
12 both Projects. Even when tiering, NEPA still requires the agency to address where the earlier
13 document’s assumptions may not remain valid or current, to identify where the broader NEPA
14 document does not address specific impacts of a project, to complete an analysis to address those
15 impacts, and to make that analysis available for public review. Although the 2004 FMP EIS self-
16 identifies as an EIS for an implementation plan, 2004 FMP EIS at I-26, as opposed to being only
17 a more general EIS for a programmatic plan, the 2004 FMP EIS in fact contains very little site-
18 specific analysis of the impacts that could result from its implementation. For example, although
19 the 2004 FMP EIS sets diameter limits for logging in sequoia groves generally, *id.* at II-24, it
20 contains no analysis of the site-specific impacts of actually conducting such logging in the
21 individual sequoia groves. Thus when the Wawona Road Project authorizes such logging in the
22 Merced Sequoia Grove, it cannot properly rely on, or tier to, the 2004 FMP EIS for an analysis of
23 the site-specific impacts of logging large trees within the Sequoia groves, especially when the
24 Project actually authorizes logging much larger trees than the 2004 FMP EIS approves. Wawona
25 Road Project CE Package at 5.

26 76. The NPS failed to identify what impacts of the Wawona Road Project are not
27 addressed in the 2004 FMP EIS, failed to identify what impacts the Yosemite Valley Project are

28 _____
⁴ In fact, these “new impacts” are not actually analyzed anywhere else in the CE Package.
22 FIRST AMENDED COMPLAINT FOR VACATUR, INJUNCTIVE, AND DECLARATORY
RELIEF

1 not addressed in the 2004 FMP EIS and Merced River Plan EIS, failed to analyze those impacts
2 in both Projects, and failed to make such analyses available for public review. Overall, the NPS
3 failed to conduct any site-specific analysis to determine the impacts of the Wawona Road Project
4 and Yosemite Valley Project. Consequently, the NPS must complete either an EA or an EIS to
5 determine the environmental consequences of the Projects.

6 77. The 2004 FMP EIS and ROD approved a management scheme involving two
7 primary management designations – “Suppression Units”, encompassing 17% of the Park, where
8 all wild fires would be immediately suppressed, and “Fire Use Units”, encompassing 83% of the
9 Park, where wild fire would be used to manage ecological conditions – as well as several Special
10 Management Areas that occur within both of these designations. 2004 FMP EIS at II-22. The
11 Sequoia groves are among these “special management areas.” *Id.* Suppression Units and Fire Use
12 Units contain three possible sub-categories with different management prescriptions: (1)
13 Wildland/Urban Interface (“WUI”), (2) Non-Wildland/Urban Interface, Non-Wilderness
14 (NWUI), and (3) Wilderness. Under the 2004 FMP EIS, within Suppression Units (the 17%) WUI
15 trees up to 12” in diameter could be thinned, and in NWUI trees up to 20” in diameter could be
16 cut in certain limited areas. No WUI fell under the Fire Use Unit designation (the 83%), and in
17 NWUI trees up to 6” in diameter could be thinned “to protect these areas as a wildland fire
18 approaches.” 2004 FMP EIS at II-38 – II-39.

19 78. In 2017 the NPS substantially amended the 2004 FMP EIS, acknowledging that
20 the 2004 plan no longer aligned with the 2009 Federal Wildland Fire Management Policy. 2017
21 FMP Amendment CE Form at 1. As part of this amendment “Suppression Units” were renamed
22 “Community and Infrastructure Protection Strategy Units”, and “Fire Use Units” were renamed
23 “Wildland Fire Management Units.” 2017 FMP Amendment Errata Sheet – Alternatives at 9–11.
24 The sub-categories within each unit type were retained. Additionally, the division of land between
25 the units was adjusted drastically. Under the 2017 FMP Amendment, 99% of all Park land now
26 falls under the Wildland Fire Management Unit designation, and only 1% falls under the
27 “Community and Infrastructure Protection Strategy Unit.” *Id.* This change means that for all
28 NWUI lands contained with 99% of the Park land, only trees up to 6” in diameter may be thinned

1 “to protect these areas as a wildfire approaches.” *Id.* at 11. Neither CE package acknowledges or
2 discusses these changes in the designated areas imposed by the 2017 Amendments. Plaintiff’s
3 review of the maps created to document these amendments indicate that a large majority of the
4 acreage covered by the Wawona Road Project area is contained within the Wildfire Management
5 Unit designation within NWUI, thus the 6” limit applies to most of that project area, especially
6 along roads. The Wawona’s Project’s logging within sequoia groves is addressed by the 2004
7 FMP EIS’s standards for Special Management areas, and Defendants’ CE Form for that project
8 admits they are not following those standards. A significant portion of the Yosemite Valley
9 Project area is also within the Wildlife Management Unit designation with NWUI, the logging
10 along 11 Mile Road for example, thus the 6” limit applies to those areas as well. The 2017
11 Amendments do not expressly change management requirements or designations for the Special
12 Management Areas.

13 79. Both Projects purport to be consistent with (“follow”/“generally covered by”) both
14 the 2004 FMP EIS and the 2017 FMP Amendments. However, the CE Forms for both Projects
15 only identify each Project’s inconsistencies with the 2004 FMP EIS – including the Wawona
16 Road Project’s plan to log trees up to 20” in diameter in a sequoia grove – but neither identify
17 inconsistencies with the more recent 2017 FMP Amendments. Further, the CE Packages for both
18 Projects fail to even mention the updated management designations, including the Community
19 and Infrastructure Protection Strategy Unit (the 1%) which certainly should have been discussed
20 as part of the Yosemite Valley Project, which clearly involves some of this protected area.

21 22 **CLAIMS FOR RELIEF**

23 **CLAIM ONE**

24 **(Violations of NEPA and APA)**

25 80. Plaintiff realleges and incorporates by reference all preceding paragraphs into each
26 of the counts set forth below.

COUNT ONE

(Failure to Complete an EIS, EA, or identify an appropriate CE)

81. In order to satisfy NEPA, for all proposed actions a federal agency must either complete an EIS or EA to evaluate the environmental impacts of a proposed action, or it must demonstrate that the proposed action is categorically excluded from additional NEPA review by identifying an approved CE that exempts the specific action proposed.

82. The NPS failed to do any of the above with regard to the Wawona Road Project and Yosemite Valley Project. The NPS did not complete an EIS or EA for either Project. The NPS did identify a CE under which it purported to categorically exclude the actions from further NEPA review, but the proposed actions of the Projects do not fit within that identified CE.

83. For both the Wawona Road Project and the Yosemite Valley Project, the NPS cites to CE “B.1 Changes or amendments to an approved plan, when such changes would cause no or only minimal environmental impact[.]” to justify exempting the Projects from further review. The descriptions of the Projects’ activities, however, do not involve “changes or amendments to an approved plan[.]” Instead, they describe discrete site-specific actions that purportedly “follow” existing plans “with several additions[.]” but do not indicate that any change or amendment is being made to those plans. Any “addition[al]” actions that go beyond what was analyzed in existing plans must be subject to NEPA analysis, or else those actions will ultimately evade NEPA review altogether. Further, even if the Projects’ activities *were* considered changes or amendments to an approved plan, they do not “cause no or only minimal environmental impact.” In fact, for both Projects the responsible official only specifically finds that “[t]here will not be serious or long-term undesirable environmental or visual effects.” Finding a lack of serious effects is a much higher threshold than finding “no or only minimal” effects. Thus, it was not appropriate for the NPS use this “changes or amendments” CE B.1 to exempt the Projects from further NEPA review.

84. A CE is appropriate for “categories of actions that normally do not have a significant effect on the human environment, and therefore do not require preparation of an environmental assessment or environmental impact statement.” 40 C.F.R. § 1501.4(a). CEs must

1 be identified in an agency’s NEPA procedures. 40 C.F.R. § 1507.3(e)(2)(ii). The proposed actions
2 within the Wawona Road Project and Yosemite Valley Project do not fit within the CE identified
3 by the NPS in both CE Forms and thus that CE cannot be used for either Project. The NPS has
4 failed to identify a CE that covers the actions included in the Projects. Without such a CE, the
5 NPS has failed to show that the Projects’ actions fall within a “categor[y] of actions that normally
6 do not have a significant effect[.]” 40 C.F.R. § 1501.4(a).

7 85. The NPS’s failure to complete an EA, EIS, or to identify an appropriate CE with
8 which to exclude the Wawona Road Project and Yosemite Valley Project from further NEPA
9 review, is arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA, in
10 violation of the APA, 5 U.S.C. § 706(2)(A).

11 86. Alternatively, NPS’ “CE Packages” authorizing the Projects and the agency’s
12 decision to move forward with the Projects’ activities without first satisfying NEPA’s procedural
13 requirements were agency actions, findings, or conclusions that were without observance of
14 procedure required by NEPA, and thus in violation of the APA, 5 U.S.C. §§ 706(1), 706(2)(d).

15
16 **COUNT TWO**

17 **(Reliance upon inappropriate “NEPA” documentation to authorize logging in violation of**
18 **Fire Management Plan standards)**

19 87. The NPS issued “CE Packages” to document the use of a CE to approve the
20 Wawona Road and Yosemite Valley Projects. However, as of the date of this filing, the CE
21 Package for the Wawona Road Project available to the public on the NPS Park Planning website
22 is incomplete, and the CE Package for the Yosemite Valley Project is not publicly available at
23 all.⁵ The CE Packages Plaintiff received from Defendants include a Letter of Compliance
24 Completion, a CE Form, an Environmental Screening Form (“ESF”), an Assessment of Actions
25 Having an Effect on Historic Properties, and an Other Compliance/Consultations Form (“OCC
26 Form”).

27
28 ⁵ EII only obtained the complete Wawona Road Project CE Package and the Yosemite Valley CE
Package from the NPS after the initiation of this litigation.

1 88. These forms are all created by the agency to assist with *documentation of NEPA*
2 *compliance*, but the forms themselves do not, and cannot, fulfill NEPA compliance requirements
3 themselves.

4 89. The NPS uses CE Packages and CE Forms to identify and document the use of
5 CEs, where such documentation is required by law. Neither the broader CE Package, nor the
6 specific CE Form are themselves a CE.

7 90. While the CE Package and CE Form may be used to *document the use of*
8 legitimate and appropriate CEs in relation to proposed actions, the CE Form cannot *be used in*
9 *place of* an EA or EIS if the action does not fit entirely within an approved CE and would
10 otherwise require additional analysis to determine the impacts of the action.

11 91. The ESF is used to, among other things, identify the potential for impacts to park
12 resources and potential issues stemming from the proposed action. The ESF is not itself a NEPA
13 document. It is unclear why the NPS uses ESF forms in conjunction with CEs, which by nature
14 are actions that have previously been identified as not having significant environmental impacts
15 and thus do not require additional scrutiny. Any findings of potential impacts on an ESF prepared
16 in conjunction with a CE indicates that a CE likely is not appropriate for the proposed action.

17 **The Wawona Road Project**

18 92. The Wawona Road Project's CE Form authorizes logging and removal of trees up
19 to 20" in diameter in the Merced Grove of Sequoias, despite that same document acknowledging
20 that the 2004 FMP EIS only allows for removal of conifers <12" in diameter in sequoia groves. A
21 CE Form may only document the use of an appropriate CE, but may not itself authorize action
22 that falls outside of that CE's purview. The NPS's reliance upon its Wawona Road Project CE
23 Form to authorize the logging of trees up to 20" in diameter within the Merced Grove of Sequoias
24 is a violation of the 2004 FMP EIS, is arbitrary and capricious and in violation of NEPA and the
25 APA, 5 U.S.C. § 706(2)(A).

26 93. The Wawona Road Project's CE Form authorizes logging along roads and trails
27 "200 feet from centerline on both sides of the road unless otherwise noted." Wawona Road CE
28 Package at 4. Unlike the logging occurring within the sequoia grove, the Wawona Road CE Form

1 does not clearly specify the size of trees which will be removed for this road-side logging. It is
2 possible that this road-side logging includes trees up to 20” in diameter as well, and photos taken
3 of the active Wawona Road Project sites indicate this is the case.

4 94. The Wawona Road CE Forms alleges that the Project follows the 2004 Fire
5 Management Plan EIS and that the Project’s actions are “generally covered” by the 2017 Fire
6 Management Plan amendment. However, despite this acknowledgement of the 2017 FMP
7 Amendment, the Project’s CE Package appears to ignore the content and substantive changes of
8 the 2017 FMP Amendment, instead appearing to rely only upon 2004 standards, even where some
9 of those standards were affirmatively superseded by the 2017 Amendment. For clarity, this
10 amended complaint will identify when a standard relied upon by NPS appears to be an outdated,
11 superseded standard.

12 95. The 2017 FMP Amendment documents include, in comparative form, changes
13 between the 2004 FMP and the 2017 Amendment, for limited portions of the Plan. These
14 documents indicate that the Park is divided into two fire management units – the Community and
15 Infrastructure Protection Unit (1% of the Park), and the Wildland Fire Management Unit (99% of
16 the Park). NPS maps identifying unit boundaries indicate that the Protection Unit is comprised of
17 developed areas, and appears to exclude the Wawona Road Project area. Therefore the Wawona
18 Road Project area is within the Wildland Fire Management Unit designation. Two management
19 prescriptions are shown for this unit: “Non-Wildland/Urban Interface, Non-Wilderness” and
20 “Wilderness.” The CE Form indicates that “no work will occur in Wilderness[,]” Wawona Road
21 CE Package at 4, therefore the Non-Wildland/Urban Interface, Non-Wilderness management
22 prescription applies. That prescription only allows for “[p]rescribed fire and thinning of small
23 trees generally less than 6” dbh [diameter at breast height] would be done to protect these areas as
24 a . . . wildfire approaches.” 2017 Amendment Errata Sheet – Chapter 2, at 11. Accordingly,
25 logging of trees ≥ 6 ” dbh in the Wawona Road Project area is not permitted by the 2004 FMP EIS,
26 nor by the 2017 FMP Amendment. To the extent that the NPS has approved, via its Wawona
27 Road CE Package, logging of trees ≥ 6 ” dbh along roads and trails in the Project area, without any
28 acknowledgement of, explanation for, or actual analysis of the environmental impacts, that

1 decision and authorization is arbitrary and capricious and in violation of NEPA and the APA, 5
2 U.S.C. § 706(2)(A).

3 96. The Wawona Road Project's CE Form authorizes additional actions that the CE
4 Form acknowledges were not contemplated by, and thus not analyzed in, the 2004 FMP. This
5 includes the off-road use of tracked equipment to haul biomass ("*FMP does not specify if
6 tracked equipment is permitted along road corridors." Wawona Road CE Package at 4); road-side
7 thinning on South Side Drive ("*FMP does not specify roadside thinning on south side drive." *Id.*
8 at 5); and expanding the "200 feet from centerline on both side of the road" corridor beyond what
9 is allowed in the FMP ("The following two road segments expand what is prescribed in the
10 FMP." *Id.* at 5). These are admissions that the described actions were not included in, and thus
11 not analyzed by, the 2004 FMP, much less the 2017 FMP Amendments. The CE Package and CE
12 Form may only document the use of an appropriate CE. The CE Package and CE Form itself may
13 not be used to otherwise analyze or justify these "additional" actions – this analysis must occur in
14 an EA or EIS. To the extent that the NPS purports to authorize, via its Wawona Road CE Form
15 and other CE Package documents, actions that extend beyond actions authorized and analyzed in
16 the 2004 FMP EIS and 2017 FMP Amendments, and does not acknowledge, or explain, or
17 analyze the impacts of those deviations, that decision and authorization is arbitrary and capricious
18 and in violation of NEPA and the APA, 5 U.S.C. § 706(2)(A).

19 **The Yosemite Valley Project**

20 97. The Yosemite Valley Project's CE Package authorizes, among other things, the
21 logging and removal of trees up to 20" in diameter in Yosemite Valley, the unincorporated
22 community of Wawona, and along 11 Mile road and spur roads in Yosemite West. The Yosemite
23 Valley Project's CE Form authorizes logging along roads and trails "200 feet from centerline on
24 both sides of the road unless otherwise noted." Yosemite Valley CE Package at 5. The Yosemite
25 Valley Project CE Form very clearly anticipates logging trees up to 20" in diameter along at least
26 11 Mile road in Yosemite West, in violation of the 2004 FMP EIS 6" standard outlined above in
27 paragraphs 77–78, and retained by the 2017 FMP Amendment, which only permits logging of
28 trees up to 6" in diameter in this area, and only "as a ... wildfire approaches."

1 98. The NPS’s reliance upon its Yosemite Valley Project CE Package to authorize the
2 logging of trees up to 20” in diameter along Mile 11 road, and to the extent it authorizes the
3 logging of trees up to 20” in diameter in other unauthorized areas, is a violation of the 2004 FMP
4 as amended, and because it fails to acknowledge, explain or analyze the impacts of these
5 deviations, is arbitrary and capricious and in violation of NEPA and the APA, 5 U.S.C. §
6 706(2)(A).

7 99. The Yosemite Valley Project’s CE Form authorizes additional actions that it
8 acknowledges were not contemplated by, and thus not analyzed in, prior NEPA analyses,
9 including the 2004 FMP EIS, the Merced River Plan EIS, and Scenic Vista Management Plan,
10 noting that actions are “called out” where they “differ from the core document.” Yosemite Valley
11 Project CE Package at 5. The only action specifically “called out” in this CE Form is logging
12 activities including in “several areas in the West Valley not currently covered by either EIS[,]” *id.*
13 at 6, but the CE Form’s use of “*several* additions” implies that other actions may also exceed the
14 authority of the cited analyses. These is an admission that the described action, and the
15 unidentified other “additions” were not included in, and thus not analyzed by, the identified
16 analyses.

17 100. The CE Package and CE Form may only document the use of an appropriate CE.
18 The CE Package and CE Form itself may not be used to otherwise analyze or justify these
19 “additional” actions – this analysis must occur in an EA or EIS. To the extent that the NPS
20 purports to authorize, via its Yosemite Valley Project CE Package and CE Form, actions that
21 extend beyond actions authorized and analyzed in the 2004 FMP EIS, the Merced River EIS, and
22 the Scenic Vista Management Plan, and fails to acknowledge, explain or analyze the impacts of
23 these deviations, that decision and authorization is arbitrary, capricious, an abuse of discretion,
24 and not in accordance with NEPA, in violation of the APA, 5 U.S.C. § 706(2)(A).

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COUNT THREE**(Improper tiering to outdated NEPA document)**

101. Although the NPS purports to “tier” to the 2004 Fire Management Plan for both Projects, as well as “tiering” to an additional EIS for the Yosemite Valley Project, the agency appears to misconstrue the nature of tiering under NEPA. To tier is when a narrower NEPA analysis document points to a broader NEPA analysis document to show that the relevant analysis has already been completed and thus need not be revisited. Tiering, by nature, involves facts and analyses that the two documents have *in common*, with one NEPA document focusing on the broader/programmatic impacts, while the other NEPA document provides analysis of site-specific impacts. The Projects’ CE Forms appear to contemplate the opposite. The Wawona Road Project CE Form first states that Project actions “tier off the FMP[,]” and then that “[t]iered actions are specifically called out with an explanation of how it differs from FMP.” Wawona Road CE Package at 4. Similarly, the Yosemite Valley Project CE Form states that the Project “follows the 2004 [FMP EIS], Merced River Plan EIS (MRP), and Scenic Vista Management Plan,” but immediately qualifies this statement by stating there will be “several additions” and some actions will “adhere directly to these overarching documents[,]” but some actions will “expand and tier to them.” Yosemite Valley CE Package at 5. Tiered actions cannot “differ” from the document tiered to – this is the opposite of what NEPA contemplates.

102. To the extent that the NPS purports to “tier” to the 2004 FMP for Wawona Road Project actions that *differ* from the 2004 FMP in order to authorize Project actions that do not fit within the stated CE, doing so is arbitrary and capricious and in violation of NEPA and the APA, 5 U.S.C. § 706(2)(A).

103. To the extent that the NPS purports to “tier” to the 2004 FMP for Wawona Road Project actions that *may actually be analyzed* in the 2004 FMP in order to authorize Project actions that do not fit within the stated CE, doing so is arbitrary and capricious and in violation of NEPA and the APA, 5 U.S.C. § 706(2)(A), because the NPS itself has stated that the 2004 FMP is out of date and no longer accurately reflects or responds to on-the-ground conditions.

1 Stated simply: the impacts of proposed actions must be analyzed. This is true whether the analysis
2 occurs in an EIS, EA, or CE. In an EIS or EA the analysis is completed within those documents.
3 With a CE the agency has *already* analyzed that type of action and determined it does not
4 typically have significant effects.

5 107. Here, the NPS has admittedly authorized actions for both the Wawona Road and
6 Yosemite Valley Projects that go beyond what was analyzed in the plans they cite as authorizing
7 the Projects. These actions are described above in paragraphs 83, 96, 99 (the “several additions”).
8 The impacts of these “additional” actions, including logging trees up to 20” in diameter in
9 sequoia groves, were not analyzed in the cited plans, including the 2004 FMP EIS. The NPS
10 admits this when it labels them “additional” actions, and refers to “[n]ew impacts not covered by
11 these comprehensive plans” in the respective CE Packages. Nor are impacts of these “additional”
12 actions actually analyzed in the respective CE Packages⁶, thus effectively causing them to evade
13 NEPA review.

14 108. *Even if* the NPS was allowed to analyze the impacts of these “additional actions”
15 within the CE Package itself, which EII contests, the relevant CE Packages merely contain a
16 collection of conclusory statements about impacts – but do not contain any actual analysis
17 explaining how those conclusions were reached. Mere conclusory statements about impacts do
18 not satisfy NEPA’s requirement to take a “hard look” at impacts.

19 109. The Projects’ reliance upon the 2004 FMP EIS and other older plans to conclude
20 that project impacts will not adversely affect ESA-listed species is misplaced – because those
21 analyses were completed before several Project-area species were listed under the ESA.
22 Therefore, it is impossible that the 2004 FMP EIS and other older plans could have sufficiently
23 analyzed impacts to ESA species properly, and such site-specific project impacts on these species
24 must be conducted now. The CE Packages cannot rely on a prior EIS to avoid site-specific
25 analysis to the extent that EIS did not contain the site-specific analysis the NPS now seeks to
26 avoid. The analysis must occur somewhere.

27 ⁶ Further, impacts of these additional actions cannot, and *should not*, be analyzed in a CE
28 document, because the very need for additional analysis indicates that a CE is not appropriate –
and that an EA or EIS should be prepared instead.

1 110. The NPS may not fulfill its obligations under NEPA to take a “hard look” at
2 impacts to species by simply pointing to ESA compliance documents within its CE Packages. The
3 ESA and NEPA require completely different levels of analysis, with NEPA demanding a much
4 broader consideration of all impacts to ESA-listed species. *See Makua v. Rumsfeld*, 163 F. Supp.
5 2d 1202, 1218 (D. Haw. 2001).

6 111. ESA-compliance documents need only address whether impacts reach the
7 threshold of “jeopardy” or result in the destruction or adverse modification of critical habitat, *see*
8 16 U.S.C. § 1536(a), while NEPA requires that an agency consider impacts that may be “both
9 beneficial and adverse.” 40 C.F.R. § 1501.3(b)(2)(ii). By relying only on the ESA documents, the
10 NPS neglects to address not only beneficial impacts, but also all adverse impacts that do not reach
11 the extreme threshold of jeopardy. *See Makua v. Rumsfeld*, 163 F. Supp. 2d 1202, 1218 (D. Haw.
12 2001) (“there can be a significant impact on a species even if its existence is not jeopardized.”). If
13 the NPS believes an ESA document contains relevant analysis, it must be addressed in publicly-
14 available NEPA analysis.

15 112. Even the ESA-related documents cited by the Projects identify impacts that the
16 Defendants needed to specifically address in an actual NEPA document. For example, the
17 Wawona Road Project CE Form expressly claims to “protect” endangered Pacific Fisher habitat,
18 CE Package at 4, and asserts, with no supporting analysis, only “minor” impacts to the Pacific
19 fisher. *Id.* at 8. During ESA consultations regarding the Forestry Programmatic CE (PEPC 79616)
20 for hazard tree removal, which the Wawona Road Project CE Form cites to as directly supporting
21 its actions, on January 22, 2021, the U.S. Fish & Wildlife Service listed as a “conservation
22 measure” for the Pacific fisher that the Park Service would “[t]o the extent feasible, leave downed
23 wood to provide habitat structure. Since this measure is in opposition with the project goal, this
24 measure may be focused on drainages, which provide habitat and travel corridors for fishers.”
25 This “conservation measure” did not make it into the Wawona Road CE Package. *See* Wawona
26 Road Project CE Package at 2–3. More importantly, the Wawona Road Project requires the
27 removal of all downed wood, including downed hazard trees, which this conservation measure
28 confirms does not benefit the fisher and in fact harms its habitat. The NPS needed to analyze in a

1 NEPA document the impacts of removing this downed wood from fisher habitat, and no such
2 analysis occurred in any NEPA document cited by the Wawona Road Project CE Package.

3 113. The NPS failed to take a hard look at, among other things, impacts from all project
4 actions not previously and actually analyzed in an approved plan and impacts to ESA-listed
5 species. This failure is arbitrary, capricious, an abuse of discretion, and not in accordance with
6 NEPA, in violation of the APA, 5 U.S.C. § 706(2)(A).

7
8 **COUNT 5**

9 **(Failure to Facilitate Public Involvement)**

10 114. NEPA requires that agencies “[m]ake diligent efforts to involve the public” and to
11 “[p]rovide public notice of . . . the availability of environmental documents so as to inform those
12 persons and agencies who may be interested or affected by their proposed actions.” 40 C.F.R. §§
13 1506.6(a), (b).

14 115. The NPS’s own 2015 NEPA Handbook acknowledges the importance of public
15 participation: “Public involvement is a key component of the NEPA process. The CEQ
16 regulations require agencies to ‘encourage and facilitate public involvement’ to the fullest extent
17 possible in making decisions that would have environmental impacts and to make diligent efforts
18 to involve the public in the NEPA process[.]” NPS 2015 NEPA Handbook at 12. Public
19 involvement is emphasized a number of other times by this guidance document, and is mentioned
20 at least fifteen times throughout the document.

21 116. Despite NEPA’s mandate to keep the public apprised of the availability of
22 environmental documents, and the NPS’s own guidance reinforcing the importance of facilitating
23 public involvement in the NEPA process, the NPS here has persistently failed to meet this
24 requirement by, among other things, failing to make NEPA documents available for public
25 review. Examples include, but are not limited to, the following:

- 26 a. The CE Package for the Wawona Road Project (PEPC 99551) posted to the NPS Park
27 Planning website is 11 pages long. EII believed this to be the complete CE Package
28 for this Project until the NPS provided it with a 20-page copy of the CE Package for

1 this Project which included two entirely new documents – the Letter of Compliance
2 Completion and Assessment of Actions Having an Affect on Historic Properties. As of
3 the date of this filing, only the incomplete 11-page document is available on the NPS
4 Park Planning website, thus the complete 20-page document is still not available to the
5 interested public to review.

- 6 b. After the initial litigation was filed challenging the Wawona Road Project, NPS
7 provided to EII the CE Package for another ongoing project – the Yosemite Valley
8 Project (PEPC 104171). The Yosemite Valley Project CE Package was not, and as of
9 the date of this filing, is still not, available on the NPS Park Planning website for the
10 interested public to review.
- 11 c. The 2004 FMP EIS is cited by a number of NPS documents including, among others,
12 the Wawona Road and Yosemite Valley Project CE Packages as providing
13 justification or authorization for other agency actions. Despite the importance of this
14 document, it was not posted to the NPS Park Planning website, and when EII initially
15 requested this document from the NPS before filing suit, the NPS declined to provide
16 this document and advised that EII file a Freedom of Information Act request to obtain
17 it. After litigation was initiated the NPS provided EII with the 2004 FMP EIS, but as
18 of the date of this filing this document is still not available on the NPS Park Planning
19 website for the interested public to review.

20 117. The unavailability of other supporting documents discussed above in paragraphs
21 13–18 and 60–66 further demonstrate the NPS’s failure to facilitate public involvement in the
22 NEPA process. The NPS’s consistent failure to make relevant NEPA documents available to the
23 public, and its resistance to providing such documents when requested, makes it nearly
24 impossible for the public to participate in the NEPA process for projects that it is made aware of,
25 or to even be involved for projects that are not even disclosed to the public.

26 118. Further, documents that *have* been made available contain numerous
27 inconsistencies and errors. This make not only makes it difficult to understand what reasoning
28

1 actually underlies the NPS’s decisions, but strains public trust in the quality and validity of
2 documents that are being completed and produced to the public.

3 119. The NPS’s failure to make NEPA documents available for public review is
4 arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA, 40 C.F.R. §
5 1506.6, in violation of the APA, 5 U.S.C. § 706(2)(A).

6
7 **CLAIM 2**

8 **(Violation of the NPS Organic Act and the APA)**

9 120. Plaintiff realleges and incorporates by reference all preceding paragraphs into the
10 claim set forth below.

11 121. The NPS’s approval of logging and other biomass removal activities in violation
12 of approved park management plans may result in the impairment of Park resources. The Projects
13 are resulting in the removal of trees of up to at least 20” in diameter – Park resources that will
14 take decades to regenerate. Doing so fails “to conserve the scenery, natural and historic objects,
15 and wild life in the System units and to provide for the enjoyment of the scenery, natural and
16 historic objects, and wild life in such manner and by such means as will leave them unimpaired
17 for the enjoyment of future generations[.]” in violation of 54 U.S.C. § 100101(a).

18 122. Further, such actions violate the NPS mandate that “[t]he authorization of
19 activities shall be construed and the protection, management, and administration of the System
20 units shall be conducted in light of the high public value and integrity of the System and shall not
21 be exercised in derogation of the values and purposes for which the System units have been
22 established, except as directly and specifically provided by Congress.” 54 U.S.C. § 100101(b)(2).
23 Neither CE Package contains a non-impairment finding.

24 123. The NPS’s approval of projects that do not expressly find compliance with
25 approved Park Plans, and its failure to explain why and how the two projects at issue – which
26 deviate significantly from approved Park Plans – actually comply with the Congressionally
27 mandated non-impairment standard, is arbitrary and capricious, an abuse of discretion, and not in
28 accordance with the NPS Organic Act, in violation of the APA, 5 U.S.C. § 706(2)(A).

1 D. Enter appropriate injunctive relief to ensure that Defendants comply with
2 NEPA and the NPS Organic Act, and specifically to ensure that Defendants and their agents take
3 no further actions toward proceeding with the challenged Wawona Road and Yosemite Valley
4 Projects, outside of the Community and Infrastructure Protection Strategy Units, until they have
5 complied with NEPA and the Organic Act;

6 E. Award Plaintiff its reasonable costs, litigation expenses, and attorneys' fees
7 associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 *et*
8 *seq.*; and

9 F. Grant such further relief as the Court deems just and proper.

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Respectfully submitted on this 7th day of July, 2022.

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