February 3, 2022

Brenda Mallory, Chair
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503
brenda_mallory@ceq.eop.gov

Jayni Hein, Senior Director for NEPA & Counsel
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503
jayni.f.hein@ceq.eop.gov

Justin Pidot, General Counsel
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503
justin.r.pidot@ceq.eop.gov

Submitted via email

RE: Request for CEQ-Issued Guidance and/or Regulatory Change Addressing Federal Land Management Agency Attempts to Avoid Site-Specific NEPA Analysis and Disclosure ("Condition-Based Management")

Dear Chair Mallory, Ms. Hein, and Mr. Pidot:

On behalf of the undersigned organizations and individuals, we write to request that the Council on Environmental Quality ("CEQ") take action to preserve the integrity of the National Environmental Policy Act ("NEPA") and correct unlawful federal agency efforts to avoid site-specific NEPA analysis and disclosure before they make decisions with site-specific consequences. NEPA commands federal agencies to look before they leap and tell the public what they see, but the Forest Service and other federal land managers are at the forefront of an unlawful trend of agencies attempting to sidestep NEPA by deploying an analytical framework commonly known as "condition-based management." These emerging practices are unlawful, unwise, and undermine basic NEPA principles.

The attached report details the legal violations and on-the-ground harms that result when agencies try to avoid their NEPA obligations through condition-based management schemes and other related practices. Site-specific NEPA analysis and disclosure is required by law, leads to better outcomes, and is critical to promoting administration priorities like advancing the cause of environmental justice and combatting climate change.

Unfortunately, the Forest Service and other land managers have not gotten the message, and it is time for CEQ to step in. We respectfully request that CEQ issue guidance and/or regulations that reaffirm the fundamental importance of site-specific NEPA analysis when agencies make site-specific choices, correct agency practices contrary to that rule, and identify NEPA-compliant ways for agencies to responsibly implement their mandates, including their NEPA obligations. We also request a meeting with you to discuss the issue further. If you have questions about this request or the attached report, or to schedule a meeting, please contact Susan Jane Brown (brown@westernlaw.org) or Sam Evans (sevans@selcnc.org).

With regards on behalf of the undersigned organizations and individuals,

Susan Jane M. Brown, Wildlands Program Director & Staff Attorney
Western Environmental Law Center
4107 NE Couch Street
Portland, OR 97232
brown@westernlaw.org

Sam Evans, National Forests and Parks Program Leader & Senior Attorney
Southern Environmental Law Center
48 Patton Avenue, Suite 304
Asheville, NC 28801
sevans@selcnc.org

Abigail André, Associate Director & Senior Attorney
Environmental Advocacy Clinic
Vermont Law School
PO Box 96
South Royalton, VT 05068
aandre@vermontlaw.edu

Edward B. (Ted) Zukoski, Senior Attorney
Center for Biological Diversity
1536 Wynkoop Street, Suite 421
Denver, CO 80202
tzukoski@biologicaldiversity.org

Marla Fox, Staff Attorney
WildEarth Guardians
PO Box 13086
Portland, OR 97219
mfox@wildearthguardians.org

Jamey Fidel, Forest and Wildlife Program Director
Vermont Natural Resources Council
11 Baldwin Avenue
Montpelier, VT. 05602
jfidel@vnrc.org

cc:

Chief Randy Moore, U.S. Forest Service (rmoore@fs.fed.us)
Deputy Chief Chris French, U.S. Forest Service (cfrench@fs.fed.us)
Under Secretary Meryl Harrell, U.S. Dep't of Agriculture (meryl.harrell@usda.gov)
Acting Chief of Staff Christine Dawe, U.S. Dep't of Agriculture (cdawe@usda.gov)

REQUEST FOR CEQ-ISSUED GUIDANCE AND/OR REGULATORY CHANGE: ADDRESSING FEDERAL LAND MANAGEMENT AGENCY ATTEMPTS TO AVOID SITE-SPECIFIC NEPA ANALYSIS AND DISCLOSURE ("CONDITION-BASED MANAGEMENT")

INTRODUCTION

The undersigned have major concerns about a growing trend of federal agency efforts to avoid site-specific analysis under the National Environmental Policy Act ("NEPA"). While this trend cuts across agencies, the bulk of examples included here relate to NEPA analyses from federal land management agencies, and primarily the Forest Service, with which our organizations have the most familiarity. The environmental reviews of federal land management agencies, especially the Forest Service, provide uniquely valuable opportunities for understanding the challenges and opportunities in implementing NEPA because of the breadth of statutory duties and interests these agencies must balance, the diversity of public values that attach to federal lands, and the sheer number of environmentally consequential land management decisions to be made. The Forest Service is also currently the most prolific in its attempts to skip site-specific NEPA analysis, pioneering a practice known as condition-based management ("CBM"), which, as shown in the attached case studies,[1] is explicitly intended to cut off the NEPA process before the agency gathers the site-specific information or public input needed to inform its decision.

As discussed below, agency efforts to avoid site-specific NEPA analysis through CBM and other related practices are unlawful, unwise, divisive, and unnecessary. We respectfully request that the Council on Environmental Quality ("CEQ") issue guidance and/or regulations that reaffirm the fundamental importance of site-specific NEPA analysis when agencies make site-specific choices, correct agency practices contrary to that rule, and identify NEPA-compliant ways for agencies to responsibly implement their mandates, including their NEPA obligations.

I. NEPA requires agencies to undertake site-specific NEPA analysis before making project-level decisions.

CEQ should reaffirm that site-specific analysis is central to NEPA's action-forcing mandate whenever agencies propose to make project-level decisions with site-specific consequences for the environment, and that NEPA requires these consequences be evaluated and disclosed to the public *before* agencies decide to act. This obligation and this sequence are legally required by statute and confirmed by decades of judicial decisions. And as a practical matter, site-specific NEPA analysis is an effective and important tool for improving decisions and for promoting administration priorities like advancing environmental justice and combating climate change.

A. NEPA requires site-specific analysis for all project-level decisions with site-specific consequences for the environment.

[1] *See* Appendix 1.

NEPA famously has "twin aims":[2] (1) the statute commands each agency to consider the environmental impacts of its proposed actions; and (2) to ensure that "the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision."[3] Although the Supreme Court has interpreted NEPA's enforceable requirements to be procedural, its goals and its benefits are unambiguously substantive. Environmental analysis and public scrutiny are intended to produce "better decisions,"[4] and, indeed, are "almost certain to affect [an] agency's substantive decision."[5] "Simply by focusing [an] agency's attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast."[6]

To this end, NEPA requires that agencies must undertake and disclose site-specific analysis before making decisions with site-specific impacts.[7] In other words, whenever an agency proposes to choose among options that have different site-specific environmental consequences—like logging in one area versus another—the agency must provide site-specific analysis of those environmental consequences during the NEPA process before making a final decision.[8] Specifically, when an agency prepares a site-specific analysis for a project-level action, it must include "a reasonably thorough discussion of the distinguishing characteristics and unique attributes of each area affected by the proposed action."[9] Moreover, in order to "facilitate public discussion," the project's "proposed activities must be sufficiently correlated with environmental factors" and values—such as the presence of plant and wildlife species, for example—in each area that will be affected by the project.[10] The same rule applies when the

---

[2] Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc., 462 U.S. 87, 97 (1983).
[3] Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989).
[4] *See* Nat'l Audubon Soc'y v. Dep't of Navy, 422 F.3d 174, 206 (quoting 40 C.F.R. § 1500.1(c) (1978)).
[5] *Robertson,* 490 U.S. at 350.
[6] *Id.* at 349.
[7] *E.g.,* California v. Block, 690 F.2d 753, 761 (9th Cir. 1982) (holding that site-specific impacts must be "fully evaluated" when an agency proposes to make an "irreversible and irretrievable commitment" of resources to a project at a particular site). Congress alone may make exceptions to this rule. *E.g.,* 16 U.S.C. §§ 6591a(b)(2), 6591b(a)(1), 6591(d) (allowing the Forest Service to skip NEPA for site-specific actions that otherwise would require an EA or EIS, provided that all the requirements for eligibility are met. Such exceptions are narrow and rare).
[8] *See, e.g.*, Western Watersheds Project v. Abbey, 719 F.3d 1035, 1049 (9th Cir. 2013) (internal citation omitted) (holding that BLM has a "critical duty to 'fully evaluate[ ]' site-specific impacts" even after issuing a programmatic EIS); City of Tenakee Springs v. Block, 778 F.2d 1402, 1407 (9th Cir. 1985) (finding that "NEPA requires both a programmatic and a site-specific EIS," and that agencies do not have discretion "to determine the specificity required by NEPA" in a site-specific EIS but must instead adhere to the statute); Wilderness Soc'y v. U.S. Forest Serv., 850 F. Supp. 2d 1144, 1150, 1157 (D. Idaho 2012) (holding that the U.S. Forest Service was required to "take a 'hard look'" at the impact of 94 miles of roads under NEPA "before making them a part of the designated route system in the area" despite the roads having been used unofficially for years); Klamath-Siskiyou Wildlands Ctr. v. U.S. Forest Serv., No. 2:05-CV-0299, 2006 WL 1991414, at *9–10 (E.D. Cal. July 14, 2006) (invalidating the use of an EA without site-specific analysis for project locations).
[9] Stein v. Barton, 740 F. Supp. 743, 749 (D. Alaska 1990); *see Klamath-Siskiyou Wildlands Ctr.*, 2006 WL 1991414, at *9–10.
[10] *Stein*, 740 F. Supp. at 749; *see* Ayers v. Espy, 873 F. Supp. 455 (D. Colo. 1994) (holding that where the Forest Service's EA for a timber sale in the Arapaho and Roosevelt National Forests selected an alternative despite "grossly inadequate" soil data, the agency was required to conduct a soils inventory and analysis providing site-specific information sufficient to properly evaluate each proposed alternative and the reasons for each alternative's selection or rejection).

choice of the timing of implementation is environmentally consequential. In such cases, the time-dependent impacts must be considered during the NEPA process.[11]

Site-specific analysis and public input are required to assess environmental baselines,[12] develop and compare differences among alternatives,[13] and develop site-appropriate mitigation measures.[14] The obligation to undertake and disclose this sort of analysis during the NEPA process is set forth by NEPA's plain terms. For on-the-ground or otherwise project-level actions that require preparation of an environmental impact statement ("EIS"), the obligation to evaluate site-specific impacts arises from the "detailed statement" requirement of Section 102(2)(C) of NEPA and the requirement that agencies consider all reasonable alternatives.[15] A "detailed statement" of effects must include analysis of impacts that depend on location or timing.[16] An agency cannot take a hard look at impacts to wildlife, for example, without first understanding exactly where the action will take place and which wildlife species are using the affected area. In addition, an EIS must evaluate alternatives to the proposed action—a requirement that has long been understood as the "heart" of the NEPA process.[17] Where alternatives involve choices between locations or timing, the comparison must account for those site-specific or time-dependent differences.[18] In addition, agencies must understand the type and degree of site- and time-specific impacts in order to identify mitigation measures.[19]

For on-the-ground or otherwise project-level actions that do not require preparation of an EIS, NEPA nevertheless requires site-specific analysis in environmental assessments ("EAs") for agency actions where the choice of sites is environmentally consequential. An EA is not solely a tool for deciding whether an EIS is needed; it is also the mechanism required to comply with Section 102(2)(E) of NEPA,[20] which requires agencies to develop and consider alternatives when there are "unresolved conflicts concerning alternative uses of available resources"—an obligation that exists independent of Section 102(2)(C)'s "detailed statement" requirement. The

---

[11] *Cf.* Marsh v. Oregon Nat. Res. Council, 490 U.S. 360, 374 (1989) (holding that a supplemental EIS is required whenever the passage of time or subsequent events might "'affec[t] the quality of the human environment' in a significant manner or to a significant extent not already considered") (quoting 42 U.S.C. § 4332(2)(C)); Oregon Nat. Desert Ass'n v. Bureau of Land Mgmt., WL 5830435, at *6 (D. Or. 2011) (finding that "the regulatory definition of 'significantly' requires the BLM to consider the context and intensity of the proposed project and its impacts.").
[12] Oregon Nat. Desert Ass'n v. Jewell, 840 F.3d 562, 568 (9th Cir. 2016) (holding that an accurate baseline is a "practical requirement" of NEPA and that environmental data must be made "available to public officials and citizens *before* decisions are made and *before* actions are taken.") (emphasis in original) (internal citations omitted).
[13] 40 C.F.R. § 1502.14 (2020).
[14] *Id.* at § 1502.16.
[15] 42 U.S.C. § 4332(2)(C)(iii).
[16] *See* Southeast Alaska Conservation Council v. U.S. Forest Serv., 443 F. Supp. 3d 995, 1013 (D. Alaska 2020) (holding that condition-based management project on the Tongass National Forest violated NEPA's hard-look standard because the Forest Service did not analyze where and when logging and road construction would occur).
[17] Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 352 (1989).
[18] *See, e.g.*, New Mexico *ex rel*. Richardson v. Bureau of Land Mgmt., 565 F.3d 683, 705–07 (10th Cir. 2009) (requiring BLM to conduct additional site-specific NEPA analysis when it significantly modified chosen alternative without completing any additional analysis).
[19] *Robertson*, 490 U.S. at 351 (holding that a discussion of mitigation measures is an "essential ingredient" of an EIS which "flows both from the language of the [Clean Water] Act and . . . from CEQ's implementing regulations."); *see also* 42 U.S.C. § 4332(C)(ii) (requiring a detailed statement for "any adverse environmental effects which cannot be avoided should the proposal be implemented").
[20] 40 C.F.R. § 1508.9 (1978); 40 C.F.R. § 1501.5(c)(2) (2020).

requirement to consider alternatives arises when the choice is environmentally consequential—i.e., whenever an agency's objective "can be achieved in one of two or more ways that will have differing impacts on the environment."[21] Accordingly, if an agency's purpose can be met by acting in different locations (or at different times or in different ways) with different environmental consequences and the agency is exercising discretion to choose among those places or times, an EA must consider the different effects corresponding to those location or timing options.[22] For example, where and how to conduct logging or build roads are the sorts of decisions explicitly left "unresolved" in forest plans and deferred to future project-level decisions, requiring site-specific analysis at the project level.[23] In addition, the requirement to consider site-specific impacts is inherent in the EA's role of assisting decisionmakers to determine whether an EIS is required. Without site-specific analysis, an agency cannot credibly justify a finding of no significant impact ("FONSI") for a site-specific project.

This is not to say that agencies must spend considerable time analyzing nonsignificant issues. If, based on agency experience and monitoring, an action will not individually or cumulatively cause significant impacts *no matter where or when it occurs*, an agency may develop a categorical exclusion ("CE") for that category of action.[24] On the other hand, if an agency's proposed action may individually or cumulatively lead to significant impacts *depending on where or when it occurs*, the agency must at least prepare an EA that considers whether the particular action will occur at a place or time that makes its impacts environmentally significant.

B. Site-specific analysis of project-level decisions is effective and important.

In addition to being legally required, site-specific NEPA analysis is effective and important as a practical matter.

First, site-specific analysis during the deliberative NEPA process is critical to ensuring informed and effective public participation, formulating and evaluating alternatives, and avoiding or mitigating adverse project impacts. Site-specific information related to, for example, where logging will occur or new roads will be built, is essential for an agency and the public to understand and evaluate the reasonably foreseeable impacts of a proposal.[25]

---

[21] 42 U.S.C. § 4332(2)(E); Trinity Episcopal Sch. Corp. v. Romney, 523 F.2d 88, 93 (2d Cir. 1975).
[22] *Trinity Episcopal*, 523 F.2d at 93.
[23] *E.g.,* U.S. DEP'T OF AGRIC., U.S. FOREST SERV., FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE REVISED LAND AND RESOURCE MANAGEMENT PLAN FOR THE NATIONAL FORESTS IN FLORIDA ch. 3, at 1 (1999), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd500375.pdf; U.S. DEP'T OF AGRIC., U.S. FOREST SERV., FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE LAND AND RESOURCE MANAGEMENT PLAN: CHATTAHOOCHEE-OCONEE NATIONAL FORESTS: APPENDIX G: RESPONSE TO PUBLIC COMMENTS 40, 108 (2004), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsm9_028731.pdf; U.S. DEP'T OF AGRIC., U.S. FOREST SERV., PISGAH-NANTAHALA FOREST PLAN ENVIRONMENTAL IMPACT STATEMENT: FINAL SUPPLEMENT TO THE FINAL ENVIRONMENTAL IMPACT STATEMENT: VOLUME II, at app. N-68 (1994).
[24] *See* Heartwood v. U.S. Forest Serv., 230 F.3d 947, 954 (7th Cir. 2000) (holding that categorical exclusions "by definition" are for actions which do not have any "significant environmental impact").
[25] *See, e.g.*, Southeast Alaska Conservation Council v. U.S. Forest Serv., 443 F. Supp. 3d 995, 1014 (D. Alaska 2020) (explaining where a project analysis "identified a total acreage of potential timber harvest, but not the distribution of the specific acreage authorized by each alternative within these areas" "[t]his omission is meaningful given the duration and scale of the project" and "fails to provide a meaningful comparison of alternatives.").

An informed public is empowered to correct agencies' mistakes, offer alternative means by which to accomplish the purpose and need of a project, provide additional relevant information, and persuade agencies that some impacts may simply be unacceptable. Project improvements are driven by public input, usually centering on concerns about site-specific impacts. As CEQ has previously recognized, site-specific NEPA analysis leads to better outcomes, period.[26]

Recent experience reinforces CEQ's conclusions about the importance of site-specific analysis when reviewing project-level decisions. In connection with its November 2020 NEPA rulemaking, the Forest Service identified 68 vegetation management projects (encompassing a range of activities, from prescribed fire to timber production), which the agency believed were representative of its routine EA-level work, and which all resulted in FONSIs. Of those 68 projects, 40 were modified after preparation of an EA—33 at least partly in response to informed public comments, and another 7 due to internal review.[27] During the EA process, the sampled projects shrank by approximately 20% in terms of total acreage treated, but project improvements were much more varied than merely dropping high-risk acres. Other improvements included changing harvest locations and types, reducing mileage or changing locations of permanent or temporary roads, and adding site-specific mitigation measures such as retention of old trees and protections for rare species.[28] Similarly, an analysis of vegetation management projects in the Southern Appalachian national forests showed that NEPA comments regarding site-specific impacts resulted in project modifications to avoid potentially significant impacts to old growth forest, roadless areas, water quality, soil, rare species, and rare and exemplary natural communities.[29]

The following examples of Forest Service projects from across the country, which improved during the NEPA process based on site-specific information, further illustrate why a NEPA process with site-specific analysis and public input is important:

- ***Stoney Creek***[30] ***and Clarke Mountain***[31] ***Projects (Watauga District, Cherokee NF)***: While modestly sized, these projects would nonetheless have caused significant impacts

[26] Memorandum from Michael Boots, Acting Director of Council on Env't Quality, to Heads of Fed. Dep'ts and Agencies 5 (Dec. 18, 2014), https://obamawhitehouse.archives.gov/sites/default/files/docs/effective_use_of_programmatic_nepa_reviews_final_dec2014_searchable.pdf (Memorandum is entitled "Effective Use of Programmatic NEPA Reviews," and states that the NEPA process of using programmatic and site-specific analysis "leads to better outcomes" for the environment, public engagement, and government decisionmaking).

[27] *See* Appendix 2, at 10–16. These tables and charts analyze the projects that the Forest Service identified in an appendix to the supporting statement for several proposed CEs, available at https://www.fs.fed.us/emc/nepa/revisions/includes/docs/SupportingStatementAppxA-D.pdf.

[28] *Id.*

[29] *See* Appendix 2, at 17–25.

[30] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., ENVIRONMENTAL ASSESSMENT: STONY CREEK PROJECT (2013), https://www.fs.usda.gov/nfs/11558/www/nepa/92055_FSPLT3_1448898.pdf; *see also* S. Env't L. Ctr., W. Env't L. Ctr., The Wilderness Soc'y, Comment Letter on Proposed Rule, National Environmental Policy Act (NEPA) Compliance (84 Fed. Reg. 27,544, June 13, 2019) at 168 (Aug. 25, 2019) [hereinafter SELC Comments on Proposed NEPA Rule], https://westernlaw.org/wp-content/uploads/2020/04/USFS-NEPA-Rulemaking-Comments-FINAL.pdf.

[31] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., DECISION NOTICE AND FINDING OF NO SIGNIFICANT IMPACT: CLARKE MOUNTAIN PROJECT (2012), https://www.fs.usda.gov/nfs/11558/www/nepa/64492_FSPLT2_117679.pdf.

to old growth forests—an extremely rare resource in the Southern Appalachian ecoregion. Of the 613 acres proposed for commercial harvest in the combined projects, 174 were old growth (119 in Stoney Creek and 55 in Clarke Mountain). In both projects, District staff either did not recognize the stands at issue as old growth or resisted acknowledging that they were old growth. Because of EA comments submitted by citizen scientists with tree core data and field visits with Forest Service staff, the agency excluded old growth stands from logging, and more ecologically appropriate harvest locations were substituted.

- ***Somerset Integrated Resource Project***[32] **(*Manchester District, Green Mountain NF*)**: This project originally proposed 9,630 acres of timber harvest, over 31 miles of road construction, and other proposed activities in the Deerfield River and Lye Brook-Batten Kill watersheds in south-central Vermont. Based on input from stakeholders and natural resource experts through the NEPA process, including supplemental input on site-specific impacts disclosed in the draft EA, the Forest Service issued a final decision that reduced temporary road construction by 45% to mitigate negative effects associated with water quality from sedimentation and overall hydrological watershed functions. In addition, the Forest Service eliminated timber harvests and road building in areas with sensitive soils, reducing detrimental impacts to wetlands and soil productivity by 67%.

- ***Modoc Restoration Project***[33] ***(Chemult District, Fremont-Winema NF)***: This project proposed an aggressive logging of white fir that would have resulted in virtual clear-cuts on Yamsay Mountain, a scenic feature of eastern Oregon that is central to the mythology of the Klamath people. Through the NEPA process, conservationists were able to convince the Forest Service to modify the heavy-handed treatments to culture individual legacy trees and thin the white fir on about 252 acres of the project, fewer acres than initially proposed. The project went forward under a decision notice and FONSI.

In sum, site-specific analysis is essential to informed review, and to enable the public to persuade agency decisionmakers to modify their proposals to avoid harm or to add mitigation measures. Even though NEPA does not require agencies to select the least harmful alternative, public input does shape agency incentives at all scales of decision-making. In addition, to avoid the necessity of preparing an EIS, agencies have strong incentives to modify or mitigate their actions to justify a FONSI.[34] Transparency regarding site-specific impacts is fundamental to ensuring that agencies are responsive and accountable to the members of the public most immediately affected. If agencies are permitted to make consequential project-level decisions without analysis, public scrutiny, or informed local input, the agencies will not have the

[32] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., DECISION NOTICE AND FINDING OF NO SIGNIFICANT IMPACT: SOMERSET INTEGRATED RESOURCE PROJECT (2020), https://www.fs.usda.gov/nfs/11558/www/nepa/108977_FSPLT3_5540552.pdf.
[33] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., DECISION NOTICE AND FINDING OF NO SIGNIFICANT IMPACT: MODOC RESTORATION PROJECT (2011), https://www.fs.usda.gov/nfs/11558/www/nepa/1864_FSPLT2_057340.pdf.
[34] CEQ guidance recognizes and encourages these "mitigated FONSIs." *See* memorandum from Nancy H. Sutley, Chair of Council on Env't Quality, to Heads of Fed. Dep'ts and Agencies 7 (Jan. 14, 2011), https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf (Memorandum entitled "Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact").

information or incentive to address public concerns and avoid or mitigate risks. This result defies congressional intent behind our environmental laws.

Second, site-specific NEPA analysis is critical to promoting administration priorities, including advancing environmental justice and combating climate change. With respect to environmental justice, agencies cannot adequately analyze potential localized impacts to environmental justice communities without site-specific analysis. EPA's environmental justice guidance recommends that "an effort should be made to correlate the demographic analysis to the area most likely to bear environmental effects."[35] This is an impossible task for projects unless the agency discloses where an action is proposed to occur and draws a rational boundary for its effects analysis.[36] Furthermore, it is unfair and unrealistic to expect members of the public to anticipate how a generalized decision untethered from site-specific information will affect them in the future. This is particularly true of environmental justice communities, which often lack access to technical resources and face barriers to access the public participation process.[37]

With respect to climate change, site-specific choices at the project level add up to profound differences in the extent to which carbon storage potential is realized and the extent to which rare species' habitats are protected on national forest lands. While a single project may appear to have only a minor impact in light of the gravity of the climate and biodiversity crises, inherently site-specific differences between project options have significant cumulative implications for carbon storage. For example, there is a substantial difference between logging in moist and productive older forests versus removing small diameter material from dry and fire-prone ecosystems. The Forest Service routinely asserts that forest fuel treatments reduce the risk of high-intensity wildfire and carbon emissions from fire.[38] Yet the agency typically makes decisions about fuel removal on a project-by-project basis without properly analyzing the individual and cumulative impacts of these inherently site-specific choices. The result: the agency may in fact be liquidating resilient and carbon-sequestering forests in the name of climate change mitigation. Allowing the agency to duck the site-specific analysis requirement altogether simply amplifies the problem.

---

[35] EPA, FINAL GUIDANCE FOR INCORPORATING ENVIRONMENTAL JUSTICE CONCERNS IN EPA'S NEPA COMPLIANCE ANALYSES § 3.2.1 (1998) [hereinafter EPA ENVIRONMENTAL JUSTICE GUIDANCE], https://bit.ly/3r7w7zj.

[36] *See* Vecinos para el Bienestar de la Comunidad Costera v. FERC, No. 20-1045, 2021 WL 3354747 at *5 (D.C. Cir. Aug. 3, 2021) ("When conducting an environmental justice analysis, an agency's delineation of the area potentially affected must but reasonable and adequately explained and include a rational connection between the facts found and the decision made.") (citations and internal quotation marks omitted).

[37] EPA ENVIRONMENTAL JUSTICE GUIDANCE, *supra* note 35, at §§ 4.0–4.2.

[38] *Cf.* U.S. DEP'T OF AGRIC., ACTION PLAN FOR CLIMATE ADAPTATION AND RESILIENCE 11–12 (2021), https://www.usda.gov/sites/default/files/documents/climate-smart-ag-forestry-strategy-90-day-progress-report.pdf (listing as a key Forest Service strategy to address climate change, "[i]ncrease the rate of fuels reduction to reduce the risk of severe wildfire," asserting that high-intensity wildfire "can move forests from being a solution to address our changing climate to a significant emitter of GHGs."). *See also* U.S. DEP'T OF AGRIC., CLIMATE-SMART AGRICULTURE AND FORESTRY STRATEGY: 90-DAY PROGRESS REPORT 17 (2021), https://www.sustainability.gov/pdfs/usda-2021-cap.pdf ("[Forest Service] will scale up its activities to accelerate the strategic implementation of hazardous fuel treatments and prescribed fire to reduce wildfire risks and to increase forest restoration and reforestation.").

To be sure, the Forest Service could analyze the balance between fuels treatments and carbon storage more efficiently at the programmatic or policy level, limiting its project-level discretion and focusing on priorities that are less likely to degrade carbon stocks and rare habitats. But site-specific analysis serves as an essential backstop, especially when the agency does not consider these tradeoffs at a higher level. Indeed, the requirement to conduct site-specific analysis of unresolved issues (like the balance between fuels reduction and carbon storage) creates a strong contextual incentive to zoom out and assess the problem programmatically. In short, analysis of carbon implications must occur *somewhere*. If analysis at the site-specific level is cumbersome, the Forest Service can make it more efficient by resolving issues at a higher level. But it simply cannot close its eyes to the problem in the name of "efficiency." Any perceived gains of omitting site-specific analysis now and rushing through ill-reviewed projects are dwarfed by the potentially damaging cumulative impacts of implementing those decisions.[39]

II. Agencies are failing to perform site-specific analysis where it is required and essential for informed decision-making.

Site-specific analysis of project-level decisions is a crucial aspect of nearly every federal agency's decision-making process—and certainly of those federal agencies tasked with managing America's public lands. This imperative has never been more apparent than today: when ecosystems are facing unprecedented stressors, agencies cannot blindly assume that they will be resilient to extractive management practices that in the past were considered routine.

Without considered and transparent site-specific analysis, agencies simply cannot make the informed decisions Congress and the courts have demanded of them. In recent years, agencies have not been meeting this obligation, particularly the Forest Service. For example, the Forest Service has aggressively proposed projects under the banner of "condition-based management" or "CBM," in which the disclosure of site-specific information and evaluation of those site-specific factors is deferred until after the NEPA process is complete. The use of CBM and other related practices discussed below demonstrate that guidance from CEQ is necessary to remind agencies of NEPA's essential obligations.

A. Condition-Based Management.

Condition-based management, as employed by the Forest Service for forest vegetation management projects,[40] represents an alarming and unlawful trend[41] that violates NEPA. At its

[39] CEQ has long warned of this phenomenon, calling it "the tyranny of small decisions." COUNCIL ON ENVIRONMENTAL QUALITY, CONSIDERING CUMULATIVE EFFECTS UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT 1 (1997) (quoting William Odum, *Environmental Degradation and the Tyranny of Small Decisions,* 32 BIOSCIENCE 728 (1984)), https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf; *see also* Kern v. Bureau of Land Mgmt., 284 F.3d 1062, 1078 (9th Cir. 2002) (quoting Odum).

[40] By focusing on vegetation management projects in this letter, we do not mean to minimize the importance of other contexts where condition-based management and related practices are occurring. Rather, these types of projects are clear examples where site-specific choices inherenrly carry different environmental consequences that are obscured by condition-based management.

[41] *See generally* Appendix 1.

core, CBM is a decision-making approach in which an agency postpones identifying or disclosing site-specific information in its analysis and instead purports to identify the conditions that will characterize the *types* of sites on which the agency wishes to act, without disclosing (or even knowing) where those actions may later be approved. The Forest Service proposed to codify this practice in 2019, explaining that CBM allows NEPA decisions to be made before the local characteristics (or impacts) are known or disclosed.[42] The proposal was abandoned, but the practice continues. To be sure, setting priorities by identifying common conditions in need of treatment can be both lawful and beneficial, but not at the expense of analyzing and disclosing site-specific impacts. For example, an agency could decide to focus on particular conditions in a programmatic NEPA decision and later analyze site-specific proposals in slimmer NEPA analyses that tier to the programmatic decision.[43] CBM, however, skips over the tiered decisions and proceeds to implementation without site-specific information and analysis during the NEPA process, violating NEPA.

Using the CBM "methodology" for vegetation management decisions (i.e., timber harvest for any purpose) the Forest Service generally: (1) proposes an action consisting of a set of loosely applicable project variables and possible mitigation techniques; (2) conducts a NEPA lookalike without disclosing where or when actions will occur; (3) approves the general proposal; and (4) only later, during project implementation and well after the NEPA decision has been made, identifies the specific locations to be managed, the specific management that will occur, and actual mitigation measures (if any). For this reason, documents available during NEPA's public participation opportunities do not provide site-specific information, analysis, comparison of alternatives, or mitigation because none exists at the time the document is issued. Put differently, the Forest Service's use of CBM deprives the public of critical opportunities to understand the precise nature of the agency's action and its potential environmental impacts, much less provide informed input to influence the decision based on site-specific impacts before project approval. In such scenarios, the "ambiguity about the actual location, concentration, and timing" of actions such as timber harvest and road construction "fails to provide a meaningful comparison of alternatives."[44]

Outside the context of vegetation management projects, to which CBM has so far been confined, the use of CBM would be rejected on its face as ridiculous. Imagine, for example, that the Department of Transportation identified "traffic congestion" as a condition warranting road capacity expansion, then declined to conduct analysis of the site-specific impacts of new road construction on particular communities and environmental resources. Or imagine that the Bureau of Land Management identified "windy areas" as conditions where windmills may be permitted, but then declined to consider site-specific impacts to bird migration paths. Such a process would not be tolerated by CEQ or the courts. Yet CBM is quietly becoming the new normal for Forest Service timber sales and other vegetation management projects.

[42] *See* 84 Fed. Reg. 27,544 at 27,545, 27,553.
[43] *See* Appendix 1, Case Study: Dry Forests Restoration Project.
[44] Southeast Alaska Conservation Council v. U.S. Forest Serv., 443 F. Supp. 3d 995, 1014 (D. Alaska 2020).

As practiced by the Forest Service, CBM is incompatible with NEPA because the Forest Service never takes the requisite "hard look at the environmental consequences."[45] By failing to focus "agency and public attention on the environmental effects of proposed agency action,"[46] the Forest Service acts on "incomplete information" and risks "regret[ting] its decision after it is too late to correct."[47] Vague statements and conclusions about the environmental impacts of a project—lasting in some cases for 15 years or more[48]—and "deferring siting decisions to the future with no additional NEPA review . . . violates NEPA."[49]

One recent project demonstrates how a CBM approach violates NEPA's basic tenets. In 2017, the Forest Service identified 125,000 acres where timber harvest might occur on Prince of Wales Island in the Tongass National Forest ("Prince of Wales"), including 48,140 old-growth acres, and over 600 miles of potential new and temporary road construction.[50] The Forest Service subsequently authorized 40,000 acres of logging within this 125,000-acre area, including over 23,000 acres of old-growth forest, and over 160 miles of road construction.[51] The project would have been the largest single timber sale approved on the Forest in at least three decades. The Final EIS and record of decision ("ROD") authorizing the project's implementation did not include site-specific information on the "where" or "when" of road construction or logging. Indeed, the Service was explicit on this point: "[this p]roject proposes to harvest timber and build roads under all action alternatives, but it is *unknown at this time where on the landscape this would occur*,"[52] adding that "it is *not possible to determine* all of the direct, indirect, or cumulative impacts to wildlife habitat or connectivity that could result from this project before implementation."[53]

The Forest Service also attempted to use an ad hoc, post-decisional, implementation-phase public participation process that contained no formal, binding requirements on the agency, unlike the specific NEPA provisions for public participation.[54] The Forest Service proposed post-decisional, twice yearly "workshops" at which the public and Forest Service personnel would

[45] Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc., 462 U.S. 87, 97 (1983) (internal quotation marks omitted).
[46] Western Watersheds Project v. Kraayenbrink, 632 F.3d 472, 487 (9th Cir. 2011) (citing Marsh v. Oregon Nat. Res. Council, 490 U.S. 360, 371 (1989)).
[47] *Marsh*, 490 U.S. at 371.
[48] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., EARLY SUCCESSIONAL HABITAT CREATION PROJECT: ENVIRONMENTAL ASSESSMENT 1 (2019), https://www.fs.usda.gov/nfs/11558/www/nepa/108891_FSPLT3_4658918.pdf.
[49] *Southeast Alaska Conservation Council*, 443 F. Supp. 3d at 1014.
[50] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., PRINCE OF WALES LANDSCAPE LEVEL ANALYSIS PROJECT: FINAL ENVIRONMENTAL IMPACT STATEMENT 23 (2018), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd601039.pdf.
[51] *Id.* at 5.
[52] *Id.* at 234 (emphasis added).
[53] U.S. FOREST SERV., APPENDIX D: RESPONSE TO COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT [FOR THE PRINCE OF WALES LANDSCAPE LEVEL ANALYSIS PROJECT DRAFT ENVIRONMENTAL IMPACT STATEMENT] 58 (2018), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd601044.pdf (emphasis added).
[54] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., PRINCE OF WALES LANDSCAPE LEVEL ANALYSIS PROJECT: RECORD OF DECISION: APPENDIX 2: IMPLEMENTATION PLAN (2018), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd601049.pdf.

suggest "activities" to implement under the Project.[55] The Forest Service's plan, in other words, was that the public, even though deprived of meaningful site-specific information, would nevertheless be able to present:

> a wide array of activities for all resource areas . . . at these workshops, and that *those present* will help to *determine locations*, activity design components, methods, mitigation measures, and integration opportunities . . . . We will be requesting written substantive comments on changes to the activities listed, the locations, activity design components, methods, mitigation measures and integration opportunities . . . . The comment period will be 30 days. [The Forest Supervisor] will consider all comments received during workshops and comment periods to finalize activities for implementation that adhere to the FEIS, ROD, and Forest Plan.[56]

This public participation framework was entirely subjective and nonbinding because the Forest Supervisor would have the final decision regarding which activities to implement with no accountability during the life of the project. Moreover, the Forest Service and the Forest Supervisor were not actually bound to follow this voluntary process. Nor would the public be able to hold the agency accountable for failing to respond to public comments or ignoring contrary data or scientific studies, as would be required under NEPA.[57] Post-decisional participation schemes like this do not comport with the public procedural rights created by NEPA.[58]

Because the Forest Service did not provide any information—let alone formal analysis—of where, when, or how it would cut old-growth forest in the project area or construct logging roads, it failed to take the requisite "hard look" at the relevant impacts. Indeed, the agency could not meaningfully distinguish between alternatives, much less rationally select one. Following a challenge by conservation groups, the U.S. District Court for the District of Alaska ruled that the lack of site-specific analysis violated NEPA and vacated the roadbuilding and logging portions of the EIS.[59]

Although the Forest Service was prohibited from using CBM in the Prince of Wales project for logging and roadbuilding, the agency continues to pursue the practice elsewhere. On the Superior National Forest in Minnesota, the Tofte Landscape Project ("Tofte" or "Tofte Project") is a 333,470-acre, 15-year project designed to achieve certain silvicultural goals in the

---

[55] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., PRINCE OF WALES LANDSCAPE LEVEL ANALYSIS PROJECT: RECORD OF DECISION AND APPENDICES 1–4 at 30 (2019), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd615347.pdf.

[56] *Id.* (emphasis added).

[57] Int'l Snowmobile Mfrs. Ass'n v. Norton, 340 F. Supp. 2d 1249, 1265 (D. Wyo. 2004) (holding that NPS acted in violation of NEPA where the agency gave minimal response to and "did not seriously consider" public comments); Ctr. for Biological Diversity v. U.S. Forest Serv., 349 F.3d 1157, 1167 (9th Cir. 2003). (finding that USFS was "required to disclose and respond to" opposing scientific viewpoints in project FEIS); 40 C.F.R. § 1503.4 (2020).

[58] *Cf.* Sierra Club v. Marsh, 976 F.2d 763, 770 (1st Cir. 1992) ("Because public disclosure is a central purpose of NEPA, an EIS that does not include all that is required by NEPA may not be cured by memoranda or reports that are included in the administrative record but are not incorporated into the EIS itself.").

[59] Southeast Alaska Conservation Council v. U.S. Forest Serv., 443 F. Supp. 3d 995, 1011–12 (D. Alaska 2020).

2004 Forest Plan.[60] The project's draft EA also proposes 148 miles of new temporary road construction and an astonishing 2,305 miles of skid trail construction. The draft EA contains no site-specific analysis. Instead, it offers a non-binding, single scenario "estimated implementation plan," which the EA purports to analyze, but the draft EA reserves the agency's discretion to depart from the estimated plan at its election.[61]

As described more fully in the attached case study, the Tofte draft EA proposes a two-year "implementation cycle" in which the "where" (forest stands) and the "how" (stand treatments) of logging will be decided *after* the project is approved.[62] The agency says it will provide for a "30-day public participation period on proposed stand treatment list (published on website) with interactive online map," outside of the NEPA process, but does not spell out how, if at all, the agency will consider or respond to public comments during this post decisional process.[63]

This project—with its long-term implementation and unaccountable decision-making—is especially concerning because the project area abuts the Boundary Waters Canoe Area, one of the nation's iconic public land jewels. As with the Prince of Wales project, the Tofte Project involves an ersatz non-NEPA process that fails to ensure that environmental information is available to the public before decisions are made as the law requires.[64]

Our review of public participation opportunities associated with current and past CBM projects, like Prince of Wales and Tofte, indicates that the Forest Service is using *sui generis* post-decisional participation schemes as substitutes to the well-defined NEPA public participation mandate.[65] These post-decisional opportunities vary arbitrarily from project to project because they are designed on an ad hoc basis by lower-level staff in the absence of any regulation, handbook, or agency guidance. As CEQ understands, there is a serious danger when agencies even *paraphrase* NEPA's requirements,[66] and that danger is greater by orders of magnitude when local agency personnel make up their own unenforceable, and inconsistent, review processes from whole cloth. Because the public never gets to review "high quality"

---

[60] Total project acreage is actually 435,327 acres, including non-Forest System lands. U.S. DEP'T OF AGRIC., U.S. FOREST SERV., TOFTE LANDSCAPE PROJECT: DRAFT ENVIRONMENTAL ASSESSMENT 5 (2021), https://www.fs.usda.gov/nfs/11558/www/nepa/110580_FSPLT3_5637846.pdf.

[61] *Id.* at 19; *see also id*., app. D, at 1–2, https://www.fs.usda.gov/nfs/11558/www/nepa/110580_FSPLT3_5637851.pdf.

[62] *Id.* at app. D.

[63] *Id*. at 3.

[64] Citizens for Better Forestry v. U.S. Dep't of Agric., 341 F.3d 961, 970–71 (9th Cir. 2003) ("[T]he very purpose of NEPA . . . is to 'ensure that federal agencies are informed of environmental consequences before making decisions and that the information is available to the public.'") (quoting Okanogan Highlands All. v. Williams, 236 F.3d 468, 473 (9th Cir. 2000)); *see also* 40 C.F.R. § 1500.1(b) (1978) ("NEPA procedures must insure that environmental information is available to public officials and citizens *before decisions are made* and before actions are taken.") (emphasis added).

[65] Weinberger v. Cath. Action of Haw./Peace Educ. Project, 454 U.S. 139, 143 (1981) ("The second aim [of NEPA] is to inform the public that the agency has considered environmental concerns in its decisionmaking process.").

[66] 40 C.F.R. § 1507.3(a) (1978) ("[E]ach agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures.").

information during the planning process, the Forest Service's use of post-decisional participation opportunities in CBM projects is especially troublesome.

In addition to agency misapprehension of its public participation obligations under NEPA, the Forest Service appears to lack a clear understanding of the differences between programmatic, "adaptive," and more traditional planning methodologies such as tiering. CBM cherry-picks elements of each of these approaches but omits the core requirement that both broad-scale and site-specific impacts must be part of the NEPA review. For example, CBM bears resemblance to programmatic analysis, but omits or explicitly disclaims any commitment to future tiered, site-specific analyses and decisions under NEPA.

CBM also shares some commonality with adaptive management, in that it purports to make a final decision despite future uncertainty regarding the scope and impact of the decision. Adaptive management, however, is distinguishable as a tool that is utilized in the face of changing conditions that are not knowable at the time of decision. CBM projects on the other hand, involve inherent uncertainties that originate from the agency's own refusal to make choices and gather obtainable site-specific information before the agency makes decisions—a self-inflicted problem. Furthermore, the Forest Service's own regulations explain that adaptive management is not a blank check; it requires the agency to clearly identify the adjustments that may be made when monitoring during project implementation reveals the project is not having its intended effect, and that the NEPA analysis for the project must identify the monitoring that would inform an adjustment and disclose the effects of any adjustment.[67] In other words, under adaptive management, the NEPA process discloses the initial management strategy, the monitoring thresholds that would change that strategy, and the modified management strategy the agency may employ. But the Forest Service's CBM projects do not comport with its own understanding of adaptive management because all of those important decisions are not part of the NEPA process and are instead made unilaterally by the agency after the final decision.

CEQ has previously provided direction on "adaptive" NEPA approaches, recognizing that the traditional "one-time" NEPA analysis may not always be appropriate where changes in conditions may "negate any environmental protections in the original analysis."[68] In fact, in 2003, the NEPA Task Force issued a report that explicitly contemplated adaptive management strategies in the context of a programmatic approach.[69] In the 18 years since that report, however, federal agencies have begun to stray far from the adaptive frameworks CEQ has endorsed.

Compounding the problem, the Forest Service also seems to lack a consistent lexicon for describing its analytical creations. For example, in addition to CBM, the Forest Service has begun to recently employ what it variously calls "landscape vegetation analysis"[70] and

---

[67] *See* 36 C.F.R. §§ 220.5(e)(2) (EISs), 220.7(b)(2)(iv) (EAs).
[68] THE COUNCIL ON ENVIRONMENTAL QUALITY, THE NATIONAL ENVIRONMENTAL POLICY ACT: A STUDY OF ITS EFFECTIVENESS AFTER TWENTY-FIVE YEARS 32 (1997), https://ceq.doe.gov/docs/ceq-publications/nepa25fn.pdf.
[69] THE NEPA TASK FORCE, MODERNIZING NEPA IMPLEMENTATION 45 (2003), https://ceq.doe.gov/publications/modernizing_nepa_implementation.html (reporting to the CEQ).
[70] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., *LaVA Project Implementation: Background and Implementation Information for the Medicine Bow Landscape Vegetation Analysis (LaVA) Project*, https://www.fs.usda.gov/detail/mbr/landmanagement/?cid=FSEPRD572816 (last visited Dec. 1, 2021).

"landscape-level analysis,"[71] among other descriptors. As a report from the Forest Service's Pacific Northwest Region recently described, "forest landscape analysis" can be applied in a variety of contexts because the Forest Service has no bright-line definition of "landscape."[72] Like integrated resource project analysis, "forest landscape analysis" contemplates project areas that are less than an entire forest unit (as captured in forest plans), but certainly more than "individual project area[s]" like traditional timber sales.[73] Of course, there is nothing inherent in conducting analysis at a landscape scale that is fundamentally incompatbible with NEPA, and landscape-level analyses can be site-specific and adaptive. On the other hand, the Forest Service has used the phrase as synonymous with CBM in projects such as Prince of Wales and the Medicine Bow Landscape Vegetation Analysis.[74] Regardless of what these CBM projects are called, their common thread is that the Forest Service plans projects on massive spatial and temporal scales, provides no site-specific analysis in the project-level documents, and provides no subsequent site-specific NEPA analysis at the implementation-level. This approach violates NEPA regardless of the terminology used.

Confusion about CBM has seeped into judicial decisions as well, including *WildEarth Guardians v. Conner* and *Southeast Alaska Conservation Council v. U.S. Forest Service* ("*SEACC*").[75] In brief, *Conner* upheld a CBM logging project authorized under an EA because the Forest Service concluded, and the court agreed, that site-specific choices about where timber harvests would occur were "not material" to whether the project would adversely affect threatened Canada lynx based on a worst-case-scenario analysis.[76] In *SEACC*, the court struck down the Prince of Wales project—also a CBM logging project—authorized under an EIS on the Tongass National Forest. The *SEACC* court reasoned that site-specific analysis was critical to discharging NEPA's mandate to fully evaluate alternatives in an EIS, and distinguished *Conner* because that case involved an EA rather than an EIS.[77]

SEACC is the only case to squarely address the illegality of CBM, and rightly concluded it was an unlawful violation of NEPA. Unfortunately, *SEACC's* dictum discussing *Conner* could be read to suggest that an EA may rely on CBM to forgo site-specific analysis for a condition-based project whereas an EIS cannot. Yet such a distinction would be inconsistent with the NEPA statute because EAs—just as EISs—must assess site-specific impacts as needed to

[71] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., *Prince of Wales Landscape Level Analysis Project* (*POW LLA*) *FAQs*, https://www.fs.usda.gov/detail/tongass/landmanagement/projects/?cid=fseprd628550 (last visited Dec. 1, 2021).
[72] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., FOREST LANDSCAPE ANALYSIS AND DESIGN: A PROCESS FOR DEVELOPING AND IMPLEMENTING LAND MANAGEMENT OBJECTIVES FOR LANDSCAPE PATTERNS 3.1, https://www.fs.fed.us/pnw/pubs/flad/part_a.pdf (last visited Dec. 1, 2021).
[73] *Id.*
[74] *See supra* notes 70–71. Both projects are also discussed in attached case studies in Appendix 1.
[75] WildEarth Guardians v. Conner, 920 F.3d 1245 (10th Cir. 2019); Southeast Alaska Conservation Council v. U.S. Forest Serv., 443 F. Supp. 3d 995, 995 (D. Alaska 2020). Both cases and the underlying logging projects are discussed in attached case studies in Appendix 1.
[76] *Conner*, 920 F.3d at 1259.
[77] *Southeast Alaska Conservation Council*, 443 F. Supp. 3d at 1013 ("While an agency's analysis of a proposed action's maximum potential impacts may be appropriate for an EA, the Forest Service's analytical framework in this case is not sufficient to meet the requirements for an EIS.").

compare the differences in environmental consequences of alternatives,[78] an issue that was not briefed in *SEACC*.

Nor does *Conner* itself support reliance on CBM to forgo site-specific analysis in an EA where the decision has site-specific environmental consequences. *Conner* merely held that, as constrained by the Forest Service's decision, future site-specific choices were immaterial to the only issue raised by the plaintiffs—impacts to Canada lynx.[79] Like *SEACC*, *Conner* did not discuss NEPA's alternatives requirement under Section 102(2)(E), even though agency decisions like where to log or build roads are exactly the type of proposals that involve unresolved conflicts concerning alternatives uses of available resources. Furthermore, the *Conner* court was not asked to decide whether site-specific choices would have been material to these sorts of unresolved issues, such as impacts to forest health and composition, streams, or rare species other than Canada lynx. In litigation, plaintiffs sometimes focus on one or two key environmental resources, like sensitive species. And in such cases, it may be theoretically possible for an EA to withstand judicial review on the grounds that the proposed action would not have a significant impact on those one or two specific resources no matter where the action occurs. Such was the case with *Conner*. But *Conner* simply cannot be read as a blanket approval to make environmentally consequential site-specific decisions without site-specific information or analysis.

Although the holdings in both *SEACC* and *Conner* reinforce the fundamental requirement that site-specific analysis is needed where site-specific differences are material to an informed decision, the interplay between the decisions has clearly created confusion regarding the lawfulness of the CBM approach. This underscores the urgent need for CEQ to issue guidance. It is incumbent upon CEQ to preserve NEPA's integrity. If CEQ does not clarify that NEPA requires site-specific analysis in both EISs *and* EAs, there is a risk that *SEACC* and *Conner* will invite agencies to promote an EA versus EIS distinction that finds no support in the text or purpose of NEPA. This risk is all too real given that agencies are increasingly preparing EAs for projects that may in fact cause significant impacts.[80]

B. Other Related Problems.

The CBM approach outlined above is perhaps the most egregious way that agencies are avoiding the duty to analyze, disclose, and solicit public input on site-specific impacts when making project-level decisions, but it is not the only such failure. Other related practices share the same legal defects, and they are sometimes used in combination with CBM. These related practices further highlight the importance of CEQ guidance reaffirming the obligation to

---

[78] 42 U.S.C. § 4332(2)(E); *see also* Greater Yellowstone Coal. v. Flowers, 359 F.3d 1257, 1277 (10th Cir. 2004) (quoting Highway J Citizens Group v. Mineta, 349 F.3d 938, 960 (7th Cir. 2003) ("An agency's obligation to consider reasonable alternatives is 'operative even if the agency finds no significant environmental impact.'"); ROBERT L. GLICKSMAN ET AL., NEPA LAW AND LITIGATION § 9:21 (2d ed. 2020) ("Alternatives must be considered in an environmental assessment as well as an environmental impact statement . . . .").

[79] *Conner,* 920 F.3d at 1258 (concluding that NEPA was not violated because "whatever sites [USFS] ultimately chooses (within the constraints imposed by the Project), there would not be a negative impact on the lynx").

[80] *E.g.,* Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs, 440 F. Supp. 3d 1, 16–17 (D.D.C. 2020) (vacating pipeline easement and ordering agency to prepare EIS where agency argued EA was appropriate despite unrebutted expert testimony demonstrating safety of pipeline was "controversial" under NEPA).

consider a proposal's site-specific impacts before a decision is made. Brief descriptions of those practices are provided here.

1. Worst-case Analysis.

As *Conner* illustrates, land managers and other agencies have recently used a form of "worst-case analysis" that attempts to analyze the environmental consequences of the largest scale and most intensive activity potentially authorized by a project decision. Rather than comparing and contrasting the risks and benefits of site-specific alternatives, worst-case analysis shows only the maximum level of impact as a way to avoid comparing alternatives. Notably, this approach is very different from the worst-case analysis required by CEQ's 1978 regulations, which were amended to address this issue in 1985. In 1985, the question was whether an agency *must* use worst-case analysis to fill the gaps when data *are not* available or obtainable.[81] Here, the question is whether agencies *may* rely on a worst-case analysis to ignore site-specific differences among alternatives when data *are* available or obtainable. Obscuring knowable site-specific differences through a worst-case approach is inconsistent with an agency's obligation to transparently consider meaningful differences between site-specific alternatives when relevant data are available.

A NEPA process that "obscure[s] differences in impacts among alternatives" is facially unlawful.[82] In *Oak Ridge Environmental Peace Alliance v. Perry* ("*OREPA*"), the National Nuclear Security Administration ("NNSA") relied on what it called a "bounding" approach that "use[d] simplifying assumptions and analytical methods *that are certain to overestimate actual environmental impacts*."[83] Specifically, NNSA "bounded" its analysis of accident scenarios for each alternative considered by evaluating only what it considered the most likely possible accident (fire) and the accident with the most severe potential consequences (a plane striking the facility).[84] The agency did not, however, consider site-specific differences in risk, particularly the risk of earthquake.[85] Because information regarding those site-specific differences was obtainable, the reviewing court found that the agency must conduct further analysis.[86] As the court explained, NNSA's own parent agency the Department of Energy recognized that worst-case analysis in lieu of analyzing alternatives is impermissible "where more accurate and detailed assessment is possible and would better serve the purposes of NEPA," such as "where differences in impacts may help to decide among alternatives."[87]

The unlawful use of worst-case analysis to dodge site-specific analysis is not limited to condition-based projects, but it is a common element of such projects.[88] Where site-specific impacts will be materially affected by site-specific choices, *SEACC* and *OREPA* establish that

[81] *See, e.g.*, Edwardsen v. U.S. Dep't of Interior, 268 F.3d 781, 785–86 (9th Cir. 2001) (holding that the agency properly used worst-case analysis to fill the gap where site-specific information (where an oil spill might actually occur) was not obtainable).
[82] Oak Ridge Env't Peace All. v. Perry, 412 F. Supp. 3d 786, 856 (E.D. Tenn. 2019).
[83] *Id.* at 855 (emphasis added).
[84] *Id.* at 820.
[85] *Id.* at 856–57 (emphasis in original) (internal citations omitted).
[86] *Id.* at 859.
[87] *Id.* at 857.
[88] *See, e.g.*, Appendix 1, Case Studies: Sage Hen Integrated Restoration Project and Tennessee Creek Project.

worst-case analysis cannot be used to obscure the differences between alternatives.[89] By statute, this limitation applies with equal force to EIS-level and EA-level decisions.[90]

2. Best-case Analysis.

Agencies have also failed to consider site-specific risks based on unfounded assertions that no environmental harm will occur so long as the agency uses best management practices (or project design criteria or similar mitigation measures) and professional judgment. In the South Red Bird Wildlife Enhancement Project in the Daniel Boone National Forest, for example, the Forest Service did identify specific locations for timber harvest, but provided no analysis of the site-specific *risk* associated with ground-disturbing timber harvest at those sites nor a comparison of lower risk in a scaled-down alternative, which excluded areas known to be at extreme risk of landslides. Instead, the agency stated in its EA and decision notice that it would follow best management practices and consult with specialists on site-specific design criteria during implementation—the same internal procedures that failed to prevent landslides in an earlier phase of the same project.[91]

NEPA requires agencies to consider actual project impacts and risks prior to a decision; they may not merely provide empty assurances —unsupported by analysis, untested by public review, and unaccompanied by site-specific mitigation commitments—that all will go according to the agency's plan. As the *OREPA* court explained, "the mere assertion that overall environmental consequences may be reduced if all goes according to plan does not allow [an agency] to avoid conducting a transparent and complete analysis in a timely fashion. To hold otherwise would turn NEPA into a dead letter."[92]

3. Single-Scenario Analysis.

Recent Forest Service projects have analyzed the site-specific impacts of a single possible implementation scenario, but leave the agency so much discretion at the implementation stage that the actual project may have far different environmental impacts than were evaluated in the

---

[89] See appended case study for discussion of the Prince of Wales timber sale at issue in *SEACC*, in which the Forest Service opted for a worst-case analysis that assumed all forest included in the project would be clearcut while admitting that the "total acres estimated to be needed to meet timber needs are likely over-estimated and therefore the effects are likely over-estimated as well." This approach blurred potentially meaningful differences between alternatives in a similar way to *OREPA*; for example, the EIS's analysis of effects on wildlife stated that the effects "are similar between all alternatives because all alternatives assume that all acres proposed for timber harvest will be harvested." The District of Alaska held that this worst-case approach violated NEPA: "By focusing on the Project's maximum potential impacts for all alternatives rather than its actual or foreseeable impacts for each alternative, the EIS falls short of NEPA's directive to 'contain[] a reasonably thorough discussion of the significant aspects of the probable environmental consequences' for each alternative." Se. Alaska Conservation Council v. U.S. Forest Serv., 443 F. Supp. 3d 995, 1013 (D. Alaska 2020) (quoting WildEarth Guardians v. Montana Snowmobile Ass'n, 790 F.3d 920, 924 (9th Cir. 2015)).

[90] 42 U.S.C. § 4332(2)(C), (E).

[91] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., DECISION NOTICE AND FINDING OF NO SIGNIFICANT IMPACT: SOUTH RED BIRD WILDLIFE HABITAT ENHANCEMENT PROJECT 2 (2021), https://www.fs.usda.gov/nfs/11558/www/nepa/107498_FSPLT3_5598895.pdf; U.S. DEP'T OF AGRIC., U.S. FOREST SERV., SOUTH RED BIRD WILDLIFE HABITAT ENHANCEMENT PROJECT ENVIRONMENTAL ASSESSMENT (2020), https://www.fs.usda.gov/nfs/11558/www/nepa/107498_FSPLT3_5237672.pdf.

[92] *Oak Ridge Env't Peace All. v. Perry*, 412 F. Supp. 3d 786, 858 (E.D. Tenn. 2019).

NEPA analysis. For example, the Tofte Project purports to provide some degree of site-specific analysis in an Estimated Implementation Plan ("EIP"), which identifies a default set of forest stands (small forested areas) for logging.[93] However, the Forest Service would retain full discretion to depart from the EIP based on a "flexible toolbox."[94] In addition, in the Francis Marion National Forest's Prescribed Burning Adaptive Management Strategy, the Forest Service analyzed one set of possible locations for dozer-created firelines, while retaining discretion to locate those firelines elsewhere.[95] NEPA requires pre-decision analysis of the sites where the project *will* occur, not merely where the project *may* occur.

4. Determinations of NEPA Adequacy (*DNAs*).

Determinations of NEPA Adequacy ("DNAs") are technically authorized by some agencies' regulations implementing NEPA,[96] but as applied are often an unlawful NEPA substitute. A DNA is an agency's determination that a new action has previously been adequately analyzed in an existing NEPA document, and a conclusion that no further environmental review is required.[97] Agencies tout DNAs to responsible officials as a "means by which you can use existing NEPA to cover your proposed action without doing additional NEPA analysis."[98]

Courts have upheld use of DNAs in narrow circumstances where the new action is in fact nearly identical to a prior action, like putting back up for sale the same lease parcel a year after it went no-bid and where there were no changes in environmental impacts in the meantime.[99] But if any circumstances on the ground change or new information becomes available, a DNA cannot be used as a substitute for NEPA analysis where there are site- or time-dependent differences, and especially not when a DNA would purport to authorize a new action in a new place.[100] In

[93] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., TOFTE LANDSCAPE PROJECT: DRAFT ENVIRONMENTAL ASSESSMENT 10–11 (2021), https://www.fs.usda.gov/nfs/11558/www/nepa/110580_FSPLT3_5637846.pdf.
[94] *Id.* at 11.
[95] U.S. DEP'T OF AGRIC., FOREST SERV., PRESCRIBED FIRE MANAGEMENT ENVIRONMENTAL ASSESSMENT: FRANCIS MARION RANGER DISTRICT, FRANCIS MARION NATIONAL FOREST 8, 12, app. A (2020), https://www.fs.usda.gov/nfs/11558/www/nepa/109253_FSPLT3_5221545.pdf.
[96] Interior Department regulations require that, before using existing NEPA documentation for a new action, the agency support a finding that the prior analysis "adequately assesses the environmental effects of the proposed action and reasonable alternatives" and evaluate whether "new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects." 43 C.F.R. § 46.120(c). Forest Service regulations require that the new proposed action be "substantially the same as a previously analyzed proposed action," with further requirements that the DNA be subject to scoping and include issuance of a new decision document when approved. 36 C.F.R. § 220.4(j). While the Forest Service authority has not yet been widely used, it invites the same kinds of abuses as Interior's DNAs.
[97] *See* Bureau of Land Mgmt., *Presentation on Determination of NEPA Adequacy*, #1620-16 at 5, https://www.ntc.blm.gov/krc/uploads/456/1620-16_PPTs+Exercises.pdf (last visited Dec. 1, 2021).
[98] *Id.*
[99] *See* Rocky Mtn. Wild v. Bernhardt, 506 F. Supp. 3d 1169, 1188–89 (D. Utah 2020) (upholding BLM's reliance on a DNA for issuing oil and gas leases where it had performed an EA on those same lease parcels the prior year but the parcels had not sold); Friends of Animals v. BLM, 232 F. Supp. 3d 53, 60–61 (D.D.C. 2017) (finding that BLM's 2008 EA analyzing the gathering of 573 wild horses for a fertility control vaccine and removing 447 was sufficient without further NEPA analysis to support a 2016 plan to gather up to 700 horses and permanently remove up to 300).
[100] *See* Rocky Mountain Wild v. Haaland, No. 18-cv-02468-MSK, 2021 WL 4438032, at *6 (D. Colo. Sept. 29, 2021) (holding that BLM violated NEPA because DNA failed to consider impacts to wilderness characteristics that

practice, however, DNAs create an overbroad process that encourages just that kind of abuse. The BLM Handbook gives discretion to the BLM officer to decide whether public involvement is necessary and what form it should take.[101] BLM encourages its field officials that "[a] public comment period may be unnecessary . . . if site specific analysis is rarely commented on and there is no or minimal public or stakeholder engagement for routine or similar EAs."[102] An agency cannot foreclose future opportunities for public comment mandated by NEPA simply because past projects—which, even if for a similar action, could have substantially different environmental impacts depending on the site at which they occurred—were not controversial. Such an approach begs the question whether the different location involves different environmental consequences, which is unknown without analysis and informed public input.

5. Unfinished Proposals.

The Forest Service sometimes proposes projects that violate NEPA simply because the agency barrels ahead before finishing its analysis. These proposals are especially baffling because the agency ostensibly intends to develop a traditional, site-specific proposal, but local agency personnel's haste to sign decisions leads to omission of site-specific analysis just the same. Unlike typical CBM projects in which the agency defers choosing where or how it will act until after the conclusion of the NEPA process, unfinished proposals tend to involve situations where the agency has identified where it proposes to act but has not identified what resources are present at those locations or how they will be impacted.

For example, in the Sandy Ridge Short Leaf Pine Restoration Project on the George Washington National Forest,[103] the Forest Service identified a general area where some acres would receive heavy timber harvest, some thinning, and some left as a "control" with no logging.[104] The EA acknowledges that when the decision was final, the "distribution of thinning and regeneration" and the "specific location" of treatments and roads would remain indeterminate.[105] Like CBM projects, the deferred choices will have different results depending on the ultimate locations chosen for the various actions. Unlike most CBM projects, however, the agency does not argue that it needs future flexibility to respond to changing conditions; it

---

were not accounted for by prior NEPA decision concerning a different area); Triumvirate, LLC v. Bernhardt, 367 F. Supp. 3d 1011, 1027 (D. Alaska 2019) (finding that BLM improperly relied on a DNA for a permit that would allow three heli-ski operators to make 390 landings per season where a prior EA only considered the impacts of one heli-ski operator making 130 landings per season); WildEarth Guardians v. Bernhardt, 423 F. Supp. 3d 1083, 1103–04 (D. Colo. 2019) (finding that DOI's decision to find an existing EIS adequate in a DNA was arbitrary and capricious where the EIS assumed no perennial springs or streams existed in the project area but information contradicting that assumption became available between the EIS and DNA); Friends of Animals v. BLM, No. 3:15-CV-0057, 2015 WL 555980, at *3–4 (D. Nev. Feb. 11, 2015) (finding that BLM's 2010 EA analyzing the gathering of 199 wild horses for a fertility control vaccine and removing 67 could not support a 2014 plan to gather 322 horses and permanently remove 200).

[101] BUREAU OF LAND MGMT., NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK H-1790-1 at 24 (2008), https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1790-1.pdf.

[102] BUREAU OF LAND MANAGEMENT, NEPA EFFICIENCIES FOR OIL AND GAS DEVELOPMENT, Information Bulletin No. 2018-061 (June 6, 2018), https://www.blm.gov/policy/ib-2018-061.

[103] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., SANDY RIDGE YELLOW PINE ENHANCEMENT PROJECT: ENVIRONMENTAL ASSESSMENT 10–12, 15 (2021), https://www.fs.usda.gov/nfs/11558/www/nepa/100648_FSPLT3_5659322.pdf.

[104] *Id.*

[105] *Id.* at 11, 62.

simply hasn't finished putting together what is otherwise a proposal for a very ordinary project. This is perplexing because the agency is clearly capable of gathering the missing location-specific data and completing the missing analysis, and indeed intends to do so before implementation. It simply failed to inform its decision and the public in its NEPA analysis.

Similarly, the National Forests in North Carolina recently issued a draft EA purporting to analyze broad-scale use of herbicides to maintain existing wildlife openings, with the promise that site-specific "maintenance plans" would be forthcoming.[106] As in the Sandy Ridge project, the agency expects to make traditional, site-specific choices before acting; it has just failed to give the public a chance to understand the impacts of those choices in the NEPA process.

III. An agency need not jettison site-specific NEPA analysis to achieve its mission.

Despite the importance of site-specific NEPA analysis and public input, agencies (and especially the federal land management agencies) are increasingly seeking to "innovate" in the NEPA process, but as discussed above, this often results in skipping site-specific detailed analysis and precludes meaningful and informed public engagement. In the following section, we address the agencies' asserted need to take these measures, explain why those assertions are misguided, and propose NEPA-compliant solutions to the proffered problems.

One important reason for the spread of inadequate analyses is a lack of agency guidance explaining which NEPA approaches are available and their comparative advantages and disadvantages. Indeed, because of a chronic lack of investment in structured NEPA training, practitioners often "learn NEPA" from their peers, very few of whom have ever had any kind of professional or legal NEPA training.[107] Moreover, this "peer learning" is often outdated and not based on recent case law or new federal law. As a result, NEPA processes follow fads or attempt to replicate processes from other places, despite contextual, practical, and legal differences. CEQ should reaffirm the appropriate approaches it has long endorsed, such as programmatic analysis, and clearly explain why current agency practices are inconsistent with those valid approaches and best practices.

Without intervention by CEQ, agencies will continue pushing the boundaries to avoid site-specific analysis. The Forest Service has been particularly upfront about its reasons for abandoning "traditional" NEPA planning:

> [T]raditional planning methods result in the inability to implement some of the treatments. Years may pass between the decision and the time of implementation. Changed conditions caused by disturbances . . . forest succession, or imperfect information at the time of analysis may result in situations where forest stands should not be treated as expected to move them toward desired conditions, and

[106] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., WILDLIFE OPENING MANAGEMENT ON THE NATIONAL FORESTS IN NORTH CAROLINA: ENVIRONMENTAL ASSESSMENT 8–9 (2021), https://www.fs.usda.gov/nfs/11558/www/nepa/110681_FSPLT3_5661301.pdf.
[107] *E.g.,* Chris French, *Environmental Analysis and Decision Making Workshop*, Phoenix, Arizona (2017).

> traditional planning does not allow the flexibility to modify the needed treatment.[108]

In other words, because of changing conditions or inaccurate information used in the NEPA process (or timber sale purchaser decisions to defer harvest for multiple years to "play the market" or harvest more lucrative timber elsewhere first), a site identified for a specific treatment may need a different treatment (or no treatment at all) by the time the Forest Service is ready to take action on the ground. Of course, the Forest Service always retains the discretion to take no action when it encounters changed conditions, and nothing prohibits the agency from analyzing a range of potential treatments that may be needed to achieve the desired future condition at a particular site, using adaptive management to tailor treatment based on monitoring triggers, or supplementing its original analysis when warranted by changed conditions. In recent decisions, however, the Forest Service is seeking increased post-decisional flexibility not only to adapt *treatment* to a particular site, but rather to pick and choose *sites* for a particular treatment or treatments.

This pursuit of unlawful "flexibility" is also driven in part by a desire to have more acres approved in the NEPA process so that they can be implemented when resources are available.[109] As Fleischman reports, the Forest Service is making fewer decisions overall, perhaps due to inadequate funding and staffing,[110] but the agency faces growing pressure to meet higher targets for timber production and fuels reduction regardless of available human and financial resources.[111] The only way to achieve higher outputs in fewer decisions is to propose larger projects. Unfortunately, the agency lacks the capacity to gather baseline data, generate site-specific prescriptions for action, and analyze site-specific and cumulative effects at those larger scales.[112] Thus, the Forest Service concluded for one project:

> A larger project area with a longer timeframe (15 years) for implementation calls for more flexibility to update treatment design in consideration of changing conditions. The condition based management approach on a larger project area would allow for greater progress . . . than would planning a static set of treatments and stands in a smaller project.[113]

Stated more simply, the agency believes it can cover more ground if it does not take the time to analyze site-specific impacts in the NEPA process. Even if true, NEPA's goal is *better*

---

[108] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., TOFTE LANDSCAPE PROJECT: DRAFT ENVIRONMENTAL ASSESSMENT 19–20 (2021), https://www.fs.usda.gov/nfs/11558/www/nepa/110580_FSPLT3_5637846.pdf.
[109] *See* SELC Comments on Proposed NEPA Rule, *supra* note 30, at 57.
[110] Forrest Fleischman et. al., *U.S. Forest Service Implementation of the National Environmental Policy Act: Fast, Variable, Rarely Litigated, and Declining*, 118 J. FORESTRY 403, 404-18 (2020), https://forestpolicypub.b-cdn.net/wp-content/uploads/2020/04/FleischmanEtAl.NEPA-JOF.pdf.
[111] SELC Comments on Proposed NEPA Rule*, supra* note 30, at 55; Letter from Shalanda D. Young, Acting Director of the Off. of Mgmt. & Budget, to Senator Patrick Leahy, Chairman of the Committee on Appropriations (Apr. 9, 2021), https://www.whitehouse.gov/wp-content/uploads/2021/04/FY2022-Discretionary-Request.pdf (requesting $1.7 billion for forest fuel reduction).
[112] *Id.* at 58.
[113] U.S. DEP'T OF AGRIC., U.S. FOREST SERV., TOFTE LANDSCAPE PROJECT: DRAFT ENVIRONMENTAL ASSESSMENT 20 (2021) [hereinafter TOFTE LANDSCAPE PROJECT DRAFT EA], https://www.fs.usda.gov/nfs/11558/www/nepa/110580_FSPLT3_5637846.pdf.

decisions, not simply *more action*.[114] "More action" comes from better resourced federal agencies, not circumvention of NEPA.

The Forest Service's novel approach to NEPA defers critical site-specific choices until after the decision has been made, "at time of implementation."[115] This is the key to understanding the problem: the Forest Service does not claim that gathering and considering site-specific information is wholly unnecessary; it admits that site-specific decisions need site-specific information *at some point*. Instead, it claims that the drag comes from making that information available in a transparent NEPA process that considers and is responsive to public input, and for which the agency can be held accountable if it ignores science or fails to respond to the public. CEQ should not turn a blind eye to what amounts to an existential threat to NEPA—the claim that the statute's procedural safeguards and informed public input are just *not worth the effort*.

As explained above, site-specific NEPA results in beneficial improvements to proposed actions, avoiding significant harms both in individual projects and cumulatively. These improvements come with a low cost. NEPA's procedural requirements do not themselves add considerable time to decision-making. Comment periods are typically 30 to 45 days, and project development can carry on while comments are solicited.[116] The Forest Service, in particular, is ahead of the pack when it comes to NEPA timelines, completing decisions faster than other agencies.[117]

Yet while most Forest Service projects move through the NEPA process quickly, a few projects encounter resistance and delay. Of course, speedy projects and slow projects are subject to the same NEPA rules, so the procedures themselves cannot take the blame. Instead, delays are attributable to not only inadequate funding and staffing, but also the substantive conflicts that the NEPA process sometimes brings to light (and indeed was designed to surface). CEQ's guidance should explain that agency strategies to avoid conflict should center around bringing forward and refining *better proposals* with broad public buy-in, not removing public scrutiny. In addition to early and iterative collaboration with interested stakeholders, the proven way to increase efficiency, at scale, consistent with NEPA requirements, is to employ programmatic analysis and decision-making prior to identifying and planning individual projects.

An agency may prepare a "programmatic" NEPA document broadly analyzing the cumulative effects of a program of work or set of connected actions, to which subsequent site-specific analyses may "tier."[118] Well-designed programmatic analysis can increase the efficiency in agency decision-making by deferring site-specific decisions for which site-specific information would be time consuming to obtain. NEPA analysis works like a funnel, where the mouth is the full breadth of the agency's discretion and the spout is concrete, on-the-ground

---

[114] *See* 40 C.F.R. § 1500.1(c) (1978) ("[I]t is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action.").
[115] *See, e.g.*, TOFTE LANDSCAPE PROJECT DRAFT EA, *supra* note 113, at 20.
[116] *See, e.g.*, 36 C.F.R. § 218.25.
[117] Fleischman et al., *supra* note 110, at 404.
[118] Ventling v. Bergland, 479 F. Supp. 174, 179 (D.S.D. 1979), *aff'd*, 615 F.2d 1365 (8th Cir. 1979); Earth First v. Block, 569 F. Supp. 415 (D. Or. 1983) (holding that the Forest Service erred by relying on a programmatic EIS that was deemed insufficient by the Ninth Circuit to prepare a subsequent EIS for the same Wilderness Area).

action. If an agency is starting from scratch every time, its site-specific analyses will be unwieldy and duplicative. Programmatic analysis, however, moves the agency partway down the funnel, putting sideboards on future actions and commensurately reducing the complexity of site-specific analysis.

Land management agencies already use programmatic NEPA analysis in support of Forest Service Land and Resource Management Plans or BLM Resource Management Plans. However, these long-lived documents are often very broad and do not move the agency far down its decision-making funnel; indeed, increasingly, land management plans are so broad as to be meaningless in determining any type of environmental effect. Plans could do a better job setting priorities and sideboards that can make future site-specific analyses more efficient. Where they fail to do so, however, programmatic *projects* can take a middle step from land-management plans to site-level decisions. For example, the Cherokee National Forest Dry Forests Restoration project[119] sets forth a set of treatment priorities (conditions in need of vegetation management for ecological restoration) and establishes conservative sideboards to protect against cumulative impacts to soil, water, and roadless area values.[120] Future site-specific decisions will be made in concise EAs that are tiered to the programmatic document.[121] Because cumulative, repeating impacts were already analyzed at the programmatic stage, the site-specific EAs need only analyze issues unique to the particular sites.[122] This is how programmatic and tiered analysis *should* work.

Yet while programmatic analysis and tiered decision-making can increase agency efficiency, we note that it is not an exception to the requirement that site-specific analysis and public comment on that analysis precede site-specific decisions. In other words, agencies may not play a shell game. If site-specific impacts are not considered at the programmatic stage, they must be considered in a subsequent tiered analysis.[123] As courts have recognized, sometimes a "program may be so broad in scope that a site-specific EIS" for an action under that program "is the only manner in which the objectives of NEPA can be met."[124] But in those cases "a programmatic EIS will often be insufficient as it relates to site-specific actions," as these high-level analyses inherently lack site- and project-specific details that are required to satisfy NEPA's mandates.[125] Thus, subsequent tiered decisions must address site-specific impacts. On the other hand, where a programmatic decision *does* constrain future site-specific choices, site-specific analysis is sometimes required even at the programmatic stage.[126] Programmatic

---

[119] *See* Appendix 1, Case Study: Dry Forests Restoration Project.
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *E.g.,* Western Watersheds Project v. Abbey, 719 F.3d 1035, 1035 (9th Cir. 2013).
[124] *Id.*; WildEarth Guardians v. Montana Snowmobile Ass'n, 790 F.3d 920 (9th Cir. 2015).
[125] Ventling v. Bergland, 479 F. Supp. 174, 180 (D.S.D. 1979).
[126] *See, e.g.*, California v. Block, 690 F.2d 753, 757–63 (9th Cir. 1982) (holding invalid a programmatic EIS that did not adequately consider the site-specific impacts of designating 36 million acres of roadless areas for "non-wilderness" because a Forest Service regulation required the agency to manage "non-wilderness" areas in a certain way such that future decisions concerning the areas would be constrained by the choice of designation); *see also Montana Snowmobile Ass'n*, 790 F.3d at 922–27 (holding invalid a programmatic EIS designating over 2 million acres of national forest land for use by snowmobiles and other winter motorized vehicles where the EIS did not provide site-specific analysis of how the designated acreage would overlap with moose range, whether the

analyses, like all analyses, must support the agency's decision by disclosing and considering the relevant impacts of that decision. When those impacts are site-specific, so too must be the analysis. No matter whether a decision is characterized as "condition-based," programmatic, or otherwise, site-specific analysis and disclosure is essential during the NEPA process when consequential site-specific decisions are being made.

CONCLUSION

We support agency efforts to improve their decision-making processes, including efforts (such as programmatic analyses and decisions) that set broad priorities and broad-scale sideboards for future action. But NEPA does not permit agencies to bypass the requisite detailed, site-specific analysis for project-level EAs or EISs. Recent approaches to NEPA like CBM undermine the public's ability to: (1) notify agencies of issues they may have overlooked; (2) encourage agencies to adopt different alternatives or mitigation measures; and (3) hold agencies accountable when they ignore public comments or contrary scientific evidence. These failures cannot be cured by ersatz, post-decisional public involvement processes.

We urge CEQ to provide guidance and/or regulations that clarify NEPA's requirements for site-specific analysis to restore public involvement in project-level decisions, improve agency transparency, and improve project design.

Sincerely,

Susan Jane M. Brown, Wildlands Program Director & Staff Attorney
Western Environmental Law Center
4107 NE Couch Street
Portland, OR 97232
brown@westernlaw.org

Sam Evans, National Forests and Parks Program Leader & Senior Attorney
Southern Environmental Law Center
48 Patton Avenue, Suite 304
Asheville, NC 28801
sevans@selcnc.org

Abigail André, Associate Director & Senior Attorney
Environmental Advocacy Clinic
Vermont Law School
PO Box 96
South Royalton, VT 05068
aandre@vermontlaw.edu

Edward B. (Ted) Zukoski, Senior Attorney
Center for Biological Diversity
1536 Wynkoop Street, Suite 421
Denver, CO 80202
tzukoski@biologicaldiversity.org

designation would affect that range, and whether there were alternatives that would avoid adverse impacts to moose and other big game wildlife).

Marla Fox, Staff Attorney
WildEarth Guardians
PO Box 13086
Portland, OR 97219
mfox@wildearthguardians.org

Jamey Fidel, Forest and Wildlife Program Director
Vermont Natural Resources Council
11 Baldwin Avenue
Montpelier, VT 05602
jfidel@vnrc.org

Alison Gallensky
Rocky Mountain Wild
1536 Wynkoop St, Suite 900
Denver, CO 80202
alison@rockymountainwild.org

Donna Stevens
Upper Gila Watershed Alliance
PO Box 383
Gila, NM 88038
director@ugwa.org

Sam Hitt
Santa Fe Forest Coalition
48 Old Galisteo Way
Santa Fe, NM 87508
sam@wildwatershed.org

Sam Hitt
Wild Watershed
48 Old Galisteo Way
Santa Fe, NM 87508
sam@wildwatershed.org

Natalie Dawson
Audubon Alaska
431 West 7th Ave., Suite 205
Anchorage, AK 99501
natalie.dawson@audubon.org

Stanley Petrowski
South Umpqua Rural Community Partnership
34620 Tiller Trail Hwy.
Tiller, OR 97484
stanley@surcp.org

Cara Christofferson
Bark
351 NE 8th Ave.
Portland, OR 97232
cara@bark-out.org

Dave Willis
Soda Mountain Wilderness Council
15187 Highway 66
Ashland, OR 97520-9439
sodamtn@mind.net

Barbara Ullian
Friends of the Kalmiopsis
1134 SE Allenwood
Grants Pass, OR 97527
barbara@kalmiopsisrivers.org

Hilary Eisen
Winter Wildlands Alliance
910 Main Street, Suite 235
Boise, ID 83702
heisen@winterwildlands.org

Dave Mertz
US Forest Service (Ret.)
597 S. Belair Dr.
Custer, SD 57730
mertzdave1@gmail.com

Randy Fox
Idaho Conservation League
710 N. 6th St.
Boise, ID 83701
rfox@idahoconservation.org

Steve Pedery
OR Wild
5825 North Greeley Avenue
Portland, OR 97217
sp@oregonwild.org

Jason Christensen
Yellowstone to Uintas Connection
205 North Main
Paris, ID 83261
jason@yellowstoneuintas.org

Su Libby
Great Old Broads for Wilderness
970 Camino Las Solanas
Tucson, AZ 85710
bigwiscon@gmail.com

Christine Canaly
San Luis Valley Ecosystem Council
PO Box 223
Alamosa, CO 81101
info@slvec.org

Janice Reid
Umpqua Watersheds
539 Main St
Roseburg, OR 97470
janice@umpquawatersheds.org

Logan Glasenapp
New Mexico Wild
317 Commercial St. NE
Albuquerque, NM 87102
Logan@nmwild.org

Sandra Seberger
Sierra Group of the Black Hills
P.O. Box 1624
Rapid City, SD 57709-1624
sandralss57702@gmail.com

Bayard Ewing
Colorado Native Plant Society
P O Box 200
Fort Collins, CO 80522
conpsoffice@gmail.com

Isabella Langone
California Native Plant Society
2707 K Street, Suite 1
Sacramento, CA 95816
ilangone@cnps.org

Juli Slivka
Wilderness Workshop
PO Box 1442
Carbondale, CO 81623
juli@wildernessworkshop.org

Dave Werntz
Conservation Northwest
1829 10th Ave W
Seattle, WA 98119
dwerntz@conservationnw.org

Suzanne Jackson
Colorado Wild Public Lands
23272 Two Rivers Road
Basalt, CO 81621
coloradowildpubliclands@gmail.com

Katie Bilodeau
Friends of the Clearwater
P.O. Box 9241
Moscow, ID 83843
katie@friendsoftheclearwater.org

Shelley Silbert
Great Old Broads for Wilderness
555 Rivergate Lane, B1-110
Durango, CO 81301
shelley@greatoldbroads.org

Kimberly Baker
Environmental Protection Information Center
145 G. St., Suite A
Arcata, CA 95521
kimberly@wildcalifornia.org

Molly Whitney
Cascade Forest Conservancy
500 West 8th Street #270
Vancouver, WA 98660
molly@cascadeforest.org

Clinton Nagel
Gallatin Wildlife Association
1385 Golden Gate Ave
Bozeman, MT 59718
clint_nagel@yahoo.com

Meredith Trainor
Southeast Alaska Conservation Council
2207 Jordan Ave
Juneau, AK 99801
Meredith@seacc.org

Lauren Kallmeyer
Kentucky Heartwood
PO Box 1486
Berea, KY 40403
kentuckyheartwood@gmail.com

Olivia Glasscock
Earthjustice
325 Fourth Street
Juneau, AK 99801
oglasscock@earthjustice.org

Sarah Hyden
The Forest Advocate
PO Box 22654
Santa Fe, NM 87502
info@theforestadvocate.org

Teagen Blakey
Magnolia Forest Group
618 Aspen Meadows Rd.
Nederland, CO 80466
magnoliaforestgroup@gmail.com

Larry Glass
Safe Alternatives for our Forest Environment
671 Hidden Valley Ranch Road
Mad River, CA 95552
larryglass71@gmail.com

Larry Glass
Northcoast Environmental Center
7310 Myrtle Ave.
Eureka, CA 95503
larryglass71@gmail.com

Will Harlan
Forest Keeper
64 Walker Creek Road
Barnardsville, NC 28709
info@forestkeeper.org

Davis Mounger
Tennessee Heartwood
212 Greenleaf St
Chattanooga, TN 37415
info@tennesseeheartwood.org

Jora Fogg
Friends of the Inyo
621 W Line St. Suite 201
Bishop, CA 93514
jora@friendsoftheinyo.org

Mary O'Brien
Project Eleven Hundred
HC 64 Box 2604
Castle Valley, UT 84532
maryobrien10@gmail.com

Zack Porter
Standing Trees
17 N. Park. Dr.
Montpelier, VT 05602
zporter@standingtrees.org

Brenna Bell
350PDX
3625 N. Mississippi Avenue
Portland, OR 97227
brenna@350PDX.org

Josh Kelly
MountainTrue
29 N. Market St. Suite 610
Asheville, NC 28806
josh@mountaintrue.org

Michael Dotson
Klamath-Siskiyou Wildlands Center
562 A Street
Ashland, OR 97520
michael@kswild.org

Jim Miller
Friends of the Bitterroot
Box 442
Hamilton, MT 59840
news@friendsofthebitterroot.net

Dave Willis
Soda Mountain Wilderness Council
P.O. Box 512
Ashland, OR 97520
sodamtn@mind.net

Donna Stevens
Upper Gila Watershed Alliance
PO Box 383
Gila, NM 88038
director@ugwa.org

Cris Corley
Sierra Club TN Chapter/Chair Forrest Committee
411 East Spring Street
Lebanon, TN 37087
drcriscorley@gmail.com

Rene Voss
Natural Resources Law
15 Alderney Rd
San Anselmo, CA 94960
renepvoss@gmail.com

Catherine Murray
Cherokee Forest Voices
1101 Antioch Road
Johnson City, TN 37604
mtncat7@earthlink.net

Michael Browning
Eagle Summit Wilderness Alliance
3186 Galena Way
Boulder, CO 80305
mfbrowning1952@gmail.com

J.D. McCrary
Georgia ForestWatch
81 Crown Mountain Place
Dahlonega, GA 30533
jdmccrary@gafw.org

Mark Allison
New Mexico Wild
New Mexico Wilderness Alliance
317 Commercial St NE, Ste. 300
Albuquerque, NM 87102
mark@nmwild.org

Mary Zimmerman
Norbeck Society
P.O. Box 9730
Rapid City, SD 57709
info@norbecksociety.com

Kelly Burke
Wild Arizona
738 N 5th Avenue, #209
Tucson, AZ 85705
kelly@wildarizona.org

Jane Pargiter
EcoFlight
307 Aspen Airport Business Ctr Ste L
Aspen, CO 81611
jane@ecoflight.org

Meredith Trainor
Southeast Alaska Conservation Council
2207 Jordan Ave
Juneau, AK 99901
Chiaraloveswater@gmail.com

Jason Christensen
Yellowstone to Uintas Connection
205 North Main Street
Paris, ID 83261
jason@yellowstoneuintas.org

Sam Hitt
Santa Fe Forest Coalition
48 Old Galisteo Way
Santa Fe, NM 87508
sam@wildwatershed.org

Lauren McCain
Defenders of Wildlife
600 17th St., Suite 450N
Denver, CO 80202
lmccain@defenders.org

Alex Craven
Sierra Club
180 Nickerson St., Suite 202
Seattle, WA 98109
alex.craven@sierraclub.org

Peter Hart
Wilderness Workshop
PO Box 1442
Carbondale, CO 81623
peter@wildernessworkshop.org

Andrew Ogden
Lawyer & Counselor
3827 Silver Plume Circle
Boulder, CO 80305
aogden@indra.com

Linda Castro
California Wilderness Coalition (CalWild)
9703 Swinton Avenue
North Hills, CA 91343
lcastro@calwild.org

Susan Britting
Sierra Forest Legacy
PO Box 377
Coloma, CA 95613
britting@earthlink.net

Erik Molvar
Western Watersheds Project
P.O. Box 1770
Hailey, ID 83333
emolvar@westernwatersheds.org

Michael Garrity
Alliance for the Wild Rockies
P.O. Box 505
Helena, MT 59624
wildrockies@gmail.com

Michael Nixon
Chair, Citizens Coal Council
101 SW Madison Street #9325
Portland, OR 97207
michaelvnixon@yahoo.com

Mark Miller
Virginia Wilderness Committee
PO Box 1235
Lexington, VA 24450
mmiller24450@gmail.com

Oscar Simpson
New Mexico Sportsmen
3320 12th Street NW
Albuquerque, NM 87107
oscarsimpson3@yahoo.com

Oscar Simpson
Rio Grande Indivisible, NM
3320 12th Street NW
Alburquerque, NM 87107
oscarimpson3@yahoo.com

Craig Thomas
The Fire Restoration Group
6221 Shoo Fly Road
Kelsey, CA 95667
craigthomas068@gmail.com

Nathan Johnson
Ohio Environmental Council
1145 Chesapeake Ave., STE I
Columbus, OH 43212
NJohnson@theOEC.org

Sarah Walker
Wyoming Wilderness Association
811 North Main Street
Sheridan, WY 82801
sarah@wildwyo.org

Barbara Ullian
Friends of the Kalmiopsis
1134 SE Allenwood
Grants Pass, OR 97527
barbara@kalmiopsisrivers.org

Andy Moderow
Alaska Wilderness League
1026 West 4th Ave Suite 200
Anchorage, AK 99501
andy@alaskawild.org

Christine Canaly
San Luis Valley Ecosystem Council
537 Main St. #2
Alamosa, CO 81101
info@slvec.org

Nancy Hilding
Prairie Hills Audubon Society
P.O. Box 788
Black Hawk, SD 57718
nhilshat@rapidnet.com

Alison Flint
The Wilderness Society
503 Mendenhall St
Bozeman, MT 59715
alison_flint@tws.org

Brendan Mysliwiec
Appalachian Trail Conservancy
799 Washington Street
Harpers Ferry, WV 25425
bmysliwiec@appalachiantrail.org

Taylor Luneau
American Alpine Club
710 10th street suite 100
Golden, CO 81301
tluneau@americanalpineclub.org

Matt Reed
High Country Conservation Advocates
716 Elk Ave./PO Box 1066
Crested Butte, CO 81224
matt@hccacb.org

Ann Mesnikoff
Environmental Law & Policy Center
813 A Street NE
Washington, DC 20002
amesnikoff@elpc.org

Sam Israel
Methow Valley Citizens Council
305 E Methow Valley Hwy
Twisp, WA 98856
sam@mvcitizens.org

Amy Pearson
Yaak Valley Forest Council
11896 Yaak River Rd
Troy, MT 59935
amy@yaakvalley.org

Matthew Davis
League of Conservation Voters
740 15th Street NW, 7th floor
Washington, DC 20005
mdavis2@lcv.org

Niel Lawrence
Natural Resources Defense Council
3723 Holiday Dr.
Olympia, WA 98501
nlawrence@nrdc.org

Erik Molvar
Western Watersheds Project
P.O. Box 1770
Hailey, ID 83333
emolvar@westernwatersheds.org

Appendix 1: Case Studies

Condition-based Management Projects

Programmatic Project

Name of Project: Black Hills Resilient Landscapes ("BHRL") Project

Location: Black Hills National Forest ("BHNF"); South Dakota and Wyoming

Responsible Official: Mark Van Every, Forest Supervisor

Forest Service Stated Purpose & Need: To reduce "hazards," move forest structure and composition toward "objectives," and increase ecosystem resilience to disturbances such as severe wildfire and mountain pine beetle infestation.[1]

Proposed Activities:[2]

- 18 miles of new permanent road construction
- Up to 20 miles of existing unauthorized roads reconstructed
- Up to 39 miles of temporary road construction
- Up to 182 miles of existing unauthorized roads may be used as temporary roads
- Reconstruction of an estimated 375 miles of roads
- Mechanical and manual fuel reduction, prescribed fire, hazard tree removal
- Timber harvest and precommercial thinning

Timeline: Officially proposed in August 2016; DEIS published for comment in Sept. 2017; FEIS published in April 2018; Final ROD issued in July 2018.

Authorities Used: NEPA, NFMA, ESA, HFRA, NHPA, BHNF Land and Resource Management Plan Phase II Amendment, National Cohesive Wildland Fire Management Strategy

Summary of Analysis:

- The final EIS includes:
    - A project implementation framework using resource-specific "design features."[3] The EIS incorporates by reference several documents it represents "contain standard design features that apply to this project."[4]
    - The EIS represents that "[p]arties responsible for implementation of proposed activities would coordinate activity layout and design with managers of affected resources."[5]
- The final EIS failed to disclose:
    - Where new permanent and temporary roads would be constructed. This omission is crucial because the Forest Service could construct 18 miles of new permanent roads nearly anywhere in the BHNF. Because the Forest Service does

[1] Final Environmental Impact Statement for the Black Hills Resilient Landscapes Project at i.
[2] *Id.* at i, 37, 48.
[3] *Id.* at 51.
[4] *Id.* at 40.
[5] *Id.* at 17.

not know the locations of the roadbuilding, the Forest Service did not analyze site-specific impacts.
    - Where fuel treatments will specifically occur. Providing a pool of acres where the fuel treatments may occur is not the same as deciding and analyzing exactly where the treatments are going to occur. Therefore, BHNF did not make an informed decision about the impacts of fuel treatments.
    - Where logging will occur. The EIS represents that commercial timber harvesting will occur on up to 185,210 acres within a 300,000 acre area.[6] Without deciding and analyzing exactly where cuts will take place, and when, BHNF did not take the requisite hard look that NEPA requires.
    - How exactly the vaguely incorporated design criteria will translate into on-the-ground implementation for site-specific actions. In other words, the EIS took away any opportunity for meaningful public participation at the project-level analysis phase (the EIS) and during the project implementation phase.
- Values at risk: Loss of habitat for certain wildlife and plant species; soil and timber productivity lost where roads are built; air quality diminished from prescribed burn smoke and dust from road construction; increase in noxious weeds; scenic views temporarily diminished; recreation sites may be impaired and unavailable.

Status: Implementation Stage, Final ROD published on July 20, 2018.[7]

[6] *Id.* at 26.
[7] Black Hills Resilient Landscapes Project Final Record of Decision, at https://www.fs.usda.gov/nfs/11558/www/nepa/103904_FSPLT3_4389333.pdf.

Name of Project: Early Successional Habitat Creation ("ESHC") Project

Location: Manchester Ranger District, Green Mountain National Forest ("GMNF"), Vermont

Forest Service Stated Purpose & Need: To create early successional habitat as provided for in 2006 Forest Plan; to improve neotropical migrant bird habitat.[1]

Proposed Activities: As originally conceived, the project authorized up to 15,000 acres of mostly even-aged management, and 17 miles of new permanent road construction, and 25 miles of total road construction, which exceeded the amount of road building authorized in the GMNF Land and Resource Management Plan. The project will last for 15 years.[2]

Timeline: The Green Mountain National Forest first proposed the project in May 2018; the EA issued in February 2019 (the public was not allowed to comment on the EA); the DN and FONSI were released in June 2019.

Authorities Used: NEPA, NFMA, ESA

Summary of Analysis:

- The EA adopts a fixed set of resource-specific "design criteria" to implement site-management objectives. The EA admits that "varying site-specific conditions [will] dictate which design criteria to apply depending on the type of harvest treatment method prescribed, level of road and location for access selected, and other site-specific factors."[3] Moreover, regarding roads, "the specific level, amount, and location of road infrastructure needed would be based upon site-specific conditions identified during project planning at the time of implementation."[4] In short, the project does not include site-specific NEPA analysis, and the public therefore cannot comment on site-specific impacts.
- The most troubling site-specific analysis omission is the failure to identify the specific location of roads, both new permanent roads and new temporary roads. The ESHC project is among the largest logging projects on the GMNF in recent years. Without disclosing site-specific road locations, the GMNF is unable to take the requisite hard look at the site-specific impacts of roadbuilding.
- Another omission is the failure to identify where exactly the harvests would take place. Though the harvest pool was identified as 17,274 acres, exactly which 15,000 acres will actually be harvested was not disclosed during the project analysis.[5] Several potential

[1] Early Successional Habitat Creation Project website at https://www.fs.usda.gov/project/?project=53629&exp=detail.
[2] Decision Notice and Finding of No Significant Impact for the Early Successional Habitat Creation Project at 4.
[3] Draft Environmental Assessment for the Early Successional Habitat Creation Project at 18.
[4] *Id.* at 15.
[5] Decision Notice and Finding of No Significant Impact for the Early Successional Habitat Creation Project at 4.

harvest units, including one unit in a completed timber sale, abut designated wilderness areas.

- The public has no way to meaningfully weigh in on what types of harvest treatments are going to be used, nor where the roads to facilitate the logging will ultimately end up. The project asks the public to trust the utilization of design criteria, while never doing the site-specific analysis required for a site-specific project.

Status: "Analysis completed"; four timber sales completed; a Supplemental Information Reports ("SIR") published related to road construction on the GMNF, which included elements of this project, and an additional SIR is expected to be released in late December 2021 or early January 2022 to make specific modifications to the project.

Name of Project: Landscape Vegetation Analysis ("LaVA") Project[1]

Location: Medicine Bow National Forest, Wyoming

Forest Service Stated Purpose & Need: Respond to changed forest vegetation conditions caused by the bark beetle epidemics on the Medicine Bow National Forest.[2]

Proposed Activities: Authorizes up to 288,000 acres of vegetation management (including up to 86,119 acres of clear-cutting), and up to 600 miles of temporary roads, somewhere within a project area of 850,000 acres over the next 15 years.

Timeline: Notice for scoping 2017; FEIS issued March 2019; Draft ROD withdrawn June 2019; Modified FEIS April 2020; Final ROD signed Aug. 2020, Fall 2020 Mullen fire and corresponding Aug. 2021 supplemental information report ("SIR").

Authorities Used: NFMA, NEPA, Healthy Forests Restoration Act and Farm Bill Amendment (2003 and 2014), 2003 Medicine Bow Forest Plan, Governor's Task Force on Forests (Bannon et al. 2015), Western Bark Beetle Strategy (USDA Forest Service 2011), and the Wyoming Statewide Forest Resource Strategy (Wyoming State Forestry Division 2010).

Summary of Analysis: The final ROD identified 288,000 acres of treatment opportunity areas, and excluded inventoried roadless areas from potential treatment. The Forest Service's analysis did not identify where within the 850,000-acre project area the agency intends to log or build roads. The analysis failed to disclose relevant site-specific details including the location, timing, and specific type of vegetation management (commercial thin, clear-cut, or other treatment) of treatment areas or particular units. It also failed to disclose the location and mileage of system and temporary roads necessary to accomplish the vegetation treatments.

As its "condition-based" analysis the Forest Service relies on an Adaptive Implementation and Monitoring Framework with five phases to identify, refine, field verify, implement, and monitor individual treatments over 15 years.[3] All phases occur after NEPA and a final decision. The agency invites public engagement via a web-based mapping application for the first two phases (identify and refine). There is no public feedback opportunity after field verification, when site-specific details will be disclosed, and no ability to hold the agency accountable for failing to respond to comments or scientific data.[4]

Without details on project implementation, it is impossible to determine how project activities relate to and may impact important factors such as: old growth, habitat for imperiled wildlife, at-risk watersheds, sources of drinking water, inventoried roadless areas, and recommended wilderness. Values at risk include 41,516 acres of old-growth forest identified for

[1] *See* Medicine Bow Landscape Vegetation Analysis Project website: https://www.fs.usda.gov/detail/mbr/landmanagement/?cid=FSEPRD572816 (last accessed Dec. 17, 2021).
[2] *See* U.S. Forest Service, Modified Final Environmental Impact Statement (April 2020), page 31.
[3] U.S. Forest Service, Medicine Bow Landscape Vegetation Analysis Project Record of Decision (Aug. 2020), pg 11.
[4] Per Forest Service response to questions during the project's first virtual public workshop on June 9, 2021.

logging, thinning, burning, and other "treatments." The project will destroy 29,870 acres of suitable lynx habitat, and degrade watershed conditions for impaired and at-risk watersheds.

Status: Forest Supervisor Bacon signed the ROD on Aug. 13, 2020. Nine individual treatments are in implementation phase, covering more than 2,500 acres.[5]

[5] *See* Aug. 2020 ROD at 43-33. *See also* LaVA Story Map, *available at* https://usfs.maps.arcgis.com/apps/MapSeries/index.html?appid=ca50896c133c414490f7255d01565aae (last accessed Dec. 17, 2021).

Name of Project: George Washington and Jefferson National Forests Oak and Woodland Restoration Project

Location: George Washington ("GW") and Jefferson National Forests, Virginia; Deputy Forest Supervisor Beth LeMaster

Forest Service Stated Purpose & Need: Manage white pine stands to promote growth of oaks, hickories, yellow pines, and other species

Proposed Activities: The project area is the entirety of both the George Washington and Jefferson National Forests.[1] The Forest Service is proposing to treat "approximately" 1,100 acres per year on the GW National Forest and 700 acres per year on the Jefferson National Forest.[2] Logging methods would range from clearcutting to thinning.[3] The project authorizes one mile of temporary road construction for each "implementation project."[4] The scoping letter does not state the expected duration of the project's implementation but agency personnel stated in a public meeting that they intended to continue implementation until the NEPA documentation becomes stale.

Timeline: Unclear. This project was scoped in October 2020, but no draft or final EA has been released. The project appears on the schedule of proposed actions, where it is denoted "on hold" as of December 2021.

Authorities Used: NEPA, NFMA, 2014 Revised GW National Forest Plan, 2004 Revised Jefferson National Forest Plan

Summary of Analysis: The process that the Forest Service is proposing for this project would be the most clearly unlawful version of condition-based management, and would defer all site-specific decisions until after completion of an EA. Instead, a "Project EA" would outline the process for how the Forest Service would select white pine-dominant stands to manage across the two National Forests and develop an "implementation checklist."[5] This Project EA and corresponding decision "would not allow for the explicit implementation of a treatment project."[6] Instead, subsequent site-specific "implementation projects" would be carried out in accordance with the process defined in the EA, subject to meeting all the implementation checklist's criteria. These "implementation projects" would not undergo further NEPA review.[7] As such, the only NEPA document prepared for the project would provide no information about the location, concentration, or timing of timber harvest and associated road construction.

[1] Scoping Notice at 2–3.
[2] Scoping Notice at 3.
[3] Scoping Notice at 3–4.
[4] Scoping Notice at 3.
[5] Scoping Notice at 1.
[6] Scoping Notice at 1.
[7] Scoping Notice at 1.

Similarly, the scoping notice does not provide information about the project's duration or the actual amount of timber harvest that would occur in a given year or during the entire implementation—only an annual cap of 1,800 acres between the two national forests. The scoping notice contemplates clearcutting and commercial thinning and silvicultural prescriptions in between, but includes no details on when, where, and how much any technique will be used on the ground.[8]

The project purportedly would involve a substitute non-NEPA process for informal public comment. Agency staff stated in a public meeting that, once a year, the Forest Service would notify the public of stands that might be managed that coming year. Even under this substitute process, the project as scoped does not provide for public disclosure of, or comment on, the implementation checklists themselves.

Additional Concerns: The Forest Plans for both the GW and Jefferson National Forests require site-specific analysis. Both Plans provide that the "Forest Plan will be implemented through a series of project-level decisions based on appropriate site-specific environmental analysis and disclosure to assure compliance with [NEPA]."[9] The Jefferson Forest Plan further requires that "[a]ny decisions on projects to implement the [Forest Plan] are based on site-specific analysis in compliance with NEPA."[10]

Status: As of December 2021, this project appears on the schedule of proposed actions, where it is denoted "on hld."

Project Website: https://www.fs.usda.gov/project/?project=58928

[8] *See* Scoping Notice at 3–4.
[9] GW National Forest Plan at 5-1; Jefferson National Forest Plan at 5-1.
[10] Jefferson National Forest Plan at 2-1.

Name of Project: Prince of Wales Landscape Level Analysis

Location: Thorne Bay and Craig Ranger Districts, Prince of Wales Island, Tongass National Forest, Alaska; supervised by M. Earl Stewart

Forest Service Stated Purpose & Need: "The purpose is to help move the project area towards the desired conditions in the Forest Plan, and to meet multiple Forest Plan resource goals and objectives," including timber harvesting.[1]

Proposed Activities: The Forest Service identified over 125,000 acres of potential timber harvest on Prince of Wales Island, including 48,140 old-growth acres, and over 600 miles of potential new and temporary road construction.[2] It then selected a preferred alternative that would have authorized logging more than 40,000 acres within that broader area, including 24,000 acres of old growth forest, and over 160 miles of road construction, without disclosing which acres would be logged or where roads would be located.[3] This would have been the largest National Forest timber sale—and the largest single old-growth forest logging proposal—in at least 30 years. The project was scheduled for a 15-year implementation.[4]

Timeline: The Forest Service published a scoping notice in July 2017. It issued a final EIS in October 2018 and a decision in March 2019. In June 2020, the District of Alaska vacated the logging and roadbuilding portions of the Record of Decision (ROD) and EIS in *Southeast Alaska Conservation Council v. U.S. Forest Service*.[5] The agency has moved forward with implementing the much smaller watershed improvement and restoration project components. The agency also initiated a new project, the Twin Mountain II Timber Sale Project, which would allow for logging up to 3,000 acres of the old growth forest on Prince of Wales Island and construction of 14 miles of roads over five-to-ten years.[6] Twin Mountain II is in scoping as of September 2020.

Authorities Used: NEPA, NFMA, Alaska National Interest Lands Conservation Act (ANILCA), 2016 Amended Forest Plan for the Tongass

Summary of Analysis: The Final EIS did not disclose where, when, or how logging would occur within the 125,000-acre area and where roads would be built. It acknowledged that the "[p]roject proposes to harvest timber and build roads under all action alternatives, but it is *unknown at this time where on the landscape this would occur*,"[7] and that "it is *not possible to determine* all of the direct, indirect, or cumulative impacts to wildlife habitat or connectivity that could result from this project before implementation."[8] The Forest Service instead planned

[1] Record of Decision at 6.
[2] Final EIS at 2-23.
[3] Final EIS at 2-23.
[4] Final EIS at 1-1.
[5] 443 F. Supp. 3d at 1022–23.
[6] *See* Scoping Information Twin Mountain II Timber Sale Project at 1.
[7] Final EIS at 3-234 (emphasis added).
[8] Final EIS, Appendix D at D-58 (emphasis added).

to determine site-specific project details based entirely on condition-based management ("CBM") performed after NEPA review concluded and implementation commenced.[9]

The District of Alaska held that the Forest Service's CBM approach violated NEPA. The court found that the project's EIS "d[id] not include a determination—or even an estimate—of when and where the harvest activities or road construction . . . w[ould] actually occur" within the much broader project area.[10] Because the project's CBM approach "create[d] ambiguity about the actual location, concentration, and timing of timber harvest and road construction on Prince of Wales Island," it "fail[ed] to provide a meaningful comparison of alternatives."[11] The court also found that, while CBM "may very well streamline management of the Tongass," NEPA requires that these site-specific determinations occur before project implementation commences to "ensure . . . that the agency will not act on incomplete information, only to regret its decision after it is too late to correct."[12]

The Prince of Wales EIS also failed to meaningfully evaluate actual or likely impacts because it opted for a worst-case analysis that assumed all forest would be clearcut.[13] The Forest Service admitted that the "total acres estimated to be needed to meet timber needs are likely over-estimated and therefore the effects are likely over-estimated as well."[14] This approach blurred potentially meaningful differences between alternatives; for example, the EIS's analysis of effects on wildlife stated that the effects "are similar between all alternatives because all alternatives assume that all acres proposed for timber harvest will be harvested."[15] The District of Alaska held that this worst-case approach further violated NEPA: "By focusing on the Project's maximum potential impacts for all alternatives rather than its actual or foreseeable impacts for each alternative, the EIS falls short of NEPA's directive to 'contain[] a reasonably thorough discussion of the significant aspects of the probable environmental consequences' for each alternative."[16] Together, the worst-case analysis and lack of site-specific information in the EIS prevent the public from having a remotely coherent understanding of the likely differences in impacts between project alternatives.[17]

Furthermore, the Forest Service substituted an informal "collaborative public process" for required NEPA notice and comment.[18] Once specific units and road locations were identified, the agency would make that information available online with an opportunity for public review and comment prior to the line officer's final decision.[19] Such informal provisions,

---

[9] Record of Decision at 21.
[10] Southeast Alaska Conservation Council v. U.S. Forest Service, 443 F. Supp. 3d 995, 1009 (D. Alaska 2020).
[11] *Id.* at 1014.
[12] *Id.* at 1014–15 (quoting Protect Our Cmtys. Found., 939 F.3d 1029, 1035 (9th Cir. 2019)).
[13] *See, e.g.*, Final EIS at 3-171, 3-179.
[14] Final EIS at 3-176.
[15] *Id.*
[16] *Southeast Alaska Conservation Council*, 443 F. Supp. 3d at 1013 (quoting WildEarth Guardians v. Mont. Snowmobile Ass'n, 790 F.3d 920, 924 (9th Cir. 2015)).
[17] *See id.*
[18] Record of Decision at 21.
[19] Record of Decision at 21.

with no legal mechanism for ensuring accountability in the event that the agency did not take a hard look at impacts to old growth and associated values, do not substitute for the specific public comment procedures that NEPA requires upon the agency making site-specific determinations.

The logging that would have been authorized under the Prince of Wales Landscape Level Analysis would have destroyed tens of thousands of acres of remaining old-growth forest in America's largest temperate rain forest. The area targeted for logging included habitat for black bears and imperiled wildlife including the Alexander Archipelago wolf and the Queen Charlotte's goshawk. Forest slated for logging included important habitat for deer and salmon, which are critical to Southeast Alaska's billion-dollar tourism and fishing industries, and to native tribes who rely on those species for subsistence. The degree of these adverse impacts could have varied widely based on the specific locations where logging would occur, but the project plan failed to analyze these site-specific differences.

Additional Concerns: The 2016 Forest Plan deferred many unresolved issues to site-specific project planning. The Plan's timber harvest standards require that the Forest Service "[d]etermine operability based on site-specific project conditions."[20] It also directs the Forest Service to "[c]onsider silvicultural systems other than clearcutting to meet resource objectives at the project level" and to, "[a]s part of the project NEPA process, analyze current scientific information related to the applicability of alternative timber harvest methods."[21] The Prince of Wales EIS could not meaningfully evaluate whether alternatives to clearcutting would be appropriate without site-specific analysis. Likewise, the Forest Plan requires that the Forest Service, "[d]uring project planning, identify resource concerns and site-specific mitigation measures" for roads and other transportation infrastructure.[22] The Forest Plan even defines a "project" as "[o]ne or more *site-specific* activities designed to accomplish a *specific on-the-ground* purpose or result."[23]

Status: Logging and roadbuilding components of EIS vacated; watershed improvement and restoration components currently being implemented. Twin Mountain II Timber Sale Project, which covers a subset of the same project area, is in scoping but is described as currently "on hold."

Project Website:
https://www.fs.usda.gov/detail/tongass/landmanagement/projects/?cid=fseprd529245

[20] 2016 Tongass National Forest Land and Resource Management Plan at 4-68.
[21] *Id.*
[22] *Id.* at 4-77.
[23] *Id.* at 7-44 (emphasis added).

Name of Project: Sage Hen Integrated Restoration Project[1]

Location: Emmett Ranger District, Boise National Forest, ID.

Forest Service Stated Purpose & Need: To improve vegetation conditions to increase forest resiliency to uncharacteristic disturbances; conserve or restore habitat for wildlife species dependent on low-elevation, old forest habitats; restore watershed function to improve aquatic resources including bull trout habitat connectivity and diversity; improve and manage recreation opportunities and use; and support local and regional economies.[2]

Proposed Activities: Commercial harvest on up to 19,900 acres, construction of up to 83.1 miles of temporary roads, and reconstruction of 10.2 miles of system roads across a 67,800-acre project area for up to 20 years.

Timeline: Proposed Oct. 2019; request for comment April 2020; Final EA and FONSI, Draft Decision Notice, and objection period Nov. 13, 2020; Decision Notice issued April 2021.

Authorities Used: NEPA, NFMA, 2010 Boise Forest Plan.

Summary of Analysis: Decision Notice states condition-based management "allows managers to make landscape-level decisions while reserving flexibility and the ability to respond to change before implementing management activities."[3] The agency relied on "a conservative maximum impact analysis approach" to analyze impacts across all "potentially treatable project acres."[4] It committed to allowing additional public engagement and field trips during pauses between the three phases of project implementation, even though the Decision Notice approves all project activities.[5]

The Decision Notice disclosed the location and timing for logging units, system roads, and temporary roads for Phase 1 of implementation, and states that Phases 2 and 3 will focus on implementing condition-based management timber sales and vegetation treatment acres.[6] The analysis fails to disclose many site-specific details for Phases 2 and 3, relying on a Vegetation Condition-Based Management Guide to defer identification of specific vegetation treatments until project development, after signing the Decision Notice.[7] Lacking these site-specific details, it is impossible to determine how the project may impact important factors such as: habitat for imperiled wildlife, old growth stands, and water quality. The project will harm threatened bull trout by degrading water quality that includes designated bull trout

[1] Sage Hen Integrated Restoration Project website: https://www.fs.usda.gov/project/?project=56701 (last accessed Dec. 16, 2021).
[2] *See* U.S. Forest Service, Decision Notice for the Sage Hen Integrated Restoration Project (April 2021), page 1.
[3] Decision Notice at 2.
[4] Decision Notice at 4.
[5] *Id.*
[6] Decision Notice at 4-9.
[7] U.S. Forest Service, Sage Hen Integrated Restoration Project Environmental Assessment (Nov. 2020), page 2.

critical habitat, and will destroy Canada lynx habitat. Vegetation management activities may destroy multiple Northern goshawk nests in the project area.

Status: Boise Forest Supervisor Tawnya Brummett signed the Decision Notice on April 14, 2021. Three salvage sales scheduled for summer 2021.[8] On Nov. 11, 2021, a coalition of conservation groups filed a complaint challenging the decision, and specifically challenging the Forest Service's use of condition-based management as violating NEPA. *See WildLands Defense et al. v. Brummett et al.*, Case No. 1:21-cv-00425 (D. Idaho).[9]

[8] Decision Notice at 15.

[9] Complaint available at https://www.docketalarm.com/cases/Idaho_District_Court/1--21-cv-00425/Wildlands_Defense_et_al_v._Brummett_et_al/1/ (last visited Dec. 17, 2021).

Name of Project: Salmon-Challis Fuels Reduction and Restoration Project

Location: Salmon-Challis National Forest, Lemhi and Custer Counties, Idaho

Forest Service Stated Purpose & Need: "[T]o improve resiliency on the Salmon Challis National Forest by reducing existing natural fuels build-up, improving timber stand and wildlife habitat conditions, and restoring aspen and whitebark pine species."[1] The historical pace and "scale of prescribed fire and hand treatments of vegetation is not sufficient to maintain ecosystem health or to mitigate wildlife hazard."[2]

Proposed Activities: Prescribed burning activities including fireline construction, hand treatment of vegetation[3]; all activities would occur on "roughly" 2.4 million acres.[4]

Timeline: The Salmon-Challis National Forest released the scoping letter in October 2020

Authorities Used: NEPA, NFMA—Salmon-Challis LRMP

Summary of Analysis:

- The scoping letter for this categorical exclusion identifies three "programmatic considerations" to guide the Forest Service in implementing the project: (1) "Areas located with the Wildfire Protection Zone,"[5] (2) "[d]egree of departure from historic conditions using Vegetation Condition Class, with the highest departures given greater priority," and (3) "[a]bility to implement based on capacity, funding, complexity, local site conditions, and other relevant factors."[6]
- The scoping letter discloses several design criteria by resource type. For example, regarding the wildlife resource, the scoping letter represents that: "If active boreal owl, flammulated owl, great gray owl, or goshawk nests [sic] sites are identified in the burn area, preventative measures would be used to reduce nest abandonment."[7] "Preventative measures" and "Active" are not defined. Another example of a design criterion for the wildlife resource represents that fire crews "will strive to meet recommended burn plan objectives for old growth stands on lands subject to the Salmon LRMP."[8] "Strive" is undefined.
- The scoping letter does not provide any site-specific information—including any information on roadbuilding. In fact, the project is expected to be implemented forest-

[1] Scoping Notice at 1.
[2] *Id.*
[3] *Id.*
[4] Legal Notice for Web at 1.
[5] Scoping Notice at 2. Areas where "high likelihood exists for wildfire impacts to infrastructure, private property and other identified socials [sic] and economic values within or near the Forest boundaries." *Id.*
[6] *Id.*
[7] *Id.* at 5.
[8] *Id.*

wide, or on about roughly 2.4 million acres.[9] The scoping letter also represents that the project will "fall within Idaho Roadless Areas."[10] The letter does not define which Idaho Roadless Areas. The lack of any site-specific information means the Forest Service not only does not know where, when, and how it will implement the project on 2.4 million acres, it does not know where, when, and how it will impact some of the most important ecosystems on the Forest. As noted above, the project's proposed design criteria are alarmingly vague and allow Forest Service staff a tremendous amount of flexibility for forest management without ever doing NEPA site-specific analysis.

Additional Concerns:

- ESA: the project area contains four listed species—Canada lynx, grizzly bear, yellow-billed cuckoo, and bull trout. The scoping letter contains no discussion of ESA-listed species, nor specific design criteria for mitigating impacts on them.

Status: Under analysis–NEPA or Forest Plan Amendment Decision Document estimated by 04/01/2022.[11]

[9] Legal Notice for Web at 1.
[10] *Id.*
[11] Salmon-Challis Fuels Reduction and Restoration Project at https://www.fs.usda.gov/project/?project=58813&exp=detail.

Name of Project: Spruce Beetle Epidemic and Aspen Decline Management Response ("SBEADMR") Project[1]

Location: Grand Mesa, Uncompahgre and Gunnison ("GMUG") National Forests, CO

Forest Service Stated Purpose & Need: Reduce the safety threats of falling, dead trees and of managing wildfires on the landscape; improve the resiliency of stands at risk of insect and disease; and treat affected stands via recovery of salvageable timber and subsequent re-establishment of desired forest conditions.[2]

Proposed Activities: Up to 60,000 acres commercial logging, up to 60,000 acres noncommercial treatment, and up to 178 miles of new road construction across a 207,600-acre project area for 8-12 years, pending funding.

Timeline: Pre-scoping map June 2013; Scoping July 2013; Draft EIS June 2015; Final EIS May 2016; Final Record of Decision July 2016.

Authorities Used: NEPA, NFMA, 1983 GMUG Forest Plan.

Summary of Analysis: The Forest Service identified acres for Priority Treatment Areas ("PTAs") for commercial and noncommercial timber harvest, potential hazard tree treatments outside of PTAs, and potential new road disturbance.[3] The agency noted that PTA boundaries may vary and "comprise more area than the total acres" approved "for treatment so that the Forest has more flexibility to implement the SBEADMR adaptively in response to evolving on-the-ground conditions over the life of the project," applying an Adaptive Implementation Framework.[4] The analysis failed to disclose site-specific details regarding the baseline environmental conditions within each of the PTAs, what types of vegetative treatments would occur where within the large PTA blocks, or where it would construct 178 miles of road. Major concerns included impacts to Canada lynx suitable habitat, impacts from the road system, and the impact of salvage logging on forest regeneration.

The Forest Service stated that it considered the project's maximum treatments, and that to comply with the Southern Rockies Lynx Amendment disturbance caps the agency would annually track implementation and report it to the U.S. Fish and Wildlife Service.[5] To address public concerns about the lack of specificity of proposed projects, areas to be treated, scope of impacts, and lack of public input, the Forest Service agreed to fund an independent science

[1] SBEADMR Project website: https://www.fs.usda.gov/project/?project=42387 (last accessed Dec. 17, 2021).
[2] U.S. Forest Service, Spruce Beetle Epidemic and Aspen Decline Management Response Final Record of Decision (July 2016), page 3.
[3] Final ROD at 4-5.
[4] Final ROD at 5-6.
[5] Final Rod at 14.

advisory team to help identify treatment locations and inform the adaptive approach and management decision making.[6]
Status: Implementation stage.[7]

[6] SBEADMR Community Report, Fiscal Year 2020.
[7] SBEADMR Implementation website: https://www.fs.usda.gov/detail/gmug/landmanagement/resourcemanagement/?cid=fseprd497061 (last accessed Dec. 17, 2021).

Name of Project: South Plateau Area Landscape Treatment Project[1]

Location: Hebgen Lake Ranger District, Custer Gallatin National Forest, MT (on western boundary of Yellowstone National Park)

Forest Service Stated Purpose & Need: Reduce the risk or extent of, and increase the resiliency to insect and disease infestation, achieve an ecosystem that can better withstand future natural events such as wildfire, contribute to a sustained yield of timber products, and improve the productivity of forested timber stands.[2]

Proposed Activities: Clear-cutting up to 4,600 acres, thinning on up to 15,096 acres, and 56 miles of temporary roads across a 39,909-acre project area for the next 15 years.

Timeline: Combined scoping and draft EA in August 2020; Forest Service cancelled objection process May 12, 2021 pending the Custer-Gallatin Forest Plan Revision, expected summer 2021.

Authorities: NEPA, NFMA, 1987 Gallatin Forest Plan, (anticipate evaluating project under the forthcoming 2021 Revised Gallatin Forest Plan).

Summary of Analysis: The proposed action "preliminarily identified areas for treatment" on National Forest land adjacent to Yellowstone National Park, but "[t]he exact extent and location of treatments to be applied would be determined through the condition-based approach."[3] While the EA maps areas where specific types of treatments could be applied, those areas are far larger than where treatments will occur. For example, the EA states that "8,787 acres of clearcut harvest has been preliminarily identified in the project area," but clearcuts will be limited to 4,600 acres—and it does not identify the precise location of those acres.[4] During implementation the Forest Service will survey areas proposed for treatment to determine existing conditions and the appropriate treatment based on a Treatment Matrix.[5] The analysis omits the actual location of proposed timber harvest, location and mileage of temporary road construction, location and mileage of system roads for truck hauling, and the specific timeframe for each of these activities. The agency provides no role for public input when the agency designs specific logging treatments and road locations.

Without site-specific details it is impossible to determine how the project activities may impact important factors such as: habitat for imperiled wildlife, old growth stands, sources of drinking water, and watersheds functioning at-risk. The project will cut 56 miles of new temporary roads, displacing threatened grizzly bear and disrupting grizzly bear habitat in the

[1] South Plateau Area Landscape Treatment Project website, https://www.fs.usda.gov/project/?project=57353 (last accessed Dec. 17, 2021).
[2] *See* U.S. Forest Service, South Plateau Area Landscape Treatment Project Final Environmental Assessment ("Final EA") (March 2021), page 1.
[3] Final EA at 6.
[4] Final EA at 57-58.
[5] *Id.* at 6.

Greater Yellowstone Ecosystem, and degrading watershed conditions for watersheds functioning at-risk.[6] It will destroy 4,600 acres of habitat for threatened Canada lynx.[7] The Forest Service concluded the project is "likely to adversely affect" both grizzlies and lynx.[8]

Status: Forest Service cancelled objection process May 12, 2021, and delayed issuance of a new draft Decision pending the release of the Custer Gallatin Forest Plan Revision (expected early 2022).

[6] Final EA at 46.
[7] Final EA at 77.
[8] Final EA at 42.

Name of Project: Tennessee Creek Project

Location: Leadville Ranger District, San Isabel National Forest and Eagle-Holy Cross Ranger District, White River National Forest, Colorado

Forest Service Stated Purpose & Need: "[T]o create forest conditions that are more resilient to insects, diseases, and fire; to improve or maintain habitat for threatened, endangered and sensitive species and other important wildlife species; and to provide for sustainable watershed conditions."[1]

Proposed Activities: The Forest Service identified a 16,450-acre project area, of which up to 13,580 were proposed for treatment.[2] The treatments include clearcutting 2,370 acres of lodgepole pine, thinning 6,765 acres of lodgepole pine, 6,040 acres of prescribed fire, and creating 20 miles of temporary roads and opening 1.5 miles of closed roads, but the location of the treatments was not disclosed[3] The project is scheduled to be implemented over a ten-to-fifteen year period.[4]

Timeline: The Forest Service published a scoping letter in November 2012. It approved the project with a FONSI in November 2014.[5] WildEarth Guardians sued in the District of Colorado in 2015. The court upheld the EA and FONSI in July 2017,[6] which the Tenth Circuit affirmed in April 2019.[7]

Authorities Used: NEPA; NFMA; ESA; Pike and San Isabel National Forests, Comanche and Cimarron National Grasslands Land and Resource Management Plan (1984) and Southern Rockies Lynx Amendment (SRLA) (2008); White River National Forest Land and Resource Management Plan (2002)

Summary of Analysis: The Tennessee Creek Project Final EA failed to disclose where and when each proposed treatment activity would occur. It instead made generalized, unconstrained predictions such as "[a]pproximately 20 miles of temporary road would be created and approximately 1.5 miles of closed roads would be open during the life of the project to access the project area, but mileage may vary during project implementation."[8] The project set up parameters such as "[t]reatments that result in openings would not exceed 25 percent of lodgepole pine stands,"[9] but provided no opportunity for public involvement, through the

[1] Final EA at 9.
[2] Final EA at 9.
[3] Decision Notice at 2.
[4] Final EA at 9.
[5] Decision Notice at 14.
[6] *See* WildEarth Guardians v. Conner, No.15-cv-00858, 2017 WL 5989046 (D. Colo. July 25, 2017).
[7] *See* WildEarth Guardians v. Conner, 920 F.3d 1245, 1251–52 (10th Cir. 2019).
[8] Final EA at 25.
[9] Final EA at 14.

formal NEPA process or otherwise, to monitor these requirements or challenge the site-specific decisions that are being made during implementation.

Instead of defining specific sites in the Tennessee Creek EA, the Forest Service applied a worst-case analysis assuming that the project would treat all 9,480 acres of lynx habitat in the project area, including clearcutting 2,485 acres, despite noting that "in reality the number of treated acres would be less, but it cannot be quantified at this time."[10] The Forest Service determined that even this worst-case scenario would fall below the SRLA's requirement that the Forest Service cut less than 15 percent of lynx habitat in each "Lynx Analysis Unit" within a ten-year period.[11] As such, the Forest Service concluded that effects on lynx would be "minimal" and "insignificant."[12]

In *WildEarth Guardians v. Conner*, the Tenth Circuit upheld the project's final EA and FONSI in a narrow ruling specific to the project's potential impacts on threatened Canada lynx.[13] Specifically, the court held that the choice of locations for future treatment was "not material" to whether lynx would be harmed.[14] The court did not address or approve condition-based management generally.

Additional Concerns: Both governing Forest Plans explicitly deferred site-specific analysis to the project level, but no such analysis occurred in the Tennessee Creek Project. The White River Forest Plan lists examples of "*site-specific* project decisions that require additional environmental analyses and disclosure," including timber harvesting, wildlife improvement projects, and prescribed burns.[15] Likewise, amendments to the Pike and San Isabel Forest Plan consistently recognize that the "actual decision to implement or not implement a project will be made after *site-specific* analysis and public involvement are completed."[16]

Status: Decision signed by Tamara Conner, District Ranger, Leadville Ranger District
Implementation ongoing

Project Website: https://www.fs.usda.gov/project/?project=30294

[10] *See* Final EA at 82, 158.
[11] Final EA at 83.
[12] Final EA at 90.
[13] *See* WildEarth Guardians, 920 F.3d at 1251–52.
[14] *Id.* at 1259.
[15] White River National Forest Land and Resource Management Plan at P-5 (emphasis added).
[16] Pike and San Isabel National Forests and Comanche and Cimarron National Grasslands Land and Resource Management Plan, Amendment 11 at 2; *see also* Amendment 12 at 2; Amendment 20 at 2; Amendment 22 at 2.

Name of Project: Tofte Landscape Project

Location: Tofte Ranger District, Superior National Forest, Minnesota

Responsible Official: District Ranger Ellen Bogardus-Szymaniak

Forest Service Stated Purpose & Need: Achieve landscape ecosystem objectives for forest type and age; promote natural spatial patterns; promote habitat; increase resiliency; manage fuels; provide harvest materials.

Proposed Activities: The project area is 333,470 acres, but only a fraction of that area will actually be logged. The proposed action sets a maximum cap on acres logged and treated over a 15-year implementation period.[1] Yearly averages are listed for each activity, but "[a]verage acres and miles per year may be more or less than the stated amounts," so long as they do not exceed the caps over the full implementation period.[2] The 15-year caps include 25,500 acres of harvesting to "create young forest," 12,700 acres of thinning, 5,600 acres of uneven aged management, 6,830 acres of underburn, and 19,450 acres of understory mechanical fuel reduction.[3] Additional acreage for mosaic burns and salvage is provided but would count toward the 25,500-acre harvesting cap.[4] The proposal would also allow construction of up to 150 miles of temporary roads.

Timeline: The project's scoping notice is dated October 4, 2019. A draft EA was posted on May 27, 2021.

Authorities Used: NEPA, NFMA, ESA, 2004 Superior National Forest Land and Resource Management Plan

Summary of Analysis: At its core, the Tofte Landscape Project resembles other condition-based management ("CBM") case studies that employ the most clearly unlawful version of condition-based management, in which the agency proposes to make site-specific decisions about where and how to implement commercial timber harvest only outside the NEPA process. However, the Tofte Project is noteworthy because it includes a non-binding "estimated implementation plan" ("EIP") that purports to provide some degree of site-level analysis. The EIP includes the current proposed location of vegetation treatments and temporary roads.[5] It was created using "stand-level vegetation data" with "GIS analysis tools and professional judgment" to identify a "potential pool of stands to conduct treatments."[6] However, the EIP does not identify which specific silvicultural prescription the Forest Service will apply to each stand. It instead only includes a general treatment category for each stand, such as "Create Young" or "Uneven

[1] Draft EA at 13–14.
[2] Draft EA at 13 n. 4.
[3] Draft EA at 13–14.
[4] *See* Draft EA at 13.
[5] Draft EA at 10–11.
[6] Draft EA at 43.

Aged."[7] These broad categories do not make clear which specific logging technique the Forest Service will apply to each stand, even though the differences between techniques in a given stand could have significant environmental differences.

Furthermore, the Draft EA still gives the Forest Service full discretion to change the EIP during the project's actual implementation through a broader CBM approach.[8] As with the EIP, the broader CBM analysis in the Draft EA does not provide site-specific designations or defined limits for specific treatment types. Instead, the project plans to use "landscape filters" to select logging sites after completion of NEPA review. These "landscape filters" may mitigate environmental effects in some way if applied, but without defining which 25,500 acres in the 333,470 acre project area will ultimately be logged, the Draft EA fails to give the public an understanding of the project's actual environmental effects.

The Draft EA's broader CBM approach also omits information about which specific logging method will be used on the 25,500 acres that it ends up selecting for logging. The Forest Service assures that not all areas allotted for harvesting to "create young forest" will be clearcut, but gives no indication of what proportion of that large total will be clearcut.[9] Several other logging techniques (e.g. clearcut with planting, seed tree harvest with natural regeneration or planting, shelterwood harvest with natural regeneration) are contemplated depending on the conditions without any binding determination of which specific sites of the 25,500 acres will undergo each respective technique.[10] Substantially different effects could result at a given site based on the logging technique applied and many other factors, but neither the EIP nor broader CBM approach adequately analyze site-specific impacts.

Ultimately, nothing in the EA limits the Forest Service's discretion to change the EIP so long as it remains within the EA's broad bounds, which renders the Tofte Landscape Project no different than any other CBM project. The EIP is merely a non-binding estimate of what the Forest Service might decide to do during implementation.

The Tofte Landscape Project would involve a substitute non-NEPA process for informal public comment. The Project Implementation Plan does not contemplate opportunities for the NEPA notice and comment process after the project is approved and implementation begins. It provides only for consultation with tribes and, once stands have been identified based on CBM, promises that it will consider public input before implementation.[11] These informal provisions do not substitute for the specific public comment procedures NEPA requires upon the agency making site-specific determinations.

Additional Concerns:

[7] *See generally* Draft EA, Appendix J.
[8] Draft EA at 11.
[9] Draft EA, Appendix A at A-1.
[10] Draft EA, Appendix A at A-4–A-6.
[11] *See generally* Draft EA, Appendix D.

- The 2004 Forest Plan notes that "'[i]mplementing the Forest Plan' means developing any implementing *site-level* forest management projects."[12] The Draft EA's analyses all occur at the landscape ecosystem ("LE") level despite the Forest Plan's directive that "[i]n designing projects that work toward reaching the desired conditions for a [management area ("MA")], managers will consider both MA direction and [LE] objectives" and requirement that "proposed projects must reflect the blend of both MA and LE direction."[13]
- The Draft EA only analyzes two alternatives: no-action and the proposed action.[14]

Status: Under analysis. Draft decision notice and objection period expected January 2022.

Project Website: https://www.fs.usda.gov/project/?project=55216

[12] Superior National Forest Land and Resource Management Plan at 1-10.
[13] *Id.* at 3-2.
[14] Draft EA at 23.

Name of Project: Dry Forests Restoration Project

Location: Ocoee/Hiwassee and Tellico Ranger Districts, Cherokee National Forest, Tennessee

Forest Service Stated Purpose & Need: Restore native tree species diversity in dry forest communities by removing off-site white pine and Virginia pine.[1]

Proposed Activities: The programmatic decision prioritizes logging approximately 62,000 acres dominated by off-site white and Virginia pine across a 300,000-acre landscape, subject to site-specific NEPA analysis and decisions, over an implementation period of at least ten years.[2] Cumulative effects are kept at non-significant levels by capping temporary road construction, limiting road length and requiring obliteration of temporary roads after use in certain unroaded areas, and prohibiting the use of ground-disturbing equipment on steep slopes. Effects unique to particular sites will be considered in the site-specific NEPA analyses.

The first tiered, site-specific decision approved 809 acres of regeneration harvest, 277 acres of commercial thinning, and 4,712 acres of manual tree release and improvement cuts.[3] A second site-specific proposal currently in scoping would allow another 624 acres of regeneration harvest, 1,237 acres of commercial thinning, and 4,463 acres of manual tree release and improvement cuts.[4] Because of the increase in pace and scale of timber harvest over recent levels, state forestry staff are providing assistance to implement the project.

Timeline: The project's scoping notice was issued in February 2019. A final programmatic EA with FONSI was published in July 2019, and the decision was signed in September 2019. The first site-specific project following the programmatic EA then had a scoping notice issued in April 2020, an EA with a FONSI published in September 2020, and a decision signed in October 2020. Scoping for a second site-specific project began in April 2021.

Authorities Used: NEPA, NFMA, Cherokee National Forest 2004 Revised Land and Resource Management Plan, CWA, ESA

Summary of Analysis: In contrast to other condition-based management ("CBM") case studies, the Dry Forests Restoration Project offers an example of a lawful programmatic approach and complies with NEPA. The Forest Service identified common conditions in the South Zone of the Forest for which a broad consensus favors active management. It then issued a programmatic EA and FONSI that did not authorize any timber harvest or make site-specific, on-the-ground decisions, but set forth a general (but not fully prescriptive) flowchart for addressing problematic conditions and established conservative sideboards to protect against cumulative impacts to soil, water, and roadless area values.[5] Then, unlike in other CBM projects that do not

[1] Programmatic EA at 6.
[2] Programmatic Decision Notice at 4; Programmatic EA at 8.
[3] *See* 2020 Decision Notice at 3–11.
[4] *See* Unicoi Mountain Pre-Scoping Letter at 2–4.
[5] *See generally* Programmatic EA.

incorporate site-specific NEPA analysis, future site-specific decisions are each determined by a tailored EA that is tiered to the programmatic EA.[6] Because cumulative, repeating impacts were already analyzed at the programmatic stage, the site-specific EAs only analyze issues unique to that site, such as impacts to recreation and rare plants.[7] This programmatic approach gives the public formal, NEPA-compliant notice and comment opportunities before site-specific decisions are made and on-the-ground activity occurs, but each project can move forward quickly and efficiently.

Furthermore, the Forest Service's proactive collaboration on this project has allowed it to deliver on the efficiency goals that other CBM projects have been unable to achieve. The project supervisors sought input from a stakeholder group while developing the programmatic EA during the formal NEPA notice and comment process. Collaborating on project parameters and sideboards on the front end has saved the Forest Service time in its site-specific implementations. Within seven months of sending a scoping notice, the Forest Service finalized a decision on the programmatic EA without public objection. Just a year later, the first implementation project was signed—accompanied by its own "skinny" EA tiered to the programmatic EA—authorizing over 1,000 acres of commercial timber harvest, again without objection.[8]

Status: Decision signed by District Rangers Michael A. Wright & Stephanie Bland. Implementation, with one logging project in progress and a second in scoping.

Project Website: https://www.fs.usda.gov/project/?project=55303

[6] *See* Programmatic EA at 7.
[7] *Id.*
[8] *See* 2020 Decision Notice at 3–10.

Appendix 2

Excerpts of Appendices to S. Env't L. Ctr., W. Env't L. Ctr., The Wilderness Soc'y, Comment Letter on Proposed Rule, National Environmental Policy Act (NEPA) Compliance (84 Fed. Reg. 27,544, June 13, 2019) (Aug. 25, 2019)

August 25, 2019

Chief Vicki Christiansen
United States Forest Service
Sidney R. Yates Federal Building
201 14th St SW
Washington, DC. 20227
victoria.christiansen@usda.gov

Deputy Chief Chris French
United States Forest Service
Sidney R. Yates Federal Building
201 14th St SW
Washington, DC. 20227
cfrench@usda.gov

Secretary Sonny Perdue
Department of Agriculture
1400 Independence Ave SW
Washington, DC. 20250
agsec@usda.gov

Under Secretary James E. Hubbard, Natural Resources and Environment
Department of Agriculture
1400 Independence Ave SW
Washington, DC. 20250
Jim.Hubbard@osec.usda.gov

Submitted via email to: nepa-procedures-revision@fs.fed.us
Submitted via public participation portal to: https://www.regulations.gov/document?D=FS-2019-0010-0001

RE: Comments on *Proposed Rule, National Environmental Policy Act (NEPA) Compliance* (84 Fed. Reg. 27,544, June 13, 2019)

Dear Chief Christensen, Deputy Chief French, Secretary Perdue, and Under Secretary Hubbard:

On behalf of the undersigned organizations and individuals, we are pleased to provide the Forest Service with the attached comments on the agency's proposed rule regarding National Environmental Policy Act (NEPA) compliance, 84 Fed. Reg. 27,544 (June 13, 2019), RIN 0596–AD31. Our organizations collectively represent decades of experience with the Forest Service's implementation of NEPA across the spectrum of land management actions, including forest planning, vegetation, wildlife, mineral, range, aquatic, travel, and recreation management decisions. Our organizations and members would be adversely affected by this proposal, which would immediately eliminate important procedural rights that we and other members of the public rely on. The proposal would have far-reaching effects to the places we advocate for and help to steward.

We have extensive expertise regarding the Council on Environmental Quality's (CEQ) NEPA regulations, the Forest Service's NEPA regulations and procedures, and the body of federal case law interpreting the agency's legal obligations under NEPA. Our experience in agency decision-making processes, collaborative efforts, and as plaintiffs in NEPA litigation lends us unique insight into the promises and pitfalls of the Forest Service's NEPA policies and practices.

Many of our organizations provided comments on the Advanced Notice of Proposed Rulemaking.[1] Unfortunately, it is clear from the proposed rule that the Forest Service failed to incorporate nearly all of our suggestions for efficient environmental analysis and decision-making that involves the public in decisions about how its lands will be managed. Instead, the agency has released a proposed rule that brazenly attempts to remove the public from public land management decisions, and seeks to expand the scope and scale of land management without sufficient environmental analysis: this is not the type of decision-making required by NEPA, which requires transparency, accurate scientific data and analysis, and inclusion of the public - including local communities, Tribes, local governments, scientists, and many others who use, enjoy, and rely upon the National Forests for a variety of values - in federal agency decision-making.

The proposed rule appears to be in service of the present Administration's deregulatory agenda that serves to elevate the interests of extractive industries above the interests of the public. This agenda is particularly inappropriate on the national forests, which are owned in common by all Americans, not just a privileged few. The proposed rule would drastically reduce or eliminate public involvement in the management of their national forests, curtail the role of science in land management planning, and will ultimately undermine the credibility of the Forest Service as the "expert scientists" in the eyes of the public it was created to serve.

In its environmental analysis and decision making efforts, the Forest Service created considerable momentum for positive change. This rule squanders the opportunity. The Forest Service has ignored its own analysis that concludes that funding, staffing, training, and internal personnel policies (particularly those related to promotion and staff transitions) are at the heart of inefficient planning and project implementation. It has also ignored the successful efforts of its most talented staff to accomplish more, high-quality work by accepting stakeholder contributions. Instead, it offers a rule meant to avoid accountability, with a rationale that is not supported by the information before the agency. The Forest Service simply offers no basis to believe that eliminating public input can improve the timeliness or quality of its decisions.

Because the Forest Service has failed to prepare a sufficient administrative record to support its proposed rule, we anticipate that the rule – should it be finalized – will not survive judicial review. We therefore recommend that the agency abandon this rulemaking effort and focus on immediate needs such as forest plan revision, science-based restoration, monitoring, and internal cultural changes.

[1] *See*, Comments on *Advanced Notice of Proposed Rulemaking, Request for Comment, National Environmental Policy Act Compliance* (83 Fed. Reg. 302, Jan. 3, 2018) submitted by The Wilderness Society, Western Environmental Law Center, Southern Environmental Law Center, et al. (Feb. 1, 2018).

With regards on behalf of the undersigned organizations and individuals,

Susan Jane M. Brown, Public Lands Director & Staff Attorney
Western Environmental Law Center
4107 NE Couch Street
Portland, OR. 97232
brown@westernlaw.org
503-914-1323

Sam Evans, National Forests and Parks Program Leader
Southern Environmental Law Center
48 Patton Avenue, Suite 304
Asheville, NC 28801
sevans@selcnc.org
828-258-2023

Alison Flint, Director, Litigation & Agency Policy
The Wilderness Society
1660 Wynkoop St., Ste. 850
Denver, CO 80202
alison_flint@tws.org
303-802-1404

TABLE OF CONTENTS

I. Introduction.[2]

NEPA is rightfully referred to as the "Magna Carta" of environmental laws. Like that famous charter, NEPA enshrines fundamental values into government decision-making. NEPA has been a proven bulwark against hasty or wasteful federal decisions by fostering government transparency and accountability. It has ensured that federal decisions are at their core democratic, by guaranteeing meaningful public involvement. And it has achieved its stated goal of improving the quality of the human environment by relying on sound science to reduce and mitigate harmful environmental impacts.

We have seen agencies, including the Forest Service, conduct highly efficient yet robust NEPA analysis. These successes demonstrate that NEPA is inherently flexible, and the current law, CEQ regulations, and Forest Service regulations and procedures provide significant authority to conduct efficient yet meaningful analysis, including through the use of tiering, mitigated findings of no significant impact, appropriate application of existing categorical exclusions, and other tools. At the same time, we agree that many Forest Service environmental analysis and decision-making processes could be more efficient and satisfying to stakeholders and the agency. However, as we described in our comments on the ANPR and reiterated below, the primary problems with – and solutions to – the Forest Service's NEPA process lie not with the agency's NEPA regulations and procedures but with funding and

[2] There are 8 key appendices to these comments, which are identified as "Appendix [number]" and are appended to these comments. Other popularly available references are identified in footnotes by author, title, year, and electronic database address, where available. Still other references that are not popularly available are attached alphabetically.

Appendix 1: Re-Analysis of Restoration CE Projects (the 68 Projects Included in Appendix A to the Supporting Statement for Proposed CE 26)

Table 1: Appendix A Data and Analytics

Project	Comm	Thinning and Fuels Reduction	Rx Burn	Reforest	Habitat & Watershed	Invasives	Total harvest	Total project
Arrowhawk	878	2618			118	2900	3496	6514
Bald Fire	8447		5499	12200			8447	26146
Barnyard South	1590			860			1590	2450
Bigelow-Newaygo	2256	952	1446			108	3208	4762
Biggie	1527	1008	256				2535	2791
Black Locust	23	23	23			23	46	92
Bucks Lake	1291	543	222				1834	2056
Charlie Preston	977	307	82	82			1284	1448
Cherokee Park	3124	2004					5128	5128
Davy Crockett			69000					69000
Deep Creek						11		11
Deer Pen	408	128				7	536	543
Dry Restoration	748						748	748
East Wedge	4976	695	4564				5671	10235
Elkhorn	2766		2191				2766	4957
Escalante	10525	11625					22150	22150
French Fire	3387	221		3000		32	3608	6640
Gooseberry	2246	126	2271				2372	4643
Gordon Hill	1466	1188	95				2654	2749
Grass Flat	200	1145	107	83			1345	1535
Grizzly Fire	3025			1837			3025	4862
Hams Fork	7892		730				7892	8622
Hopkins Prairie	1000						1000	1000
Interior	16638	106	3312		829		16744	20885
Iron Springs	4121	769		154			4890	5044
Julius Park	675	89					764	764
Junction	8964	12280	5738				21244	26982
Keola	371	401	139	11			772	922
Kidhaw	560	545	820				1105	1925
Larson	24574	1822	4906				26396	31302
Lemon Butte	603	43		55			646	701
Lower Skokomish	4484						4484	4484

Macedonia	8121						8121	8121
Marshall Woods	266	1178	1055	450			1444	2949
Martin Creek	774	338		929			1112	2041
Middle Bugs	705	114	642				819	1461
Millsteck	1989		1673	2956	160	70	1989	6848
Mitchell Spring	771	626		108			1397	1505
Morrison Run	1401	536	370	451		442	1937	3200
Mower Tract		6358			54		6358	6412
North Heber	3730						3730	3730
North Shore	3190	3785	20				6975	6995
Ocala		352					352	352
Pine Ridge	7496	10972	12708	400	1168		18468	32744
Pipeline	1944	952		461			2896	3357
Red Hill	1448	88					1536	1536
Reedy	1275						1275	1275
Renshaw	4970	457	663				5427	6090
Roy Creek	2550	865	5582			200	3415	9197
Sagehen		2627	2350				2627	4977
Salmon West	2529	819		1684		188	3348	5220
Sandbox	2185	2097	7465				4282	11747
Shores	1460	117					1577	1577
Smith Mountain	3032	2781	8970	572		50	5813	15405
Soldier Bay	2062	1434		243			3496	3739
South Bridger	250						250	250
South Summit II	2350	1000	6600				3350	9950
Southern Creek Ouachita River	1838	835	5460	225			2673	8358
Spring Gulch	256	66	229				322	551
Sulphur Forest	613						613	613
Telogia	1631	77					1708	1708
Toll Joe	944	139					1083	1083
Upper Lake Winona	2965	8097	15959	1555			11062	28576
Upper South Fork Skokomish	880						880	880
Watson Hill LLC	8116	268					8384	8384
West Slope		4546					4546	4546
Westside Collaborative	1349	978					2327	2327
Windy Project	2699	549	186				3248	3434
Average	**3153.7**	**1797.8**	**5039.2**	**1348.4**	**465.8**	**366.5**	**4351.8**	**7253.4**
Median	**1891.0**	**769.0**	**1559.5**	**451.0**	**160.0**	**70.0**	**2663.5**	**3734.5**

Table 8: Summary of Changes to Appendix A Projects

Project	Explicitly due to Public Comment	Due solely to Internal review or Unexplained	Non-substantive (Analysis or Informational)	Notes
Bald Fire	X			Adjusted treatment acres from SL to EA after fieldwork (see EA p.12). Added Alternative 3 to address public concern regarding commercial timber harvest (see EA p. 16).
Barnyard South	X			Reduced miles of road construction/reconstruction from SL to EA. Added alternatives in response to public concerns about road construction (Alt. 3), openings in forest canopy caused by logging (Alt. 4), and the need for "real restoration" (Alt. 5) (see EA p. 9-10). Analyzed Alts. 3, 4 in detail. Selected Alt. 2. Added documentation to project record in response to an objection (see DN p. 1).
Bigelow-Newaygo	X			Added Alternative 3 to address public concerns. Alternative 3 included the following: 1) Reduced acres of red pine stands proposed for conversion to prairie by changing treatment to thinning. 2) Dropped stands proposed for savanna restoration. 3) Dropped new road construction from southern part of project area; retained roads proposed for closure based solely on the fact the roads were duplicative (see EA p. 1-9 - 1-10). Selected Alt. 3 with some modifications (see DN p. 2). Modifications included adding 24 acres of savanna restoration (see DN p. 8-9).
Biggie	X			Changed 2 treatment areas from commercial to noncommercial treatment; changed follow-up fuels treatments of two treatment areas; dropped 772 acres of roadside hazard tree treatment (see EA p. 7). Updated timber volume and economic analysis as a result of internal review (see EA p. 7). From EA to DN, dropped hazard tree treatments, which reduced noncommercial harvest from 1,718 to 1,008 acres.
Black Locust		X		Reduced treatment area from original SL to EA (see EA p. 1-2).
Bucks Lake	X			Added Alternative D in response to scoping (EA p. 8). From EA to DN agency dropped 15.2 acres of mechanical thinning (590-574.8), dropped 5.4 acres of radial thinning (155.8-150.4), and added 22.2 acres of group selection treatments. USFS received two objections on the project (DN p. 12). Changed commercial harvest treatments in order to resolve objections.
Charlie Preston	X			From SL to EA: added public firewood gathering, provided more dispersed camping, reduced timber harvest along private property boundary, and provided more explanation. Added Alternative C to address public concerns about amount and types of timber harvest and amount of road construction (see EA p. 11). From EA to DN: selected Alternative C
Cherokee Park	X			Agency performed revised travel analysis in response to scoping. Agency added design criteria to address concerns about timber harvest impact on viewshed (see DN p. 3).
Davy Crockett		X		Dropped RX fire in all areas in which the management emphasis was not for red cockaded woodpecker, from 105,941 acres to 69,000 acres (see EA p. 1).
Deep Creek	X			Agency added project-specific design measures for monarch butterfly, sage grouse, and water quality (see DN p. 6).
Deer Pen	X			Removed used of herbicide, glyphosphate, in response to scoping comments. Resulted in 63-acre decrease in project size (see EA p. 32).
Dry Restoration			X	Added more information to descriptions of proposed activities in response to scoping.
East Wedge	X			From SL to EA: reduced commercial treatments and increased Rx fire. Agency added Alternative C, which reduced amount of treated acres in response to public comment. Selected Alternative C and modified it by

Project	Explicitly due to Public Comment	Due solely to Internal review or Unexplained	Non-substantive (Analysis or Informational)	Notes
				changing treatments and removing treatment acres from selected action (see DN p. 2-4). Removed Canada lynx habitat from areas proposed for commercial harvest. Agency removed all new road construction from proposed action. Removed areas along US-Canada border from areas proposed for commercial harvest. Removed re-designating a forest road from proposed action.
Elkhorn	X			Changed types of vegetation treatments applied to some areas. Modified travel management activities associated with project.
Escalante	X			Reanalyzed proposed timber management in unroaded and lightly roaded areas and excluded areas from consideration if accessing the areas would require "extensive temporary road construction."
French Fire	X			Developed Alternative 4 in response to public comments re. California Spotted Owl. Developed Alternative 5 in response to public comments. Developed Alternative 3 in response to public comments regarding hazards posed by herbicides. After EA released, removed herbicide treatment from one area in response to scoping comments provided by USFWS. USFWS comments pertained to California red-legged frog (see DN p. 5).
Gooseberry		X		Dropped construction of new temporary road in order to avoid a stream crossing (see DN p. 2).
Grass Flat	X			Agency's preferred alternative in EA was "Modified Alternative B," which was developed in response to public comment (EA Ch. 2.5, p. 10). EA Table 2.8 depicts difference in commercial harvest between original proposed action and modified Alternative B. Agency reduced total treatment acres from 1,808 to 1,602 (compare EA Table 2.2 to EA Table 2.5). Agency changed treatments in many areas, emphasizing more basal area retention for spotted owl. From EA to DN agency shifted 29 acres of mastication to hand-cut pile and burn treatment.
Grizzly Fire			X	Agency developed Alternative 3 in response to public comments on scoping notice (EA p. 12). Agency selected Alternative 2.
Hams Fork	X			Agency developed proposal that was presented in scoping letter with a collaborative working group (see DN p. 5-6). Original proposal was to treat 10,414 acres (see EA p 19), including 12 miles of roads (8 miles in Invent. Roadless Area). Collaborative group (w/ USFS) reduced size of proposed action to 8,622 acres in order to avoid constructing 8 miles of roads in an Invent. Roadless Area (see EA p. 19; DN p. 6). Received 4 objections to proposal (DN p. 4). Objection Reviewing Officer tasked District with explaining how the project complied with the 2001 Roadless Rule and with various exemptions from restrictions on timber harvest (DN p. 7). District's response at DN p. 7-10.
Interior	X			Released first scoping letter 12/20/2012. Released second scoping letter 07/25/2013. From first to second SL, prescribed fire reduced by 398 acres, timber harvest reduced by 326 acres, road construction increased by 5 miles, wildlife resource improvements reduced by 180 acres. From SL2 to EA, hazardous fuels treatments increased by 108 acres, timber harvest reduced by 141 acres. From EA to DN hazardous fuels treatments decreased by 16 acres.
Iron Springs	X			Changed proposed action treatment acres from SL to EA (compare SL p. 4 to EA Table 9). Created Alternative A in response to public comment on scoping letter (EA p. 7).
Junction	X			From SL to EA: maintained the same total acres treated: 16,034 (see SL Table 1; EA Table 2). Developed Alternative 3 in response to public comments on scoping notice (see EA, p. 12). Alternative 3 intended to favor habitat for three woodpecker species (see EA, p. 12). Selected Alternative 3 Modified (see DN, p. 1:

Project	Explicitly due to Public Comment	Due solely to Internal review or Unexplained	Non-substantive (Analysis or Informational)	Notes
				"Overstory, understory, and fuels treatments may occur on the same acres."). Modification to reduce commercial harvest from 9,864 (see EA p. 29) to 8,964 (see DN p. 2)
Kidhaw		X		Midstory control by mulching decreased from 600 acres in SL and EA to 545 acres in DN.
Larson	X			From SL to EA: added 2 miles of temporary road construction. Added Alternative 3 in response to public input on draft EA (see EA p. 12). Modified Alternative 3 in final EA to address public concern about mistletoe infected trees (see EA, p. 26). Selected Alternative 2, with modifications. Modified Alternative 2 by removing all temporary road construction from the proposal (see DN p. 4).
Lemon Butte	X			Prior to release of EA, reduced commercial harvest from 1650 acres to 603 acres. USFS dropped 6058 acre prescribed burn from SL to EA. Dropping prescribed burn was internal decision (see EA p. 21). Reduced commercial harvest from 1,650 acres to 603 acres in response to public input and internal review (see EA p. 17).
Lower Skokomish	X			Multiple modifications to treatment acres and treatment types from SL to EA. Original proposal had a 13,500 acre footprint. SL reduced that to 4,900. Proposed action in EA included 4,237 acres. SL included 5 miles road construction. EA included 15.6 miles construction and 3.1 reconstruction.
Macedonia			X	Developed a no herbicide alternative in response to public concern (see EA p. 10).
Marshall Woods	X			Developed Alternative N in response to public comment but did not analyze it in detail (see EA p. 27). Developed Alternatives C and D in response to public comment (see EA p. 26). Agency implemented a hybrid of Alternatives C and D (see DN p. 1).
Martin Creek	X			Developed Alternative C in response to public comment (see EA p. 2-1). Modified selected alternative in response to internal and public comment (see DN p. 8). Reduced total timber harvest acres, reduced precommercial thinning acres, reduced acres of tree planting (see DN Table 1).
Middle Bugs	X			SL proposed 712 acres commercial harvest. DN contained 705/114 commercial/noncommercial harvest. Within the commercial harvest acres, the DN included 642 acres of Rx burn. Developed Alternatives C-E in response to public comment (see EA p. 6-7). Implemented Alternative C (see DN p. 1).
Millsteck	X			SL included 2036 acres of even-age commercial harvest. EA reduced even-age commercial harvest to 2,033 acres. From SL to EA, prescribed fire changed from 1,727 to 1,795 acres. Reforestation changed from 3,114 to 3,090 acres from SL to EA.
Mitchell Spring	X			Removed pinyon-juniper treatment in response to public comment and agency fieldwork, resulting in a modified proposed action (see EA, p. 16). Developed Alternative 3 in response to public comment (see EA p. 27). Selected the modified proposed action for this project (see DN p. 1).
Morrison Run	X			From SL to EA to DN, commercial harvest changed from 1325 acres, to 1,399 acres, to 1,401 acres. RX Burn acres went from 429 to 370 to 370 acres. Developed Alternative 3 in response to public comment and IDT concerns regarding amount of timber harvest and associated road building (see EA p. 18).
Mower Tract	X			Scoped non-commercial treatments over 12,597 acres. Agency included 12.597 acres in the EA. Following EA release, agency engaged in ESA Sect. 7 consultation. As a result of consultation, the agency removed 6,239 acres from the project in order to avoid Cheat Mtn. Salamander habitat (see DN p. 11).
North Heber			X	Added alternative in response to public comments (see EA p. 13).
North Shore	X			From EA to DN: reduced size of prescribed burning by 40 acres.
Pine Ridge	X			From SL to EA: removed ponderosa pine planting from proposed action and refined design features for

Project	Explicitly due to Public Comment	Due solely to Internal review or Unexplained	Non-substantive (Analysis or Informational)	Notes
				proposed activities (see EA p. 4). Modified selected action (see DN p. 2).
Pipeline		X		Modified acres proposed for 4 types of treatment between Sl and EA. Comm Trt 1: 451 to 461 acres; Comm Trt 2: 1209 to 1142 acres; Comm Trt 3: 336 to 341 acres; Non-comm Trt 1: 1203 to 952 acres. Modifications from SL to EA.
Red Hill			X	Developed alternative in response to scoping (see EA p. 1-17).
Reedy		X		Scoped 1,350 acres and proposed 1,275 in EA. Added drum chopping in all treatment areas to be completed after commercial harvest and before herbicide treatments.
Renshaw	X			Added 13 acres of commercial harvest from SL to EA. Added 3 miles of road construction and 33 miles of road reconstruction from SL to EA.
Sagehen	X			Dropped one unit from project because of public comment regarding the effect of underburning on goshawk habitat (see EA p. 27).
Salmon West		X		Agency removed a 19-acre stand from selected action (see DN p. 2).
Sandbox	X			Developed Alt. 3 in response to scoping (comparison of SL to EA). Agency incorporated two elements from Alt. 3 into the selected action (Alt. 2) (see DN p. 1).
Shores		X		Dropped 48 acres of timber harvest and 0.4 miles of temp road construction between SL and EA (see EA p. 5, Sect. 1.4.1).
Smith Mountain			X	Developed no-herbicide alternative in response to scoping (see EA p. 21).
Soldier Bay	X			Dropped 500 acres - in 15 stands - of commercial harvest from EA to DN. Dropped all treatment from 8/15 stands (see DN Table 1). Decreased intensity of thinning from 40 BA to 50 BA for all commercial harvest. Dropped acres due to objection to EA (see DN p. 8). USFS received one objection to the EA/DN (DN p. 8). Changes described in DN Table 1 were made to resolve disagreement between agency and objector. Changes removed thinning treatment from 500 acres (234 acres treated with herbicide only; 266 acres removed from all treatment). Thinned density for all treated areas increased from 40 BA to 50 BA (DN p. 1 Table 1).
South Bridger	X			Added mitigation in response to objection (see DN p. 5).
South Summit II	X			Acres reduced from 2,350 proposed to 2,180 in DN (see DN p. 3).
Southern Creek Ouachita River		X		Added 18 acres commercial harvest and 60 acres RX fire.
Spring Gulch	X			USFS received 1 appeal on original EA (see DN p. 2-3). USFS withdrew DN in order to gather more information (see DN p. 3). Agency revised EA and released revised EA. From EA to DN: reduced noncommercial timber harvest and added prescribed burn.
Sulphur Forest	X			Modified proposed action due to internal scoping (EA p. 15). Modified selected action (DN p. 1). Total project area reduced from 1,700 to 1,677 acres.

Project	Explicitly due to Public Comment	Due solely to Internal review or Unexplained	Non-substantive (Analysis or Informational)	Notes
Telogia	X			Modified treatments from EA to DN based on public input and two objections. Changed from clearcut to firewood harvest and herbicides on 46 acres; dropped 20 acres from the project; changed 98 acres from clearcut to clearcut with reserves; and changed 79 acres from 'third-row harvest' to 'thin from below to 50 BA (see DN Table 1).
Toll Joe	X			Dropped 163 acres of commercial and 45 acres of noncommercial harvest. Reduced road construction from 1.5 to 1.3 but added 5.5 miles of reconstruction.
Upper Lake Winona		X		Reduced miles of fire line maintenance from 30 to 28.
Upper South Fork Skokomish	X			Reduced commercial harvest from 1,050 acres to 880 acres.
West Slope	X			Added two alternatives in response to scoping (see SL p. 2). The proposed action (Alt. 2) included 2,350 acres of mastication. Alternative 3, which the agency identified as its preferred alternative (see EA p. 12), included 4,546 acres of mastication because Alternative 3 dropped the use of herbicides in response to public comment (see SL p. 2; DN p. 4).
Westside	X			Commercial harvest in SL was 607/698/44 acres (see SL Table 1). In EA, agency adjusted commercial treatments to 506/799/44 acres (see EA p. 2-1). This change was described as Modified Alternative 2 in EA. From EA to DN the agency retained 0.68 miles of roads intended for decommissioning. Roads were retained due to public comment and subsequent agency fieldwork (see EA p. 1-15).
Windy	X			From EA to DN, commercial harvest was 3,958 to 2,699. Noncommercial treatment acres were 334 to 549. Burn acres were 390 to 186. Road construction went from 7.8 to 9 miles. Modified the selected Alternative (Alt. 3) by dropping 110 acres from the project and adding 112 of treatments to the project. Added reforestation to the selected action.
Total	**43**	**11**	**6**	

Chart: Relative Effect of Public Input on Appendix A Projects (n=68)

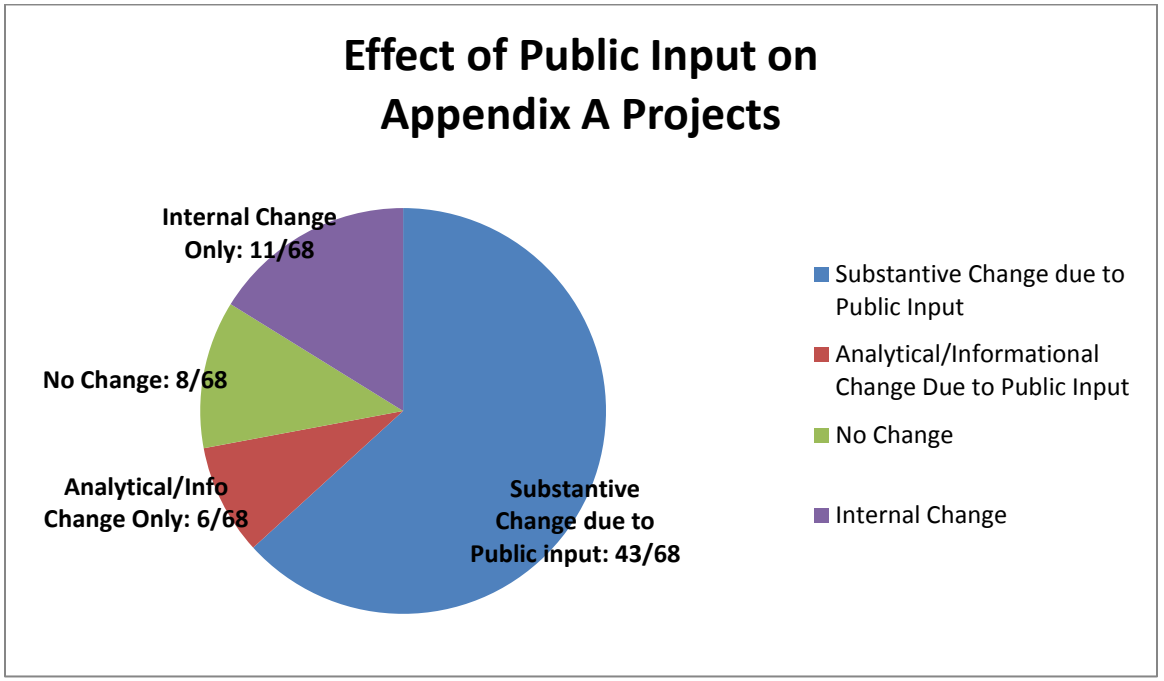
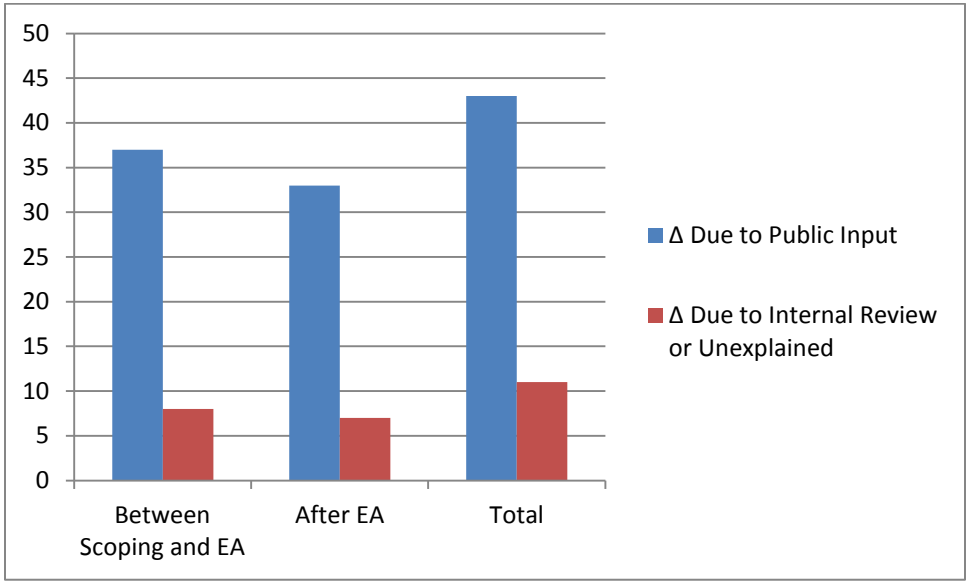


Chart: Number of Projects from Appendix A Modified in Response to Public Comment and due to Internal Review at Different Stages of Project Development



Southern Appalachian Project Analysis

Table 1: Net Changes in Southern Appalachian Projects Completed with EAs (2009-2019)

Project (Forest/District)	Total Harvest Proposed Acres (A)	Total Harvest Decision Acres (B)	Δ Total Harvest Acres (B-A)	% Change Total Harvest [(B-A)/A]	Commercial Harvest Proposed Acres (A)	Commercial Harvest Decision Acres (B)	Δ Commercial Harvest Acres (B-A)	% Change Commercial Harvest [(B-A)/A]
04-136 - East Nottely Watershed Project (Chattahoochee / Blue Ridge)	1153	1108	-45	-3.90%	566	1108	542	95.76%
Cooper Creek Watershed Project (Chattahoochee / Blue Ridge)	3754	2058	-1696	-45.18%	2315	1397	-918	-39.65%
Forest Health Stewardship (Chattahoochee / Blue Ridge)	713	582	-131	-18.37%	713	528	-185	-25.95%
05-183 - Eastside Forest Health - Five Years (Chattahoochee / Chattooga River)	6800	6663	-137	-2.01%	6800	6663	-137	-2.06%
Upper Warwoman Landscape Management Project Proposal (Chattahoochee / Chattooga River)	1233	1115	-118	-9.57%	1168	785	-383	-32.79%
Sumac Creek Watershed Project (Chattahoochee / Conasauga)	1710	1951	241	14.09%	1681	1776	95	5.65%
Fightingtown Creek Wildlife Habitat Project (Chattahoochee / Conasauga)	436	394	-42	-9.63%	436	340	-96	-22.02%
Upper West Armuchee Creek Watershed (Chattahoochee / Conasauga)	1870	1813	-57	-3.05%	1870	1640	-230	-12.30%
Chattahoochee Totals	**17669**	**15684**	**-1985**	**-11.23%**	**15549**	**14237**	**-1312**	**-8.44%**
Dinkey (Cherokee / Ocoee)	1194.4	912	-282.4	-23.64%	751	428	-323	-43.01%
Spring Creek (Cherokee / Ocoee)	212	212	0	0.00%	212	212	0	0.00%
Conacat (Cherokee / Tellico)	1666	873	-793	-47.60%	13	29	16	123.08%
Greasy Creek (Cherokee / Tellico)	390	390	0	0.00%	390	390	0	0.00%
Middle Citico (Cherokee / Tellico)	971	872	-99	-10.20%	971	872	-99	-10.20%
Tellico (Cherokee / Tellico)	722	772	50	6.93%	622	622	0	0.00%
Clarke Mountain Project (Cherokee / Unaka)	230	230	0	0.00%	230	230	0	0.00%
Meadow Creek Environmental Assessment (Cherokee / Unaka)	831	784	-47	-5.66%	231	184	-47	-20.35%
Paint Creek Project (Cherokee / Unaka)	1298	1837	539	41.53%	529	623	94	17.77%
Doe Project (Cherokee / Watauga)	267	539	272	101.87%	257	357	100	38.91%

Project (Forest/District)	Total Harvest Proposed Acres (A)	Total Harvest Decision Acres (B)	Δ Total Harvest Acres (B-A)	% Change Total Harvest [(B-A)/A]	Commercial Harvest Proposed Acres (A)	Commercial Harvest Decision Acres (B)	Δ Commercial Harvest Acres (B-A)	% Change Commercial Harvest [(B-A)/A]
Offset Project (Cherokee / Watauga)	2185	2214	29	1.33%	696	723	27	3.88%
Pond Mountain II Project (Cherokee / Watauga)	825	809	-16	-1.94%	296	310	14	4.73%
Cherokee Totals	**10791.4**	**10444**	**-347.4**	**-3.22%**	**5198**	**4980**	**-218**	**-4.19%**
Harmon Den (NPNF / Appalachian)	1000	961	-39	-3.90%	306	267	-39	-12.75%
Franks Creek (NPNF / Cheoah)	1196	1128	-68	-5.69%	831	763	-68	-8.18%
Upper Santeetlah (NPNF / Cheoah)	1026	311	-715	-69.69%	442	292	-150	-33.94%
Armstrong (NPNF / Grandfather)	1269	1068	-201	-15.84%	563	362	-201	-35.70%
Roses Creek (NPNF / Grandfather)	535	535	0	0.00%	459	459	0	0.00%
Southside (NPNF / Nantahala)	371	317	-54	-14.56%	352	317	-35	-9.94%
Haystack (NPNF / Nantahala)	794.5	618	-176.5	-22.22%	462	384	-78	-16.88%
Copeland (NPNF / Nantahala)	389	371	-18	-4.63%	389	371	-18	-4.63%
Buckwheat (NPNF / Nantahala)	173	173	0	0.00%	173	173	0	0.00%
BBQ (NPNF / Nantahala)	279	234	-45	-16.13%	256	234	-22	-8.59%
Mossy Oak (NPNF / Nantahala)	323	298	-25	-7.74%	245	220	-25	-10.20%
Horse Bridge (NPNF / Nantahala)	197	197	0	0.00%	0	136	136	0.00%
Wetface (NPNF / Nantahala)	198	198	0	0.00%	157	157	0	0.00%
Fatback (NPNF / Nantahala)	632	538	-94	-14.87%	423	329	-94	-22.22%
Cane Pole (NPNF / Nantahala)	636	559.5	-76.5	-12.03%	334	323.5	-10.5	-3.14%
Brushy Ridge (NPNF / Pisgah)	1894	1666	-228	-12.04%	482	369	-113	-23.44%
Courthouse (NPNF / Pisgah)	1437	1351	-86	-5.98%	499	418	-81	-16.23%
Femelschlag (NPNF / Pisgah)	254	254	0	0.00%	145	145	0	0.00%
Lower End (NPNF / Tusquitee)*	735		-735		735		-735	
Brushy Flats (NPNF / Tusquitee)	242	242	0	0.00%	242	242	0	0.00%
Long Buck (NPNF / Tusquitee)	237	239	2	0.84%	237	239	2	0.84%
Prospect Hamby (NPNF / Tusquitee)	335	335	0	0.00%	320	320	0	0.00%
Thunderstruck (NPNF / Tusquitee)	335	290	-45	-13.43%	335	290	-45	-13.43%
Fontana (NPNF / Tusquitee)	1140	998	-142	-12.46%	721	579	-142	-19.69%
NPNF Totals	**15627.5**	**12881.5**	**-2746**	**-17.57%**	**9244**	**7389.5**	**-1854.5**	**-20.06%**
Wells Branch (GWJ / Clinch)	490	461	-29	-5.92%	490	461	-29	-5.92%
Hardwood Restoration (GWJ / Clinch)	100	92	-8	-8.00%	100	92	-8	-8.00%
Nettle Patch (GWJ / Clinch)	2622	1125	-1497	-57.09%	1449	577	-872	-60.18%
Tub Run (GWJ / ED)	769	766	-3	-0.39%	534	531	-3	-0.56%

Project (Forest/District)	Total Harvest Proposed Acres (A)	Total Harvest Decision Acres (B)	Δ Total Harvest Acres (B-A)	% Change Total Harvest [(B-A)/A]	Commercial Harvest Proposed Acres (A)	Commercial Harvest Decision Acres (B)	Δ Commercial Harvest Acres (B-A)	% Change Commercial Harvest [(B-A)/A]
Rich Mountain (GWJ / ED)	380	380	0	0.00%	380	380	0	0.00%
Fork Mountain (GWJ / ED)	635	635	0	0.00%	635	635	0	0.00%
White Rocks (GWJ / ED)	271	374	103	38.01%	239	342	103	43.10%
Pulaski (GWJ / GP)	402	393	-9	-2.24%	321	312	-9	-2.80%
Panther Mountain (GWJ / GP)	422	377	-45	-10.66%	422	377	-45	-10.66%
Gilmore Hollow (GWJ / GP)	674	669	-5	-0.74%	362	357	-5	-1.38%
Poplar Cove (GWJ / GP)	507	487	-20	-3.94%	143	123	-20	-13.99%
Tri County (GWJ / James River)	376	376	0	0.00%	376	376	0	0.00%
Little Mountain Mad Anne (GWJ / James River)	744	744	0	0.00%	220	220	0	0.00%
Brattons Run (GWJ / James River)	455	430	-25	-5.49%	455	430	-25	-5.49%
Humpback (GWJ / James River)	221	221	0	0.00%	221	221	0	0.00%
Lower Cowpasture (GWJ / James River)	3705	3422	-283	-7.64%	2207	1909	-298	-13.50%
Barb Gap (GWJ / Lee)	682	662	-20	-2.93%	537	517	-20	-3.72%
Church Mountain (GWJ / Lee)	75	75	0	0.00%	75	75	0	0.00%
SR 622 Bear (GWJ / Mt Rogers)	289	279	-10	-3.46%	114	104	-10	-8.77%
Woodpecker (GWJ / Mt Rogers)	250	285	35	14.00%	193	140	-53	-27.46%
Tom Lee Draft (GWJ / North River)	464	464	0	0.00%	292	292	0	0.00%
Hodges Draft (GWJ / North River)	182	182	0	0.00%	182	182	0	0.00%
Wall and Marshall Tracts (GWJ / North River)	185	185	0	0.00%	185	185	0	0.00%
West Side (GWJ / North River)	950	833	-117	-12.32%	750	633	-117	-15.60%
Moffett Creek Grouse (GWJ / North River)	591	591	0	0.00%	402	402	0	0.00%
Rocky Spur (GWJ / North River)	292	267	-25	-8.56%	245	220	-25	-10.20%
Back Draft (GWJ / North River)	866	805	-61	-7.04%	566	505	-61	-10.78%
Mares Run (GWJ / Warm Springs)	267	233	-34	-12.73%	203	169	-34	-16.75%
GWJ Totals	**17866**	**15813**	**-2053**	**-11.49%**	**12298**	**10767**	**-1531**	**-12.45%**
Southern Appalachian Totals	**61953.9**	**54822.5**	**-7131.4**	**-11.51%**	**42289**	**37373.5**	**-4915.5**	**-11.62%**

* The proposed Lower End project was split into three smaller projects (Brushy Flats, Long Buck, and Prospect Hamby) and was reduced by 735 acres of harvest based on concerns from environmental stakeholders that the District lacked the capacity to assess the impacts of such a large project. Lower End was not included as a separate project in this analysis because it did not go to a decision, but we document these acres in this table because the primary documents for the smaller projects do not otherwise show this change.

Table 2: Southern Appalachian Projects – Commercial and Total Harvest Acres and Analytics (n=71)

GW/Jeff comm.	GW/Jeff total	NPNF comm.	NPNF total	CNF comm.	CNF total	Chatt. comm.	Chatt. total
461	461	267	961	428	912	1108	1108
92	92	763	1128	212	212	1397	2058
577	1125	292	311	29	873	528	582
531	766	362	1068	390	390	6663	6663
380	380	459	535	872	872	785	1115
635	635	317	317	622	772	1776	1951
342	374	384	618	230	230	340	394
312	393	371	371	184	784	1640	1813
377	377	173	173	623	1837	**14237**	**15684**
357	669	234	234	357	539	**340**	**394**
123	487	220	298	723	2214	**6663**	**6663**
376	376	136	197	310	809	**1779.63**	**1960.50**
220	744	157	198	**4980**	**10444**	**1252.5**	**1464**
430	430	329	538	**29**	**212**		
221	221	323.5	559.5	**872**	**2214**		
1909	3422	369	1666	**415.00**	**870.33**		
517	662	418	1351	**373.5**	**796.5**		
75	75	145	254				
104	279	242	242				
140	285	239	239				
292	464	320	335				
182	182	290	290				
185	185	579	998				
633	833	**7389.5**	**12881.5**				
402	591	**136**	**173**				
220	267	**763**	**1666**				
505	805	**321.28**	**560.07**				
169	233	**304.5**	**326**			**All Comm**	**All Total**
10767	**15813**				**Total**	**37373.5**	**54822.5**
75	**75**				**Min**	**29**	**75**
1909	**3422**				**Max**	**6663**	**6663**
384.54	**564.75**				**Average**	**526.39**	**772.15**
349.5	**411.5**				**Median**	**357**	**535**

Table 3: Total Harvest (Comm. and Noncomm.) for Projects in the Southern Appalachians, 2009-2019, by Forest

Forest	Number of Projects	# Acres Min.	# Acres Max	#Acres Average	#Acres Median
GW/Jeff	28	75	3422	565	412
NPNF	23	173	1351	561	326
Chattahoochee	8	394	6663	1961	1464
Cherokee	12	212	2214	870	796.5
All	71	75	6663	772	535

Chart 1: Frequency Distribution of Project Sizes in the Southern Appalachians, 2009-2019

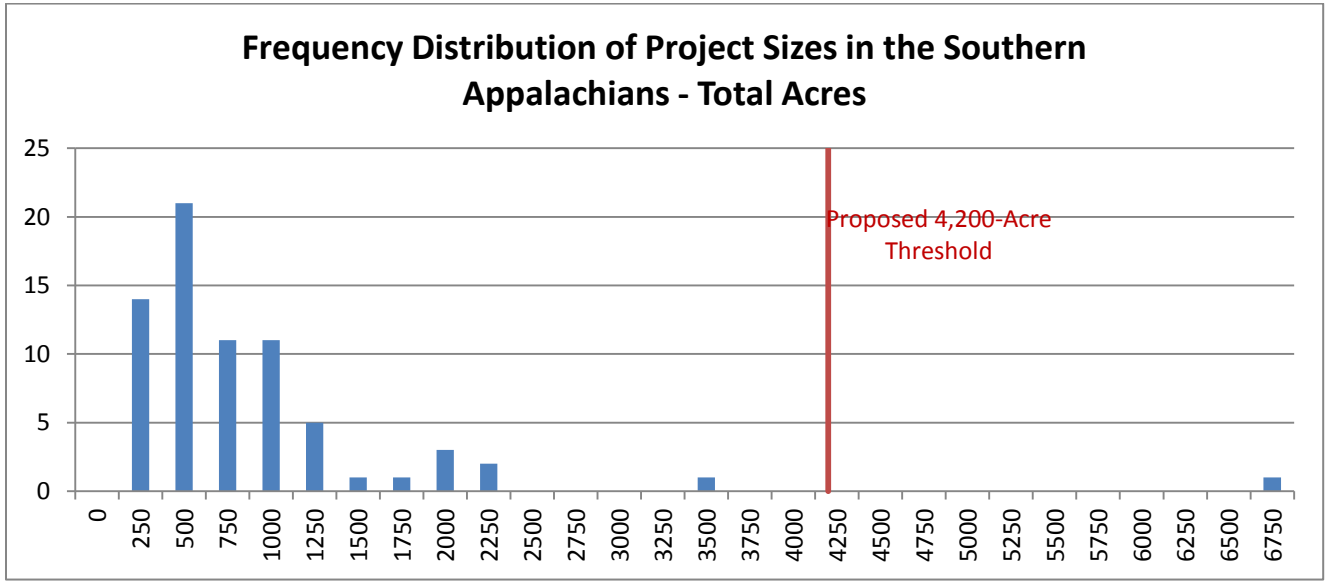


Table 4: Net Changes to Project Activities During EA Process by Forest

Forest	Δ Commercial Harvest (acres)		Δ Total Harvest (acres)		Δ Permanent Roads (miles)		Δ Temporary Roads (miles)	
GJ/Jeff	-1,531	-12.45%	-2,053	-11.49%	0.45	2.70%	-3.48	-8.20%
NPNF	-1,854.5	-20.06%	-2,746	-17.57%	-6.35	-74.1%	-1.97	-9.30%
Chattahoochee	-1,312	-8.44%	-1,985	-11.23%	0	0.00%	1.7	5.33%
Cherokee	-218	-4.19%	-347.4	-3.22%	1.2	22.86%	-0.5	-4.14%
Total	-4,915.5	-11.62%	-7,131.4	-11.51%	-4.7	11.03%	-4.25	-3.71%

Table 5: Net and Gross Changes in Total and Commercial Harvest by Forest

Forest	Combined Increases in Total Harvest	Combined Decreases in Total Harvest	Net Change Total Harvest	Gross Change Total Harvest	% Gross Change Total Harvest	Combined Increases in Commercial Harvest	Combined Decreases in Commercial Harvest	Net Change Commercial Harvest	Gross Change Commercial Harvest	% Gross Change Comm. Harvest
Chattahoochee	241	-2226	-1985	2467	14.0%	637	-1949	-1312	2586	16.2%
Cherokee	890	-1237.4	-347.4	2127.4	19.7%	251	-469	-218	720	13.9%
NPNF	2	-2748	-2746	2750	17.6%	2	-1856.5	-1854.5	1858.5	20.1%
GW/Jeff	138	-2191	-2053	2329	13.0%	103	-1634	-1531	1737	14.1%
All	**1271**	**-8402.4**	**-7131.4**	**9673.4**	**15.6%**	**993**	**-5908.5**	**-4915.5**	**6901.5**	**16.3%**

Chart 2: Acres Added and Dropped from Projects During EA Process

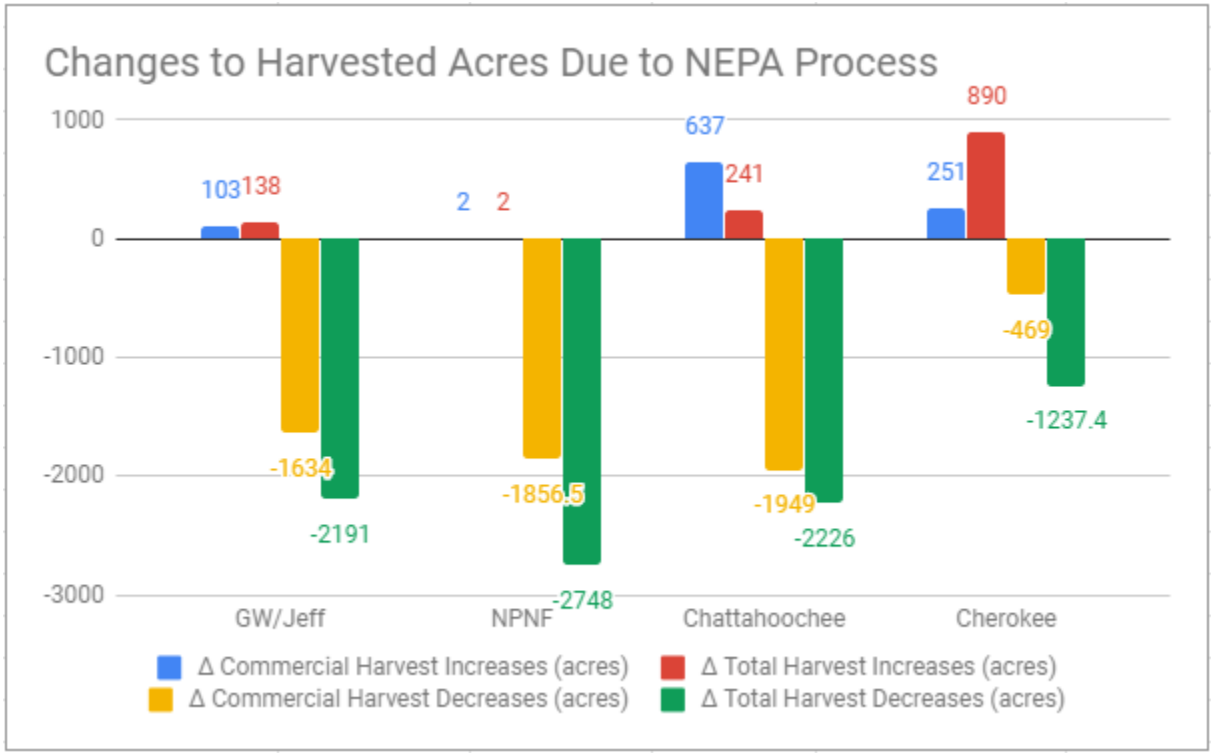


Table 6: Percent Net and Gross Changes in Total and Commercial Harvest by Forest

Forest	Δ Commercial Harvest Increases (acres)	% Δ Commercial Harvest Increases	Δ Total Harvest Increases (acres)	% Δ Total Harvest Increases	Δ Commercial Harvest Decreases (acres)	% Δ Commercial Harvest Decreases	Δ Total Harvest Decreases (acres)	% Δ Total Harvest Decreases
Chattahoochee	637	4.10%	241	1.36%	-1949	-12.53%	-2226	-12.60%
Cherokee	251	4.83%	890	8.25%	-469	-9.02%	-1237.4	-11.47%
NPNF	2	0.02%	2	0.01%	-1856.5	-20.66%	-2595	-18.42%
GW/Jeff	103	0.84%	138	0.77%	-1634	-13.29%	-2191	-12.26%
All	**993**	**2.38%**	**1,271**	**2.05%**	**-5908.5**	**-13.97%**	**-8402.4**	**-13.56%**

Chart 3: Percent Change in Acres (Dropped and Added) During EA Process

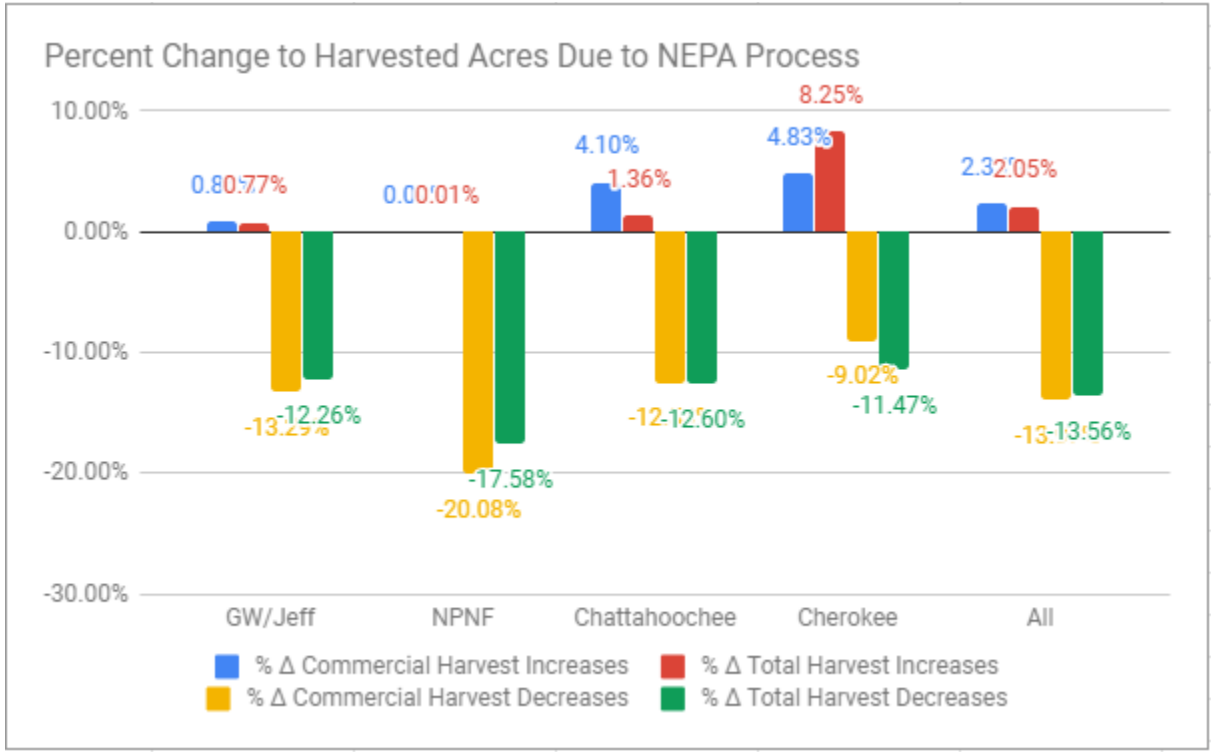


Table 7: Mitigation Added During EA Process (Number of Projects by Issue)

Forest	Ch. 70		Old growth		PETS		State nat. area		Water quality		Soil/Slope	
	Present	Mitigated	Present	Mitigated	Present	Mitigated	Present	Mitigated	Present	Mitigated	Present	Mitigated
GW/Jeff	4	2	6	6	5	4	1	1	9	9	9	9
NPNF	10	2	9	4	16	10	10	3	5	1	3	1
Chatt.	1	1	2	2	6	6	6	6	8	8	8	8
Cherokee	3	0	1	1	3	3	1	1	9	9	11	11
Total	18	5	18	18	30	23	18	11	31	27	31	29

Table 8: Summary of Potentially Significant Issues (PSIs) Present & Mitigated

Forest	Number of PSIs Present	Number of PSIs Mitigated	Percent of PSIs Mitigated
GW/Jeff	34	31	91%
NPNF	53	21	40%
Chattahoochee	31	31	100%
Cherokee	28	25	89%
All	**146**	**108**	**74%**