

February 20, 2024

Sent via CARA

National Forests in North Carolina
ATTN: Objections Coordinator
160A Zillicoa Street
Asheville, NC 28801

Dear Mr. Melonas,

On behalf of MountainTrue, the Center for Biological Diversity, and Defenders of Wildlife (“Objectors”), the Southern Environmental Law Center submits the following objection to the Draft Decision Notice and Finding of No Significant Impact for the Nantahala Mountains Project (“the Project”) published on January 3, 2024,¹ by the responsible official, M. Troy Waskey, the District Ranger for the Nantahala District of the Nantahala National Forest. This objection is timely.

Objectors submitted timely, substantive comments² regarding the Nantahala Mountains Project during designated opportunities for public comment and are eligible to object pursuant to 36 C.F.R. § 219.53.

I. Introduction

We are grateful for the District’s work to improve the Project and to address most of our concerns about its impacts on stands with old growth or rare and exemplary habitats and risks like steep slopes. In fact, we hesitated to file this Objection given those improvements. The objections we raise here are fundamentally problems with the new Forest Plan (“Plan”). To be clear, we could live with this Project if the Plan contained a strategy, as required by the Planning Rule, to ensure that successive projects in the future work together to restore ecological integrity and reduce the harm caused by the road system. And, if the Forest Service were to commit to initiate a Plan amendment addressing our concerns here, we would withdraw this Objection. In the meantime, however, we object to the Project for the following reasons.

This Project illustrates two of the fundamental flaws in the Plan. The Plan does not contain binding constraints on project-level actions to maintain or restore ecological integrity. It expressly allows individual projects to work against ecological integrity, with no structure to

¹ U.S. Forest Serv., Nantahala National Forest, Nantahala Mountains Project: Draft Decision Notice and Finding of No Significant Impact (January 2023) (“Draft Decision Notice & FONSI”).

² Comment Letter from S. Env’tl L. Ctr., MountainTrue, Wilderness Soc’y, & Defs. of Wildlife, to Steverson Moffat, Planning Team Leader, Nantahala Nat’l Forest (Dec. 13, 2021), re: Nantahala Mountains Project scoping letter; Comment Letter from S. Env’tl L. Ctr., MountainTrue, Wilderness Soc’y & Defs. of Wildlife to Steverson Moffat (Sept. 30, 2022), re: Draft Environmental Assessment for Nantahala Mountains Project; Comment Letter from Ctr. for Biological Diversity to Steverson Moffat (Dec. 13, 2021), re: Nantahala Mountains Project scoping letter; Comment Letter from Ctr. for Biological Diversity to Steverson Moffat (Sept. 28, 2022), re: Draft Environmental Assessment for Nantahala Mountains Project. These four comment letters are combined and attached as Attachment 1.

ensure that multiple projects over time are contributing to ecological integrity. Unsurprisingly, this Project, along with many others that preceded and will follow it, are continuing the practices that drove the Nantahala National Forest into departure in the first place. Specifically, we object to the Project's emphasis on large openings in cove and northern hardwood forests. We also object to the continued expansion of the road system, which undermines the integrity of aquatic ecosystems.

Under the National Forest Management Act (NFMA), land management plans must contain binding project-level constraints to maintain or restore ecological integrity. Throughout the plan revision, Objectors asked the Forest Service to adopt such constraints. Planners explicitly rejected those requests and instead explicitly allowed projects to violate principles of ecological integrity at the "local" level. Yet the agency did not acknowledge that "locally" inappropriate projects will add up to undermine ecological integrity at the landscape scale.

The Plan's lack of constraints (and its failure to analyze the likely effects of omitting such constraints) sets project developers up for failure as they try to meet institutional mandates, like timber targets, that are in tension with on-the-ground restoration needs. This Project—the first commercial timber project to be finalized under the new Plan—illustrates what will happen in the absence of binding, plan-level direction.

First, the Project emphasizes creation of large-patch early successional habitat (ESH) in highly productive cove and northern hardwood ecozones, where such disturbances are not consistent with ecological integrity as the Forest Service has defined it. During plan revision, we asked the agency to set limits on the amount of large-patch regeneration harvest that would occur in these forest types, because disturbances at that scale should be rare according to the Forest Service's description of their key ecosystem characteristics—the Plan's reference condition. The Plan contains no limit or even a pacing mechanism to prevent disproportionate targeting of these ecozones for timber production, and the cumulative effect of this Project and others under the old and new forest plans will be continued departure from ecological integrity.

Second, the Project will involve the construction of new roads and the expansion of the permanent road system, despite being tiered to a Forest Plan analysis that assumes the forests' already bloated and neglected road system will not grow under the Plan. The Plan analysis further fails to acknowledge the cumulative impact to aquatic ecosystems of building more roads with inadequate resources to maintain them. During plan revision, we showed that increasing the footprint and pace of timber production would result in an expansion of the road system, and this Project proves us right. There is no way for the agency to implement the Plan without growing the road system, yet the Plan provides no analysis of the cumulative impact of doing so. Put simply, the Project has no competent analysis to which it can tier.

Below, we summarize the arguments we made during the Forest Plan's comment and objection periods with respect to each of the two problems identified above, as well as how the Forests responded to them. We begin, though, by reiterating what NFMA and the Planning Rule require of forest plans and how those obligations intersect with the Forest Service's National Environmental Policy Act (NEPA) obligations. We then show how the Nantahala Mountains

Project illustrates the legal errors we identified during the forest plan revision process and encourage the Forests to correct them.

II. NFMA and the Planning Rule

The National Forest Management Act requires the Forest Service to produce and periodically revise a land resource management plan for each of its units. 16 U.S.C. § 1604. The Forest Service has structured its fulfillment of this obligation through regulations collectively known as the Planning Rule, 36 C.F.R. § 219. In 2012, the Forest Service revised the Planning Rule (“2012 Rule”) to ensure that regardless of whatever else forest plans did, they would provide for ecological sustainability by maintaining ecological integrity where it exists and restoring it where it does not.³

Ecological integrity is defined by the Planning Rule as “the quality or condition of an ecosystem when its dominant ecological characteristics ... occur within the natural range of variation,” or “NRV.”⁴ The Planning Rule further identifies “structure, function, composition, and connectivity” of forest ecosystems as dimensions of ecological integrity that must be provided for.⁵ The agency’s planning directives elaborate further: Each forest plan must be based on a set of reference conditions for the key ecosystem characteristics associated with ecosystems in the plan area.⁶ While plan-level exceptions can be made for “specific areas,” plan components must aim to restore NRV for those key ecosystem characteristics.⁷

Under the 2012 Rule, progress toward restoration must be *obligatory* at the project level. The 2012 Rule requires that forest plans include “plan components, including standards *or* guidelines, to maintain or restore” ecological integrity.⁸ “Standards” are “mandatory constraint[s] on project and activity decisionmaking.”⁹ “Guidelines” are also defined as “a constraint on project and activity decisionmaking,” but guidelines are drafted to “allow[] for departure from [their] terms, so long as the purpose of the guideline is met.”¹⁰ While standards and guidelines are subtly different, they are both *binding* at the project level. The 2012 Rule simply does not allow planners to set broad desired conditions and hope that future projects will do the right thing.

Stated differently, a forest plan does not satisfy the Planning Rule or NFMA if its components are so open-ended that their observance may or may not move the forest toward ecological integrity.

³ 36 C.F.R. § 219.8(a)(1) (2012); *see also* U.S. Forest Serv., Final Programmatic Environmental Impact Statement, National Forest System Land Management Planning (January 2012), at 105 (“[The 2012 Rule] clearly and explicitly focuses on maintaining desired ecological conditions where they currently exist and restoring ecological conditions that have been degraded, damaged, or destroyed.”).

⁴ *Id.* § 219.19.

⁵ *Id.* § 219.8(a)(1).

⁶ FSH 1909.12 ch. 14.

⁷ *Id.* 1909.12 ch. 23.11a

⁸ 36 C.F.R. § 219.8(a)(1) (emphasis added).

⁹ *Id.* § 219.7(e).

¹⁰ *Id.*

III. The Forest Service’s NEPA obligations

Under NEPA, the Forest Service must take a “hard look” at the likely impacts of implementing forest plans and projects under those forest plans.¹¹ To meet this basic requirement, the scope of NEPA analysis must correspond to range of outcomes authorized. For instance, if a decision authorizes the agency to take a range of actions that could have a high, medium, or low impact to a resource, the accompanying NEPA analysis is insufficient if it only analyzes a scenario where the agency chooses the action with a best-case scenario. This “hard look” must also extend to the cumulative effects of successive actions over time.¹²

Certainly the most efficient—and potentially the only—way to fully account for cumulative impacts of the Forest’s work is to programmatically assess the impacts of the projects expected under a forest plan and analyze their cumulative impacts. If this programmatic analysis is done well, project-level NEPA documents can “tier” to that analysis’ assessment of cumulative impacts and focus, appropriately, on the project’s local impact.¹³ In the absence of such analysis, however, each project-level NEPA document will be obligated to undertake the cumbersome and duplicative task of relating their local impacts to those of a program of work that likely has not yet fully taken shape.

But what happened here—and what is unacceptable under NEPA—is for *neither* the programmatic, plan-level Environmental Impact Statement (EIS) *nor* the project-level Environmental Assessment (EA) to take a “hard look” at the cumulative effects of agency work.

IV. Issue 1: Large-Patch ESH Creation in Ecozones where Inconsistent with NRV

More than half of the 357 acres of regeneration harvest approved under the Project would occur in the rich cove ecozone alone. By contrast, just 21 percent of the analysis area consists of rich cove forest. We are concerned that, as we discussed in our comments and objection to the Forest Plan, the agency is targeting these productive, commercially viable forest types for harvest in a manner that contradicts the agency’s own definition of ecological integrity in those forest types.

Even if it is agreed that the landscape would benefit from a given amount of young forest creation, *in what patch sizes* and *in which forest types* that amount of young forest is created matters tremendously for whether the landscape is moving closer to or farther away from ecological integrity. For example, as we pointed out repeatedly during the forest plan revision

¹¹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

¹² 40 C.F.R. § 1508.1(g)(3) (2020); *see also, e.g., WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 77 (D.D.C. 2019) (“Although [the Bureau of Land Management] may determine that each lease sale individually has a de minimis impact on climate change, the agency must also consider the cumulative impact of GHG emissions generated by past, present, or reasonably foreseeable BLM lease sales in the region and nation.”) (emphasis added); *Native Ecosys. Council v. Dombeck*, 304 F.3d 886, 896 (9th Cir. 2002) (rejecting Forest Service attempt to limit cumulative effects analysis to area immediately surrounding timber sale); *Salmon River Concerned Citizens v. Robertson*, 798 F. Supp. 1434, 1440 (E.D. Cal. 1992), *aff’d*, 32 F.3d 1346 (9th Cir. 1994) (finding NEPA documents must “consider cumulative effects in light of other [actions] by the Forest Service or other entities and must consider any cumulative effects resulting from the site specific application, even those effects occurring beyond the site area”).

¹³ 40 C.F.R. § 1508.1(ff) (2020) (defining tiering).

process, only a small amount of large-patch ESH occurs in mesic forests within their natural range of variation.¹⁴ Disturbance in cove and northern hardwood forests typically occurs through the creation of small gaps pockmarking the canopy rather than the kinds of large patches harvest creates, which are more characteristic of other forest types.

This was not controversial. In the Forest Service’s own words, cove forests are “generally stable” and “subject to smaller-scale natural disturbances.”¹⁵ Disturbance in these cove forests within their natural range of variation, according to the Forest Service, consists “primarily [of] single tree fall gaps, around 1/8 acre,” with “rarer 15–20 acre wind-blown areas.”¹⁶ But the Project will create 204 acres of large patches that should be “rare” in the rich cove ecozone. In the meantime, the Project proposes creating *zero* acres of regeneration through ESH gaps (i.e., 1/8 of an acre or less) that are common as part of the rich cove ecozone’s natural range of variation.

Though the Forest Service maintained throughout the planning process that NRV—the Planning Rule’s definition of ecological integrity—was not a “management target,”¹⁷ it nevertheless defined its reference conditions for ecological communities in the plan area based on NRV.¹⁸ Remarkably, however, the agency failed to include binding, project-level components to move toward its own reference conditions. Instead, it decided to aim for a crude landscape-scale target for total ESH levels irrespective of which ecozones and what patch sizes it was created in. This Project shows why the Plan’s framework will not restore ecological integrity, violating NFMA and the planning rule.

The Forest Service is approving this Project in the absence of any binding constraint in its forest plan dictating how many such “rare” areas it may create through harvest while maintaining or restoring ecological integrity, in this project or in combination with others to come. The Plan allows (and this Project perpetuates) a type of management that will not and *cannot* restore ecological integrity. The Forest Service offered two inadequate responses when we pointed out this fundamental flaw. First, the agency acknowledged that projects would “locally” be inconsistent with NRV, but not at the landscape scale.¹⁹ This makes no sense. Landscape-scale structure is the sum of local structural characteristics. By the Forest Service’s own definition, ecological integrity does not necessarily exist where landscape-level thresholds for ESH are present, but only where that ESH occurs in the right gap and patch sizes in the right ecozones.

¹⁴ See *id.* at 57–59 (describing “disturbance gap sizes” in cove and mesic oak forests as consisting of “primarily single tree fall gaps, around 1/8 acre” and larger 15–20-acre patches as “rare[.]”).

¹⁵ U.S. Forest Serv., Final Environmental Impact Statement for the Revised Land Management Plan, Nantahala & Pisgah National Forests (2023) (“NPNF FEIS”), at 3-162.

¹⁶ U.S. Forest Serv., Revised Land Management Plan, Nantahala & Pisgah National Forests (2023) (“NPNF Forest Plan (2023)”), at 57, 58.

¹⁷ See NPNF FEIS, *supra* note 15, at 3-102 (noting that NRV “does not necessarily constitute a management target”); NPNF FEIS App’x A (Response to Comments) at 36 (noting, more definitively, that NRV “does not constitute a management target”).

¹⁸ See, e.g., NPNF Forest Plan (2023) at 54–64, tbl.2 (ecozone descriptions for each forest type analyzed by the plan EIS, based on NRV as modified to account for things like the loss of American chestnut).

¹⁹ See *id.* at 51, ECO-DC-03 (“Locally, young forest patch size will frequently exceed average natural disturbance gap size ...”).

Second, the Forest Service stated that it would not exceed NRV for any ecozone at the landscape scale during the life of the Plan.²⁰ Again, however, the agency is not accounting for gap size. The Forest Service has developed no threshold capping the *large-patch* ESH that it knows should be “rare.” It therefore has no way of knowing when cove ecozones will exceed NRV for large patches. In fact, we provided data during the planning process showing that in 2013, “cove forests [were] more disturbed than their reference models.”²¹ The Plan (and this Project) will exacerbate that departure.

We note, again, that the Plan has put project developers in an impossible position. Planners explained that NRV is “used to understand landscape ecological integrity” and confirmed that project developers could not and would not “evaluate [it] at the project level.”²² We tend to agree that ensuring progress toward ecological integrity is practically beyond the scope of any one project, which is precisely why the Plan was required to ensure such progress by adopting binding project-level components to do so. The Plan declined, and Districts are now in a pickle.

While the Plan itself does not contain project-level limits needed to restore ecological integrity, the Plan’s EIS assumes the existence of such components. For instance, the model the Forests used to analyze the impact of plan implementation on the environment applied a rule capping regeneration harvest occurring in cove forests at 30 percent of the landscape’s total.²³ The use of that cap prevented the EIS from showing the worst-case effects of the Plan’s open-ended discretion. Meanwhile, this Project, typical of others on the District, shows exactly how that discretion will be exercised (as does the table on the following page).

Contrary to the 30 percent cap on regeneration harvest in cove forests assumed by the modeling informing the Plan’s NEPA analysis, the Project proposes a slate of regeneration harvest where coves (rich coves and acidic coves) account for more than double that 30 percent cap—62.6 percent of the total.²⁴ And it is not an outlier. As we warned the Forest Service, many of the projects underway when the plan was finalized proposed to regenerate a disproportionate share of cove forests. Current projects on the Nantahala are locating more than 64% of harvest in the cove ecozone and 89% in mesic ecozones. Because coves are already more disturbed than their reference model, this Project is exacerbating departure at the ecozone scale. And it is part of a trend that the Forest Service has no mechanism to restrain: The Project targets highly productive mesic forests in a manner and to a degree that under the terms of the Plan the Forest Service could—and by all appearances, plans to—repeat for the life of the Plan.

²⁰ See *id.* at 215, MAT-DC-02 (noting that “frequently” excessive young forest patch sizes will nevertheless “not contribute to exceeding the Natural Range of Variation at the landscape scale”).

²¹ W. N. Carolina Alliance [now MountainTrue], Summary of Ecological Departure Analysis of Nantahala–Pisgah National Forest (2013), at 1, *available at* <http://www.conservationgateway.org/ConservationPractices/FireLandscapes/FireLearningNetwork/NetworkProducts/Documents/Final%20Summary%20of%20Ecological%20Departure%20Analysis.pdf>.

²² NPNF FEIS, *supra* note 15, App’x A at 36.

²³ *Id.*, App’x D at D-49.

²⁴ The model undergirding the Forests’ NEPA analysis of the revised forest plan lumped acidic coves and rich coves together in a single analytic unit.

Proportional Analysis of Regeneration Harvest in Mesic Ecozones for Projects to be Implemented Under the New Forest Plan

Project	Total Regen Acres	Northern Hardwood Ecozone	Cove EcoZone Regen	Mesic Oak Ecozone Regen	% Cove	% Mesic Oak	% Mesic Ecozones²⁵
12-Mile	1008	2.8	475.4	181.7	47.20%	18%	65.50%
Buck	795	29.7	499.5	185.6	62.80%	23.30%	89.90%
Crossover	1316	87.9	871.8	192.9	66.20%	14.60%	87.50%
Nantahala Mountains	357.7	56	223.7	49.5	62.60%	13.8%	94.60%
Nantahala NF Total	2468.7	173.6	1595	428	64.6%	17.34%	88.97%
Nantahala-Pisgah Total	3476.7	176.4	2070.4	609.7	59.55%	17.54%	82.16%

More practically, failing to adopt binding constraints deprives the Forest Service and the public of a decision tool that can answer questions about management like “where” and “how much” in a way that would reduce controversy around each project-level decision. It dooms all parties involved to argue over those questions in piecemeal ways, in forums—like this one—where the agency can argue that the answers are outside the scope of the decision under review. To be sure, those questions *should* have been answered at the planning stage, but they were not.

In summary, the Project illustrates the Plan’s violation of the planning rule, and it also violates NEPA because it has no Plan-level analysis to tier to with respect to overall levels of ESH creation in coves. The Plan EIS assumes that ESH in coves will be limited to 30% of overall harvest, but the Project blows past that figure. The Project also has nothing to tier to when it comes to appropriate gap and patch sizes of ESH by ecozone. Neither the Plan nor the Plan EIS explain what “rare” means as applied to large ESH patches in cove or northern hardwood ecozones, so the Project must fill that gap and provide a cumulative effects analysis of how these harvests, combined with other past and future harvests, will add up to provide for ecological integrity. Is that a difficult task? Maybe so, but that is why the Plan was required to include project-level constraints—which we pointed out repeatedly during the planning process.

²⁵ This column represents the combined proportion of regeneration harvest occurring in the Northern Hardwood, Rich Cove, Acidic Cove, and Mesic Oak ecozones. “Mesic Oak” in turn refers to a combination of ecozones including High-Elevation Red Oak and Montane Oak ecozones. For the Nantahala Mountains Project specifically, the acreages constituent to “mesic oak” are as follows: Montane Oak–Hickory Slope: 22.3 acres; Montane Oak–Hickory Cove: 4.3 acres; High-Elevation Red Oak: 22.9 acres.

To remedy these errors, the Forest Service must (a) drop enough harvest of cove and northern hardwood ecozones in *this* Project to show that large-patch openings in cove hardwoods will be “rare,” or at the very least will not exceed 30% of total harvest; (b) adopt a tracking system to ensure that successive projects over time will meet those criteria at the geographic-area scale; (c) undertake a comprehensive cumulative impacts analysis of the effects of overharvesting in cove and northern hardwood ecozones; or (d) initiate a plan amendment process to incorporate collaborative solutions for “pacing” different types of harvest over successive projects (i.e., the solutions recommended by the Nantahala–Pisgah Forest Partnership).

V. Issue 2: The Road Network

To facilitate the Project’s silvicultural work, “additions to the permanent road system are proposed,” as well as “[n]ew temporary road segments.”²⁶ Specifically, the Project proposed to add close to three miles of roads to the permanent road system. All these miles are new road construction and would expand the existing road system, although all but 0.28 miles would involve the improvement and integration of “existing, unclassified road prism.”²⁷

Our objection to the Project is based on the agency’s failure to conduct a cumulative effects analysis, at either the Plan level or the Project level, reflecting the impacts of these or any other road system additions. The Plan’s cumulative effects analysis merely notes that “Forest Service Roads will receive increasing use” due to population growth.²⁸ It does not grapple with the inevitable expansion of the road system necessary to meet increased timber harvest levels on a larger spatial footprint. In fact, the Plan EIS states, with no factual basis, that “there is unlikely to be a gain in overall road miles”²⁹

During the plan revision process, the Forest Service acknowledged that roads were the greatest threat to water quality on the forests.³⁰ Among other things, roads threaten slope stability, impede passage of aquatic species, and contribute to siltation of their watersheds—threats we expect to become more pronounced as climate change makes severe storms more common. These risks are highest when roads are under-maintained, and so water quality is especially threatened by the road networks on the Nantahala and Pisgah national forests, which have exceptionally long road maintenance backlogs and only a small fraction of the funding required to address them.³¹

²⁶ U.S. Forest Serv., Nantahala Mountains Project, Scoping Record (2021), at 6.

²⁷ *Id.* at 15; Draft Decision Notice & FONSI, *supra* note 1, at 14.

²⁸ NPNF FEIS, *supra* note 15, at 3-521.

²⁹ *Id.*

³⁰ *Id.* at 3-57; *see also id.* at 3-73 (“Changes in the effects of the transportation system are often associated with changes in active timber management.”).

³¹ *See* S. Env’tl L. Ctr. et al., Comments on Draft Environmental Impact Statement for the Revised Land Management Plan, Nantahala & Pisgah National Forests (June 29, 2020), at 208 (citing U.S. Forest Serv., National Forests in North Carolina, Nantahala National Forest Transportation System Analysis Process (TAP) Report (Sept. 2015), at 2 (noting an 88% budget shortfall relative to the expenditure necessary to adequately maintain the then-existing road system)).

The Forest Plan authorizes both the expansion of the forests' logging footprint and a quintupling of logging levels.³² Road construction is a necessary incident to logging on the Forests. It was therefore unacceptable for the FEIS, as we observed in our Objection, to claim “there is unlikely to be a gain in overall road miles”³³ and “not disclose the extent of the backlog or attempt to characterize the degree to which the current road system is negatively impacting environmental resources, despite that information being available to the agency in the planning record and highly relevant to the decision.”³⁴ In its response to our Plan objection, the Forest Service rationalized its “no net gain” assumption with an argument that “the revised plan does not propose road building as part of plan components.”³⁵ Yes, but so what? NEPA requires disclosure of *effects*, not purposes. Whether or not the purpose of projects is to expand the road system, projects under the Plan will cumulatively have that effect. The agency also attempted to bolster its no-net-gain assumption by pointing to an objective to decommission a paltry number of *unauthorized* road miles,³⁶ which would have no effect on the size of the road system the agency is obligated to maintain, and a Tier 2 objective to reduce road miles in backcountry areas by 10%—i.e., a reduction of four total road miles over the 20-year expected life of the Plan.³⁷ In contrast, taking the Plan's road construction assumptions at face value, the forests would experience a 16% increase—364 new miles—to the road network over that time period, far outpacing its modest road reduction goals.³⁸ Indeed, even this is a massive underestimate relative to the Plan's ambitious logging targets, which require expansion of the suitable base into currently inaccessible areas. This Project, which alone would add about 3 *net* miles to the road system, shows precisely why the Plan's math doesn't add up.

This issue highlights the mismatch between the Plan's lack of project-level constraints and a best-case environmental analysis that assumes future projects will always do what is necessary, even absent binding plan components, to achieve ecological integrity. For instance, in responding to comments on its draft plan and DEIS asking for harvest to be focused on areas accessible from the existing road network, the Forest Service explained that the Plan would not include such limits.³⁹ But the Forest Service nevertheless decided to *assume* in the EIS that such limits had been adopted or, at any rate, would be voluntarily observed.⁴⁰ Planners appear to have

³² See NPNF FEIS, *supra* note 15, at xv tbl.i (contrasting the 650 acres per year of timber harvest occurring under Alternative A (the no-action alternative) with the harvest authorized under all action alternatives—up to 3200 acres per year).

³³ *Id.* at 3-521.

³⁴ S. Env't'l L. Ctr. et al., Objection to the Revised Land Management Plan, Nantahala & Pisgah National Forests (March 22, 2022) (“SELC Plan Objection”), at 144, Attachment 2.

³⁵ NPNF FEIS, *supra* note 15, at 3-520.

³⁶ *Id.* at 3-521 (citing objective TA-O-04 from the NPNF Forest Plan (2023)), *supra* note 16, at 107–08 (committing to decommission 20 miles of unauthorized roads over the life of the plan).

³⁷ NPNF FEIS, *supra* note 15, at 3-521 (citing objective TA-O-06 from the NPNF Forest Plan (2023), *supra* note 16, at 108 (committing to “determine the amount of unneeded roads in Backcountry and decommission 10% [of them] over the life of the plan”).

³⁸ SELC Plan Objection, *supra* note 34, at 145.

³⁹ NPNF FEIS, *supra* note 15, App'x A at 75 (noting that “the areas identified for harvest consider a variety of factors [including] age and road access but not to the exclusion of other needs in the area.”).

⁴⁰ *Id.* at 75–76 (“To address this in the EIS, the Spectrum model included prompts to repeatedly return to previously harvested units in order to reduce the timber harvest footprint across the forest.”).

confused a modeling constraint with a legal constraint. To be clear, the Plan’s analysis is based on an assumption (repeat harvesting of the same units) that does not correspond to any components we can find in the Plan. This Project, of course, shows that the assumption was untrue. The Project does not use existing system roads. It instead requires expansion of the road system. The consequences of omitting binding plan direction to constrain the road system are present in this Project, exposing the absence of NEPA analysis of direct and cumulative impacts.

Despite our efforts to provide collaborative solutions to address the road system at the Plan level, the Forest Service repeatedly responded that “[d]ecisions regarding individual roads are made at the project level” and that “[t]he plan includes direction to ensure the transportation system ... [has] minimal impacts on resources.”⁴¹ It also stated that “the EIS considers the potential impact of road construction on several resources described in other sections of th[e] EIS (soils, water, cultural resources, etc.).”⁴² But none of these sections of the EIS grapple with the fundamental issues: the road system is bigger than the agency’s budget and is inadequately maintained; the road system is currently having serious and deleterious effects on aquatic ecosystems; implementing Plan objectives on the enlarged suitable base will require an expansion of the road system; and the increase in road miles will cause an increase in harm to aquatic resources, not to mention spreading non-native invasive plants and serving as vectors for unlawful off-road vehicle use. This problem is beyond the scope of individual projects, and failing to consider it at the Plan level leaves project developers with an impossible task.

Indeed, the Project’s EA does not even attempt to fill the enormous gap left by the Plan EIS. Despite authorizing construction of new roads and expansion of the permanent road system, the Project EA concluded “there would be no cumulative effects to road management from implementing [the Project].”⁴³ The Project thus lacks its own analysis of cumulative impacts of expanding the road system, and it has nothing to tier to. For that reason, we object. As a remedy, the Forest Service must (a) drop the road construction and the commercial harvest served by the new roads in this Project; (b) undertake a full analysis of cumulative impacts of road construction and road system expansion in the Project’s NEPA analysis; or (c) initiate a plan amendment process to adopt plan components that will limit expansion of the road system to match the “no net gain” assumption in the Plan EIS or otherwise incorporate collaborative solutions to address the road system’s bloat.

VI. Conclusion

If we were still operating under the old forest plan, we would not have objected to this Project. Again, we appreciate the District’s sincere efforts to respond to public input and tailor the Project to avoid the most sensitive resources. But given the Forests’ outright refusal to address our fundamental, long-term concerns during the planning process, we are left with no choice but to raise them again here.

⁴¹ U.S. Forest Serv., Nantahala & Pisgah National Forests Land Management Plan Revision, Final Response to Objection Issues and Instructions (January 2023) (“Response to Objections”), at 250 (quoting NPNF FEIS App’x A at 89).

⁴² *Id.* at 254.

⁴³ See Nantahala Mountains Project Draft EA (August 2022) at 71.

What do we want the Nantahala National Forest's landscape to look like in the future? During plan revision, even the Forest Service agreed that it should resemble the natural range of variation, with appropriate species composition and disturbance patch sizes in each ecozone, and that the road system should be fully maintained to protect aquatic ecosystems. Yet here we are, after 10 years of planning, with a project that will move us farther away from that goal. The planning rule requires more, and these lands deserve better.



Henry Gargan
Associate Attorney
Southern Environmental Law Center
hgargan@selcnc.org



Sam Evans
National Forests and Parks Program Leader
Southern Environmental Law Center
sevens@selcnc.org